



CITY PLANNING COMMISSION

October 23, 2013/Calendar No. 9

C 080322 ZMK

IN THE MATTER OF an application submitted by Forrest Lots, LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 13b:

1. changing from an M1-1 District to an R6A District property bounded by:
 - a. Flushing Avenue, Bushwick Avenue, the southwesterly centerline prolongation of Forrest Street, Garden Street, a line 100 feet southeasterly of Flushing Avenue, and Beaver Street;
 - b. a line midway between Flushing Avenue and Montieth Street, a line 100 feet southwesterly of Stanwix Street, Forrest Street, and a line 100 feet northeasterly of Bushwick Avenue; and
 - c. a line 100 feet southeasterly of Noll Street, a line 100 feet southwesterly of Evergreen Avenue, Melrose Street, and Stanwix Street;
2. changing from an M1-1 District to an R7A District property bounded by:
 - a. Flushing Avenue, Stanwix Street, Forrest Street, a line 100 feet southwesterly of Stanwix Street, a line midway between Flushing Avenue and Montieth Street, a line 100 feet northeasterly of Bushwick Avenue, Forrest Street, and Bushwick Avenue; and
 - b. Noll Street, Evergreen Avenue, Melrose Street, and a line 100 feet southwesterly of Evergreen Avenue, a line 100 feet southeasterly of Noll Street, and Stanwix Street;
3. changing from an M3-1 District to an M1-2 District property bounded by Flushing Avenue, Evergreen Avenue, Noll Street, and Stanwix Street;
4. establishing within a proposed R6A District a C2-4 District bounded by Flushing Avenue, Bushwick Avenue, the southwesterly centerline prolongation of Forrest Street, Garden Street, a line 100 feet southwesterly of Bushwick Avenue, a line 100 feet southeasterly of Flushing Avenue, and Beaver Street;
5. establishing within a proposed R7A District a C2-4 District bounded by:
 - a. Flushing Avenue, Stanwix Street, Montieth Street, a line 100 feet southwesterly of Stanwix Street, a line midway between Flushing Avenue and Montieth Street, a line 100 feet northeasterly of Bushwick Avenue, Forrest Street, and Bushwick Avenue; and
 - b. Noll Street, Evergreen Avenue, Melrose Street, and a line 100 feet

southwesterly of Evergreen Avenue;

as shown on a diagram (for illustrative purposes only) dated June 3, 2013, and subject to the conditions of CEQR Declaration E-315.

This application by Forrest Lots, LLC, for an amendment of the Zoning Map from M1-1 to R6A, R6A/C2-4, R7A and R7A/C2-4, and from M3-1 to M1-2 was filed on March 5, 2008, to facilitate the development of ten mixed-use residential-commercial buildings with 977 units of housing, including 242 units of affordable housing, and 54,132 square feet of ground floor retail space, on five blocks bounded by Bushwick Avenue, Flushing Avenue, Evergreen Avenue, Melrose Street, Stanwix Street and Forrest Street in Brooklyn Community District 4.

RELATED ACTIONS

In addition to the application for a zoning map amendment (C 080322 ZMK), which 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 110179 ZRK Zoning Text Amendment to create new Inclusionary Housing Designated Areas in Brooklyn Community District 4.

C 070250 MMK City Map Amendment to re-establish Stanwix Street between Montieth Street and Forest Street, and Noll Street between Stanwix Street and Evergreen Avenue.

BACKGROUND

Forrest Lots, LLC, is requesting several actions to facilitate the development of 977 units of housing, including 242 units of affordable housing, 54,132 square feet of ground floor retail space, 504 accessory off-street parking spaces, and publicly accessible open space to be located in the Bushwick section of Brooklyn Community District 4.

The rezoning area is located in northwestern Bushwick, just south of Brooklyn Community District 1 (Greenpoint-Williamsburg) and west of Community District 3 (Bedford-Stuyvesant), and is bounded by Flushing Avenue to the north, Evergreen Avenue to the east, Melrose Street to the south and Stanwix, Garden, and Beaver streets to the west.

The rezoning area is currently zoned M1-1 and M3-1 and is comprised of five full blocks and one partial block, of which the applicant owns two full blocks and two partial blocks. Within the M1-1 district, the applicant owns one full and one partial blocks that are currently vacant and used for truck parking. Within the M3-1 district, the applicant owns two parcels, one occupied by warehouse structures to be demolished, and one occupied by the “Mademoiselle” building, a large warehouse which is proposed to remain.

The remainder of the rezoning area not under the applicant’s control is zoned M1-1 and is characterized by mixed-use residential buildings with ground-floor retail, warehouses and auto-oriented uses along Flushing and Bushwick avenues, and a manufacturing use at the corner of Evergreen Avenue and Melrose Street.

The area to the north of Flushing Avenue and east of Bushwick Avenue, in Community District 1, is zoned M1-1 and M1-2 and is predominately developed with light manufacturing uses in one- and multi-story loft buildings. North of Flushing Avenue and west of Bushwick Avenue are the NYCHA Bushwick Houses, a public housing development with 1,221 units consisting of eight 13- and 20-story buildings in an R6 district.

Rheingold Gardens and Renaissance Estates are located immediately to the west of the rezoning area. These two developments contain 460 residential units, many of them affordable homeownership units in row-houses and rental units in mixed-use apartment buildings with ground-floor retail, as part of the West-Bushwick Urban Renewal Plan, adopted in 2001 (C 010593 HUK). They were developed after a design ‘charrette’ held by HPD with area residents, and facilitated by a 2001 zoning map amendment (C 010594 ZMK) to change an M3-1 district to R7-2.

The area further to the west between Beaver Street, Bushwick Avenue and Broadway is mixed in character, with two- and three-story row-houses interspersed with low-rise manufacturing uses and mixed-use and low-rise commercial buildings along Broadway in C4-3, M1-1, R6 and C8-2 districts. The J, M, and Z subway line runs elevated along Broadway with stations at Flushing Avenue Station and the Woodhull Medical Center at the intersection of Broadway and Flushing Avenue one block to the west of the rezoning area. The area to the west of Broadway, in Community District 3, was rezoned in 2012 as part of the Bedford-Stuyvesant North Rezoning

(C 120294 ZMK) following a request by the local Community Board and elected officials to protect the residential row-house character of the area and incentivize affordable housing.

The area to the south of the rezoning area is characterized by low-rise manufacturing buildings, row houses and some vacant lots in M1-1 and R6 districts.

To the east of the site across Evergreen Avenue are Green Central Noll Park and P.S. 145, an elementary school, as well as warehouse and manufacturing uses in an M3-1 district.

The applicant proposes the construction of ten new buildings, ranging in height from six to eight stories with a total of 977 residential units, of which 242 would be affordable for residents earning 60% or less of the Area Median Income. Of the affordable units, 47 are proposed for senior housing. A total of 54,132 square feet of retail space would be provided on the ground floor of the buildings along Bushwick Avenue, Stanwix Street between Flushing Avenue and Montieth Street, and along Evergreen Avenue between Noll Street and the non-applicant owned parcels on the southeast corner of that block. 504 off-street parking spaces would be provided in decked and wrapped parking on the inside of the buildings. The deck above the parking would serve as accessible landscaped open space for building residents.

The applicant also proposes a publicly accessible landscaped open space that would create a pedestrian connection between the intersections of Renaissance Court and Stanwix Street to the west and the intersection of Evergreen Avenue and George Street to the east.

The applicant also proposes to reopen Stanwix Street between Forrest Street and Montieth Street and Noll Street between Stanwix Street and Evergreen Avenue, thus restoring the original street grid. Both street segments were demapped and closed in the 1950s and 1960s when the land was still used for manufacturing uses including the Rheingold Brewery.

To facilitate this project, the applicant has requested zoning changes from M1-1 to R7A and R7A/C2-4, R6A and from M3-1 to M1-2, a zoning text amendment to create a new Inclusionary Housing Designated Area in Community District 4, and an amendment to the City Map to reestablish the formerly demapped streets.

Zoning Map Amendment (C 080322 ZMK)

The applicant proposes to rezone the area to the west of Bushwick Avenue from M1-1 to R6A and R6A/C2-4 along Flushing and Bushwick avenues. The proposed zoning districts would bring most of the parcels into conformance and compliance with zoning. For the area between Bushwick Avenue and Stanwix Street, the applicant proposes to rezone from M1-1 to R7A, R6A and R6A/C2-4 along Bushwick Avenue, Flushing Avenue and Stanwix Street between Flushing Avenue and Montieth Street. This would bring the current uses along Flushing and Bushwick avenues into conformance and compliance with zoning and allow for the proposed mixed-use residential with ground-floor retail development on sites owned by the applicant. For the block occupied by the “Mademoiselle” building warehouse, the applicant proposes to rezone from M3-1 to M1-2. The proposed M1-2 zoning district would allow the existing warehouse use to remain conforming and complying with zoning while providing a transition to the proposed residential

use. For the block along Evergreen Avenue, the applicant proposes to rezone from M1-1 to R7A, R6A and R6A/C2-4 and would allow for the mixed-use redevelopment of this site which is mostly owned by the applicant.

M1-1 and M1-2 districts are light manufacturing districts which allow light manufacturing and limited commercial uses at a Floor Area Ratio (FAR) of 1.0 and 2.0, respectively, and limited community facility uses of 2.4 and 4.8 FAR, respectively. The maximum building height is governed by a sky exposure plane after a maximum street wall height of 30 to 60 feet.

M3-1 districts are heavy manufacturing districts with low performance standards where commercial uses are limited and community facility and residential uses are not permitted. The FAR is limited to 2.0 and the building height is controlled by sky exposure plane, which begins 60' above the street line.

R6A is a contextual residential zoning district that allows residential and community facility uses. The maximum FAR is 3.0, and the maximum building height is 70 feet, with the base height limited to 40-60 feet, above which a setback is required. In Inclusionary Housing designated areas, as proposed, the base FAR for developments without affordable housing is reduced to 2.7. If affordable housing is provided pursuant to the Inclusionary Housing Program, the maximum FAR may be increased to 3.6.

R7A is a contextual residential zoning district that allows residential and community facility uses and a building height of up to 80 feet, with a base height of 40 to 65 feet and a maximum FAR of 4.0. In Inclusionary Housing designated areas, the base FAR for developments without affordable housing is reduced to 3.45. If affordable housing is provided pursuant to the Inclusionary Housing Program, the maximum FAR may be increased to 4.6.

C2-4 is a commercial “overlay” district which allows for neighborhood retail uses with a commercial FAR of up to 2.0, or 1.0 in a mixed-use building controlled by the underlying residential district.

Zoning Text Change (N 110179 ZRK)

The proposed zoning text change would amend Appendix F of the Zoning Resolution to create an Inclusionary Housing designated area within Community District 4. The Inclusionary Housing Program would only apply to the districts in which residential uses are allowed.

City Map Change (C 070250 MMK)

The City Map Amendment would re-establish the section of Stanwix Street between Montieth and Forrest Street, and the section of Noll Street between Stanwix Street and Evergreen Avenue which were demapped in the 1956 and 1967, respectively. Both streets would be mapped to a width of 50 feet with 10-foot-wide sidewalks on either side, and a 30-foot wide parking/travel lane. As part of the reopening of the streets, Stanwix Street would become a southbound-only one-way street and Noll Street a westbound only street, and Forrest Street between Bushwick

Avenue and Stanwix Street an eastbound-only street to better integrate the remapped streets into the modified street grid.

ENVIRONMENTAL REVIEW

This application (C 080322 ZMK) in conjunction with the applications for the related actions (N 110179 ZRK and C 070250 MMK) 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 New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 09DCP002K. The lead agency is the City Planning Commission.

It was determined that the proposed actions may have a significant effect on the environment. A Positive Declaration was issued on July 31, 2012 and a Draft Scope of Work was issued on July 27, 2012, and distributed, published and filed. A Public Scoping meeting was held on September 10, 2012 and comments were accepted by the lead agency through September 24, 2012. A Final Scope of Work, reflecting the comments made during the scoping was issued on May 31, 2013.

The applicant prepared a Draft Environmental Impact Statement (DEIS) and a Notice of Completion for the DEIS was issued May 31, 2013. On September 11, 2013, a joint public hearing was held on the DEIS pursuant to SEQRA regulations and CEQR procedures in conjunction with the Uniform Land Use Review Procedure (ULURP) applications and comments

were accepted by the lead agency through September 23, 2013. A Final Environmental Impact Statement (FEIS) was completed and a Notice of Completion for the FEIS was issued on October 11, 2013.

The FEIS identified that the proposed project would result in significant adverse impacts to community facilities (public elementary schools), open space, and transportation (traffic). Details of these impacts and measures to minimize or eliminate these impacts, where feasible and practicable, are described below.

COMMUNITY FACILITIES – PUBLIC ELEMENTARY SCHOOLS

The proposed project would result in significant adverse impacts on elementary school seats by increasing the shortfall of elementary school seats in CSD 32, sub-district 2. The significant adverse elementary school impacts can all be fully mitigated by either one of following mitigation measures:

- Reconfiguration of certain existing unused administrative and support space within P.S. 145 (located at 100 Noll Street) to create additional classroom space for the 73 student shortfall resulting between the CEQR threshold for significance and projected elementary students generated by the applicants proposed development of the Applicant's sites; or
- Provide new classroom space within one of the Applicant's proposed buildings, preferably on Site 3, which is nearest to P.S. 145, for the 73 student shortfall resulting between the CEQR threshold for significance and projected elementary students generated by the applicants proposed development of the Applicant's site.

In order to address the Proposed Action's potential significant adverse impact on elementary schools, prior to any phase of development that will result in the Applicant's introduction of 619 residential units in the study area, the Applicant, in consultation with DOE/SCA and the principal of P.S. 145 will seek to implement one of the two mitigation measures outlined above. In accordance the terms of the Restrictive Declaration entered into by the Applicant, the Applicant will be required to work with DOE/SCA and the principal of P.S. 145 to implement one of these mitigation measures prior to commencing construction on any phase of development that would introduce 619 residential units. Absent the implementation of such measures, the Proposed Action could have an unmitigated significant adverse impact on elementary schools.

OPEN SPACE

The proposed project's new residential population would place new demands on the area's open space resources and would result in a significant open space impact. The following measures would partially mitigate the Proposed Action's significant adverse open space impact:

- Prior to the occupancy of 260 new residential units developed by the Applicant, the Applicant shall provide a contribution to DPR of \$350,000 for improvement of adult fitness equipment or other active open space improvements to Green Knoll Park, or for other improvements, enhancements or creation of active open spaces in the study area to increase their utility, safety and capacity to meet identified needs in the study area as may be determined by DPR, in consultation with DCP as the lead agency, at a time when the funding becomes available, and;
- Prior to the occupancy of Sites 3 & 4, the Applicant shall provide approximately 17,850 sf ft (0.4 acres) of publicly accessible on-site open space;

In accordance with the provisions of a Restrictive Declaration entered into by the Applicant, the required publicly accessible on-site open space shall be located on the Applicant's property, on site 3, between sites 3 & 4, with access from both Stanwix Street and Evergreen Avenue, and shall be accessible to the public during all hours of operation. In accordance with the provisions of the Restrictive Declaration, prior to the implementation of the publicly accessible open space, the Applicant shall propose a final design, subject to review and Certification of the Chair of the Department of City Planning that the open space complies with the minimum standard requirements set forth in the Restrictive Declaration. While the identified significant adverse impact to open space could be partially mitigated with the measures proposed above, it would still constitute an unavoidable significant adverse impact on open space resources. As the significant adverse impact on open space would not be fully mitigated, the Proposed Action would result in an unavoidable adverse impact on open space.

TRANSPORTATION – Traffic

The traffic impact analysis indicates that there would be the potential for significant adverse impacts at two intersections each in the weekday AM and Saturday MD peak hours, three intersections each in the weekday midday peak hour, and four intersections each in the PM peak hour.

Implementation of traffic engineering improvements, such as shifting of signal timing changes and parking regulation modifications would provide mitigation for all of the anticipated traffic impacts. In addition, a new warranted traffic signal would be installed at the Bushwick Avenue/Noll Street intersection reflecting of the change in street direction of Noll Street to westbound and its extension west of Evergreen Avenue due to the newly mapped segment of the street.

Forrest Street and Bushwick Avenue

Impacts to the northbound approach in the MD and PM peak hours could be fully mitigated by implementing a no standing 7AM-7PM, Monday through Friday regulation for 100' on the east curb of the northbound approach.

Noll Street and Bushwick Avenue

Impacts to the westbound left-right movement on Noll Street in all peak hours could be fully mitigated by installing a new traffic signal with a 120 second cycle length. As discussed above, the installation of the traffic signal reflects the change in street direction of Noll Street to westbound and its extension east of Evergreen Avenue due to the newly mapped segment of the street.

Arion Place/Beaver Street and Bushwick Avenue

Impacts to the northbound through movement on Bushwick Avenue in the weekday MD peak period could be fully mitigated by shifting one second of green time from the eastbound and southbound approaches to the northbound/southbound approaches. Impacts to the northbound through movement on Bushwick Avenue could be fully mitigated by shifting two seconds of green time from the eastbound approach to the northbound/southbound approach in the Saturday MD peak period. Impacts to the eastbound left-right movement in the PM peak period could be fully mitigated by implementing a no standing 7AM-7PM, Monday through Friday regulation for 100' on the south curb of the eastbound approach.

Melrose Street and Bushwick Avenue

Impacts to the westbound through movement on Melrose Street in the weekday AM and PM peak periods could be fully mitigated by shifting three seconds of green time from the northbound/southbound approaches to the westbound approach as well as implementing a no standing 7AM-10AM, Monday through Friday regulation for 100' on north curb of the westbound approach.

PROTECTIVE MEASURES RELATED TO THE ENVIRONMENT

To avoid the potential for certain significant adverse impacts to occur, the proposed actions includes an (E) designation for hazardous materials, air quality, and noise (E-315). In addition the applicant will record a restrictive declaration in conjunction with the proposed project which will require the implementation of project components related to the environment and mitigation measures, consistent with the FEIS.

HAZARDOUS MATERIALS

The (E) designation requirements related to hazardous materials would apply to all of the projected and potential development sites, which include the following:

Projected Development Sites:

Block 3139, Lots 18-21, 23-36 (Projected Development Site 1)
Block 3141, All Lots (Projected Development Site 2)
Block 3152, Portion of Lot 3 (Projected Development Site 3)
Block 3152, Lots 1, 2, p/o Lot 3, 45, 48, 56, 58 62-64, 66 (Projected Development Site 4)
Block 3152, Lots 36-38, 41, 43 (Projected Development Site 5)
Block 3138, Lots 20, 22 (Projected Development Site 6)
Block 3138, Lot 32 (Projected Development Site 7)
Block 3137, Lot 56 (Projected Development Site 8)

Potential Development Sites:

Block 3152, Lot 44 (Potential Development Site 9)
Block 3138, Lot 11 (Potential Development Site 10)
Block 3137, Lot 51 (Potential Development Site 11)

Proposed Streets to be Mapped:

Block 3140, Lot 50 (Proposed Stanwix Street to be mapped)
Block 3152, Lot 100 (Proposed Noll Street to be mapped)

The applicable text for the (E) designations related to hazardous materials is as follows:

Task 1

The applicant must submit to the New York City Office of Environmental Remediation (OER), for review and approval, a Phase 1 Environmental Site Assessment (ESA) of the site along with a soil and groundwater testing protocol, including a description of methods and a site map with all sampling locations clearly and precisely represented. If site sampling is necessary, no sampling should begin until written approval of a protocol is received from OER. The number and location of sample sites should be selected to adequately characterize the site, the specific source of suspected contamination (i.e., petroleum based contamination and non-petroleum based contamination), and the remainder of the site's condition. The characterization should be complete enough to determine what remediation strategy (if any) is necessary after review of sampling data. Guidelines and criteria for selecting sampling locations and collecting samples are provided by OER upon request.

Task 2

A written report with findings and a summary of the data must be submitted to OER after completion of the testing phase and laboratory analysis for review and approval. After receiving such results, a determination is made by OER if the results indicate that remediation is necessary. If OER determines that no remediation is necessary, written notice shall be given by OER.

If remediation is indicated from the test results, a proposed remediation plan must be submitted to OER for review and approval. The applicant must complete such remediation as determined necessary by OER. The applicant should then provide proper documentation that the work has been satisfactorily completed.

An OER-approved construction-related health and safety plan (CHASP) would be implemented during excavation and construction activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil and/or groundwater. This plan would be submitted to OER for review and approval prior to implementation.

All demolition or rehabilitation would be conducted in accordance with applicable requirements for disturbance, handling and disposal of suspect lead-paint and asbestos containing materials. For all projected and potential development sites where no (E) designation is recommended, in addition to the requirements for lead-based paint and asbestos, requirements (including those of the New York State Department of Environmental Conservation (NYSDEC)) should petroleum tanks and/or spills be identified and for off-site disposal of soil/fill would need to be followed.

AIR QUALITY

The (E) designation requirements related to air quality would apply to the following properties, which include six (6) projected and three (3) potential development sites. The (E) designations for the Applicant's development sites are based on the Applicant's illustrative building design for these sites, as shown on Figure 11-4 and Figure 11-6 of the FEIS. Any changes to the heights or configurations of the buildings or tiers may necessitate revisions to the (E) designations.

Block 3139, Lots 18-21, 23-26, and 27-36 (Projected Development Site 1, Buildings A and B): Any new residential and/or commercial development on the above-referenced properties must ensure that the heating, ventilating and air conditioning stack(s) are placed on building A, which is configured for Lots 18-21 and 23-26. The stack must discharge at least 90 feet above ground level and at least 10 feet from the Montieth Street lot line. The development must also ensure that the type of fuel used for the HVAC system is natural gas with low NO_x only. Adherence to these conditions would avoid any potential significant adverse air quality impacts.

Block 3141, Lots 1, 5-8, 10, 11, 12, 14, 15, 18, (Projected Development Site 2, Buildings C and D): Any new residential and/or commercial development on the above-referenced properties must ensure that the type of fuel used for space

heating and hot water (HVAC) systems is natural gas only, to avoid any potential significant adverse air quality impacts.

Block 3141, Lots 20, 21, 22, 23,36 (Projected Development Site 2, Buildings E and F): Any new residential and/or commercial development on the above-referenced properties must ensure that the heating, ventilating and air conditioning stack(s) are placed on building F, which is configured for Lots 20 (part), 21, 22, 23 (part). The stack must discharge at least 90 feet above ground level and at least 10 feet from the Monteith Street lot line. The development must also ensure that the type of fuel used for the HVAC system is natural gas with low NOx only. Adherence to these conditions would avoid any potential significant adverse air quality impacts.

Block 3152, Lots 3 (part) and 48 (part) (Projected Development Site 3, Buildings G and H): Any new residential and/or commercial development on the above-referenced properties must ensure that the heating, ventilating and air conditioning stack(s) are placed on building H, which is configured for Lots 3 (part) and 48 (part). The stack must discharge at least 90 feet above ground level and at least 10 feet from the lot line facing Melrose Street. The development must also ensure that the type of fuel used for the HVAC system is natural gas with low NOx only. Adherence to these conditions would avoid any potential significant adverse air quality impacts.

Block 3152, (Lots 3 (part) 48 (part), 1, 2, 45, 48 56, 58, 62-64, and 66 (Projected Development Site 4, Buildings I and J): Any new residential and/or commercial development on the above-referenced properties must ensure that the heating, ventilating and air conditioning stack(s) are placed on building I, which is configured for Lots 3 (part) 1, 2, 56, 62-64, and 66 and are at least 80 feet above ground level. The stack must be at least 10 feet from the lot line facing Stanwix Street. The development must also ensure that the type of fuel used for the HVAC system is natural gas with low NOx only. Adherence to these conditions would avoid any potential significant adverse air quality impacts.

Block 3152, Lots 36, 37, 38, 41, 43 (Projected Development Site 5): Any new residential and/or commercial development on the above-referenced properties must use natural gas with low NOx only for HVAC and ensure that the heating, ventilating and air conditioning stack are at least 10 feet above the roof to avoid any potential significant adverse air quality impacts. The stack must be at least 10 feet from the lot line facing Stanwix Street. Adherence to these conditions would avoid any potential significant adverse air quality impacts.

Block 3137, Lot 56 (Projected Development Site 8): Any new residential and/or commercial development on the above-referenced properties must ensure that the heating, ventilating, and air conditioning stack must discharge

at least 10 feet from the lot line facing potential development site 11, Lot 51.

Block 3152, Lot 44 (Potential Development Site 9): Any new residential and/or commercial development on the above-referenced properties must ensure that the heating, ventilating and air conditioning stack must discharge at least 10 feet from the lot line facing potential development site 5, Lots 36-38, 41, and 43.

Block 3138, Lot 11(Potential Development Site 10): Any new residential and/or commercial development on the above-referenced properties must ensure that the heating, ventilating, and air conditioning stack must discharge at least 10 feet from the lot line facing potential development site 7, Lot 32.

Block 3137, Lot 51 (Potential Development Site 11): Any new residential and/or commercial development on the above-referenced properties must ensure that the heating, ventilating, and air conditioning stack must discharge at least 10 feet from the lot line facing potential development site 8, Lot 11.

NOISE

There are two levels of required noise attenuation. Depending on the ambient noise levels at each location, attenuation of 31 or 35 dBA would be required.

The following properties require 31 dBA of noise attenuation in order to avoid the potential for significant adverse impacts related to noise, which include five (5) projected and two (2) potential development sites:

Projected Development Sites:

Block 3139, Lots 23-36 (Projected Development Site 1; Façade facing Montieth St.)

Block 3141, All Lots (Projected Development Site 2)

Block 3152, Portion of Lot 3 (Projected Development Site 3)

Block 3152, Lots 1, 2, p/o Lot 3, 45, 48, 56, 58 62-64, 66 (Projected Development Site 4)

Block 3152, Lots 36-38, 41, 43 (Projected Development Site 5)

Block 3137, Lot 56 (Projected Development Site 8; Façade facing Beaver St.)

Potential Development Sites:

Block 3152, Lot 44 (Potential Development Site 9)

Block 3138, Lot 11 (Potential Development Site 10)

The text of the (E) designation for noise for the above properties is as follows:

“To ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed-window condition with a

minimum of 31 dBA window/wall attenuation to maintain an interior noise level of 45 dBA. To maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, air conditioning.”

The following properties require 35 dBA of noise attenuation in order to avoid the potential for significant adverse impacts related to noise, which include four (4) projected and one (1) potential development sites:

Projected Development Sites:

Block 3139, Lots 18-21, 23, 36 (Projected Development Site 1; Facades facing Flushing and Bushwick Avenues and Stanwix Street)
Block 3138, Lots 20, 22 (Projected Development Site 6)
Block 3138, Lot 32 (Projected Development Site 7)
Block 3137, Lot 56 (Projected Development Site 8; Façade facing Flushing Avenue and Garden Street)

Potential Development Sites:

Block 3137, Lot 51 (Potential Development Site 11)

The text of the (E) designation for noise for the above properties is as follows:

“To ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed-window condition with a minimum of 35 dBA window/wall attenuation to maintain an interior noise level of 45 dBA. To maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, air conditioning.”

With the proposed (E) designations, the proposed actions would not result in significant adverse impacts related to hazardous material, air quality or noise.

UNIFORM LAND USE REVIEW

This application (C 080322 ZMK) was certified as complete by the Department of City Planning on June 3, 2013 and was duly referred to Community Board 4 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-029b) in conjunction with the related application (C 070250 MMK) and the related application for a zoning text

amendment (N 110179 ZRK) which was referred to Community Board 4 and the Borough President in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Community Board 4 held a public hearing on this application on June 19, 2013. On July 29, 2013, by a vote of 29 in favor, three opposed with no abstentions, Community Board 4 adopted a resolution recommending approval of the application, with the following condition:

That the number of affordable housing units may be increased to more than the currently proposed 24 percent of units.

The Community Board's vote was taken at a meeting that did not meet the public notice requirements of the ULURP rules and is therefore non-complying.

Borough President Recommendation

This application (C 080322 ZMK) was considered by the Borough President of the Borough of Brooklyn, who issued a recommendation on September 4, 2013, recommending approval of the applications, with the following conditions:

1. That prior to City Council review, the applicant provides its intended stipulation to the Council indicating that the development would be pursued according to: a) the filing of an affordable housing plan approved by the Department of Housing Preservation and Development; b) the filing for 421-a benefits pursuant to not less than 20 percent of the floor area not exceeding 60 percent AMI; and, c) establishing a mechanism to provide a percentage of low-income senior housing (without the need to pay rent in excess of 30 percent of household income), and that the City Council have such stipulations implemented prior to granting its approval.
2. That the senior housing component be increased so that the number of affordable units be 25 percent of the overall floor area.
3. That the developer adheres to the written commitment to further reduce the percentage of market rate development should discretionary Capital Budget dollars be

- appropriated to the development site for additional affordable housing above and beyond the inclusionary housing or affordable senior housing commitment.
4. That the Restrictive Declaration facilitate open space mitigation options, including those cited by the Borough President, pursued in consultation with CB 4 and local elected officials as an alternative to the mitigation described in the EIS regarding Green Central Knoll Park
 5. That the Restrictive Declaration for the 17,850 square feet on site open space, in addition to binding the developer's several hundred thousand dollar commitment for the privately-held proposed open space between Stanwix and George Streets, incorporates a public access easement and that such open space be completed prior to the issuance of a Certificate of Occupancy on the properties controlled by the applicant or successors.
 6. That the frontage along Flushing Avenue from Beaver Street to Garden Street (Block 3138), an area that includes an existing supermarket, retain its existing M1-1 district, in lieu of the proposed R6A/C2-4.
 7. That prior to City Council review, the applicant provides its intended stipulation indicating that that required parking triggered by affordable housing units would be indexed to be half the monthly rental of spaces of the market rate spaces and that such number of spaces be leased to those residing in the affordable housing units, and that the City Council has stipulation implemented.
 8. That the City Council incorporates the applicant's commitment to monitoring the actual automobile ownership of the market rate units from the first phase of development and the commitment to provide more than the zoning minimum should statistics demonstrate demand warrants that additional parking should be provided.
 9. That, prior to a determination by the City Council, the applicant fund and implement a study, in consultation with the Department of Transportation and Community Board 4, to determine if there is any feasibility to establish angled parking for streets that abut the applicant's property, and to the extent deemed acceptable to DOT, to pay for any costs to implement such parking scheme.
 10. That the mapping agreement for the new street segments ensure that they are constructed by the applicant prior to the issuance of a Certificate of Occupancy for construction on Block 3141 (Stanwix Street) and Block 3152 (Noll Street).

City Planning Commission Public Hearing

On August 21, 2013 (Calendar No. 4), the City Planning Commission scheduled September 11, 2013, for a public hearing on this application (C 080322 ZMK) and the related applications (C 070250 MMK, N 110179 ZRK). The hearing was duly held on September 11, 2013 (Calendar No. 37), in conjunction with the public hearing for the related actions. There were five speakers in favor of the application and eight speakers in opposition.

Two speakers representing the applicant's Counsel, appeared in favor of the application, stating that the applicant is committed to 24 percent affordable housing, more than the 20 percent required under the Inclusionary Housing Program (IHP), which would be applicable on the site, at lower affordability levels than required under the IHP (60 percent AMI instead of 80 percent AMI). The representatives also stated that the proposed rezoning would allow for a contextual development in keeping with the neighborhoods built character. Other representatives of the applicant, including two environmental consultants and the project architect also appeared in favor of the application.

The speakers in opposition included one union representative, six community residents and a small business owner. The union representative criticized the low number of affordable units in the project and expressed the hope that the building staff of the proposed development would be unionized. The small business owners expressed concern that the rezoning and redevelopment of land zoned for manufacturing could threaten local manufacturing and business, that the affordability levels provided by the proposed project would be insufficient, and that the new development would overburden local community facilities.

The area residents expressed concern that the proposed development would be out of character with existing neighborhood, would create more traffic and a shortage of parking spaces, and that local schools and open spaces are insufficient to accommodate the additional residents. The

residents also stated that they were insufficiently informed about the ongoing public review process and that the Community Board's vote was closed to the public and not duly noticed.

There were no other speakers and the hearing was closed.

CONSIDERATION

The City Planning Commission believes that this application for a Zoning Map amendment (C 080322 ZMK), in conjunction with the related applications (C 070250 MMK, N 110179 ZRK), is appropriate.

The proposed actions would facilitate the development of new residential buildings with up to 977 residential units, including 242 units of affordable housing, 504 accessory parking spaces and 54,132 square feet of retail space on the ground floors of the buildings and approximately 17,000 square feet of publicly accessible open space on land that has been underutilized or vacant since the 1970's. These actions would also allow existing residential and retail uses within the rezoning area to be in conformance and compliance with zoning. The area affected by the proposed actions is characterized by vacant and underutilized land and buildings, the "Mademoiselle" warehouse, mixed-use residential buildings with ground-floor retail and commercial uses.

Immediately adjacent to the west of the area are the City-sponsored residential, three- to six-story Rheingold Gardens and Renaissance Court, both of which were facilitated by land use actions in 2001 and completed in 2004 on previously underutilized City-owned land. To the east

is Green Central Knoll Park, a large, triangular City park completed in the late 1990's, as well as PS 145, and light industrial loft buildings and open parking lots.

The Commission notes that the proposed redevelopment of the vacant parcels by the applicant builds on the development pattern of the Rheingold Gardens and Renaissance Court projects that were developed in the early 2000's with City subsidies by providing much-needed new housing and retail close to transit on land that has long been lying fallow and has not been used for manufacturing uses for more than 30 years. The applicants have engaged the architect for both of these adjacent projects to design the buildings anticipated to be developed pursuant to the subject actions in order to continue the same architectural style. The applicants propose to construct ten residential buildings with ground-floor retail along Bushwick, Flushing and Evergreen avenues in height between six to eight stories. The new retail would create a continuous retail front along Bushwick Avenue at Rheingold Gardens and provide needed retail services and jobs to area residents. There would be 504 accessory off-street parking spaces provided in decked and wrapped parking on the inside of the new buildings. The deck above the parking would serve as accessible landscaped open space for building residents. Of the total of 977 units, 242 units would be developed as permanently affordable housing pursuant to the Inclusionary Housing Program, which would be made applicable to this area. 47 units of the 242 affordable housing are proposed to be developed as low-income senior housing and would be in excess of the minimum affordable housing requirements of the Inclusionary Housing Program.

The Commission notes that, as part of the proposed development to address a partial shortfall in open space in the area, the applicant is required to provide publicly-accessible landscaped open

space on their property between Renaissance Court and Stanwix Street to the west and Evergreen Avenue and George Street to the east. The proposed new open space would create a pedestrian connection between Renaissance Court, Rheingold Gardens and the adjacent area to the west with Green Central Knoll Park to the east and thus would greatly improve access for area residents to the park in this community underserved with open space.

The proposed Zoning Map Amendment (C 080322 ZMK) would change an M1-1 district to R6A, R7A, R6A/C2-4 and R7A/C2-4 districts, and an M3-1 district to an M1-2 district. The existing M1-1 and the proposed M1-2 districts are light manufacturing districts which limit commercial uses and do not permit new residential uses. The existing M3-1 district is a heavy manufacturing district which allows intensive manufacturing uses including open industrial uses, restricts most commercial uses, and also does not allow new residential uses. The proposed R6A and R7A districts are contextual residential zoning districts that establish height limits of 70 and 80 feet, respectively, and allow for densities that are in keeping with the residential R6 and R7-2 zoning districts of the surrounding areas. The proposed rezoning to allow for new residential uses would facilitate the applicant's proposal for new residential buildings on previously vacant or underutilized blocks, as well as allow for existing residential and commercial retail uses within the rezoning area to be in conformance and compliance with zoning.

The rezoning of the applicant-owned "Mademoiselle" warehouse on the southwest corner of Flushing and Evergreen avenues from M3-1 to M1-2 would allow for the continued use of this facility. M1 districts are typically mapped adjacent to residential areas because they mandate

high performance standards and thus would be more appropriate at this site which would border proposed new residential uses and Green Central Knoll Park.

The proposed Zoning Text Amendment (N 110179 ZRK) would make the rezoning area eligible for the Inclusionary Housing (IH) Program for which the applicant has stated they would apply. The IH Program promotes economic integration in areas of the City undergoing substantial new residential development by offering an optional floor area bonus in exchange for the creation or preservation of affordable housing, on-site or off-site, principally for low-income households. Typically, the IH Program provides for a 33 percent floor area bonus in exchange for 20 percent of floor area for the provision of permanently-affordable housing for households earning no more than 80 percent of the Area Median Income (AMI). The Commission is pleased to note that the applicant proposes to utilize the IH Program to develop 242 units, or 24 percent of the 977 total units to be affordable, four percent more than the 20 percent requirement, for households earning 60 percent or less of AMI, less than the 80 percent of AMI minimum requirement. Of the 242 affordable units, 47 are proposed for low-income seniors.

The proposed amendment to the City Map (C 070250 MMK), to open Stanwix Street between Forrest Street and Montieth Street and Noll Street between Stanwix Street and Evergreen Avenue, would restore the original street grid for this area. The streets were originally closed and demapped in the 1950's and 1960's to promote large-scale manufacturing development. Mapping and construction of these streets would reconnect the mixed-use residential and commercial neighborhoods on either side of the Mademoiselle warehouse with each other and

ease access to Green Central Noll Park. The Commission believes that opening of these streets would greatly improve connectivity for residents of the area to retail and recreation services.

Regarding the recommendation of the community board to increase the number of affordable housing units within the proposed development, the Commission notes that the applicant has stated that they would provide 24 percent affordable housing units, more than the 20 percent required under the IH Program at affordability levels that are 20 percent below the minimum requirement of 80 percent of the AMI stipulated by this program.

Regarding the recommendation of the Borough President that the applicant should enter into legally binding agreement and to codify affordability and to increase affordability, the Commission notes that this is beyond the purview of this Commission.

Regarding the recommendation of the Borough President to study alternative mitigation measures for open space than those proposed in the Draft Environmental Impact Statement and that a public access easement be mapped for the required publicly-accessible open space on the applicant's property, the Commission notes that the Restrictive Declaration, that will be executed as part of the environmental review process, would assure that adequate and appropriate open space would be provided.

Regarding the recommendation of the Borough President that the frontage along Flushing Avenue, from Beaver Street to Garden Street, should retain the current M1-1 zoning to protect an existing supermarket, the Commission notes that the proposed R6A/C2-4 district would allow for

the continuation of the supermarket on this site and that the availability of the FRESH zoning bonus and financial incentives for supermarkets in this area would strongly encourage the provision of a supermarket should the site be redeveloped.

Regarding the recommendation of the Borough President to index the cost of parking for affordable housing tenants to half of the monthly rental for market rate spaces, the Commission notes that this is beyond its purview.

Regarding the recommendation of the Borough President to study angled on-street parking and that the developer monitors the actual demand of parking for future development phases, the Commission notes that the proposed zoning establishes a parking requirement of 50 percent for all units. Furthermore, according to the U. S. Census Bureau 2008-2010 American Community Survey, 70 percent of households in Community District 4 do not have access to a car and the Environmental Impact Statement did not identify any shortfall of parking.

Regarding the recommendation of the Borough President for the phasing of the construction of the remapped street segments of Stanwix Street and Noll Street, the Commission notes that the Restrictive Declaration, executed as part of the environmental review process, would address these issues appropriately.

Regarding the testimony at the Commission's public hearing that Community Board 4 conducted its vote on the subject actions at a meeting that was not properly noticed as open to the public,

the Commission is deeply concerned. While Community Board 4 held a duly-noticed public hearing on June 19, 2013, with testimony and discussion by the public, its vote on the applications at a closed meeting on July 29, 2013, was contrary to the rules for public meetings. The Commission strongly encourages Community Board 4 to closely follow the rules for public meetings in the future.

Regarding the oral and written testimony received by the Commission at and after its public hearing that the proposed project would be out of scale with existing development, that it would create dangerous traffic conditions, create parking issues, and displace jobs, the Commission notes that the proposed actions would result in appropriate development. The proposed contextual residential zoning districts would result in new development in keeping with the density and scale of the surrounding areas. The new districts would require appropriate accessory off-street parking requirements to meet the anticipated needs of project residents. The Environmental Impact Statement (EIS) analyzed the reopening of streets and concluded that overall traffic conditions would improve within the rezoning area. Furthermore, the EIS analysis did not disclose any displacement of jobs in the surrounding area.

RESOLUTION

RESOLVED, that having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on October 11, 2013, with respect to this application (CEQR No. 09DCP002K), the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and Regulations have been met and that:

1. Consistent with social, economic, and other essential considerations, from among the reasonable alternatives thereto, the action to be approved, is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts disclosed in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval, pursuant to the Restrictive Declaration marked as Exhibit A, those mitigation measures that were identified as practicable.
3. No development pursuant to this resolution shall be permitted until the Restrictive Declaration attached as Exhibit A, as same may be modified with any necessary administrative or technical changes, all as acceptable to counsel to the Department is executed, and such Restrictive Declaration shall have been recorded and filed in the Office of the Register of the City of New York, County of Kings.

This report of the City Planning Commission, together with the FEIS, constitute the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination, and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended by changing the Zoning Map, Section No. 13b, by

1. changing from an M1-1 District to an R6A District property bounded by:

- a. Flushing Avenue, Bushwick Avenue, the southwesterly centerline prolongation of Forrest Street, Garden Street, a line 100 feet southeasterly of Flushing Avenue, and Beaver Street;
 - b. a line midway between Flushing Avenue and Montieth Street, a line 100 feet southwesterly of Stanwix Street, Forrest Street, and a line 100 feet northeasterly of Bushwick Avenue; and
 - c. a line 100 feet southeasterly of Noll Street, a line 100 feet southwesterly of Evergreen Avenue, Melrose Street, and Stanwix Street;
2. changing from an M1-1 District to an R7A District property bounded by:
- a. Flushing Avenue, Stanwix Street, Forrest Street, a line 100 feet southwesterly of Stanwix Street, a line midway between Flushing Avenue and Montieth Street, a line 100 feet northeasterly of Bushwick Avenue, Forrest Street, and Bushwick Avenue; and
 - b. Noll Street, Evergreen Avenue, Melrose Street, and a line 100 feet southwesterly of Evergreen Avenue, a line 100 feet southeasterly of Noll Street, and Stanwix Street;
3. changing from an M3-1 District to an M1-2 District property bounded by Flushing Avenue, Evergreen Avenue, Noll Street, and Stanwix Street;
4. establishing within a proposed R6A District a C2-4 District bounded by Flushing Avenue, Bushwick Avenue, the southwesterly centerline prolongation of Forrest Street, Garden Street, a line 100 feet southwesterly of Bushwick Avenue, a line 100 feet southeasterly of Flushing Avenue, and Beaver Street;
5. establishing within a proposed R7A District a C2-4 District bounded by:
- a. Flushing Avenue, Stanwix Street, Montieth Street, a line 100 feet southwesterly of Stanwix Street, a line midway between Flushing Avenue and Montieth Street, a line 100 feet northeasterly of Bushwick Avenue, Forrest Street, and Bushwick Avenue; and
 - b. Noll Street, Evergreen Avenue, Melrose Street, and a line 100 feet southwesterly of Evergreen Avenue;

as shown on a diagram (for illustrative purposes only) dated June 3, 2013, and subject to the conditions of CEQR Declaration E-315.

The above resolution (C 080322 ZMK), duly adopted by the City Planning Commission on October 23, 2013 (Calendar No. 9), 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.

AMANDA M. BURDEN, FAICP, Chair
KENNETH J. KNUCKLES, Esq., Vice-Chairman
RAYANN BESSER, IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, III,
BETTY Y. CHEN, MICHELLE R. DE LA UZ, JOSEPH DOUEK,
RICHARD W. EADDY, ANNA HAYES LEVIN, ORLANDO MARIN,
Commissioners

ANGELA M. BATTAGLIA, Commissioner (recused)



Community/Borough Board Recommendation

Pursuant to the Uniform Land Use Review Procedure

Application #: **C 070250 MMK**

Project Name: **Rheingold City Map Change**

CEQR Number: 09DCP002K

Borough(s): Brooklyn

Community District Number(s): 04

Please use the above application number on all correspondence concerning this application

SUBMISSION INSTRUCTIONS

- Complete this form and return to the Department of City Planning by one of the following options:
 - EMAIL (recommended):** Send email to CalendarOffice@planning.nyc.gov and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C100000ZSQ"
 - MAIL:** Calendar Information Office, City Planning Commission, Room 2E, 22 Reade Street, New York, NY 10007
 - FAX:** (212) 720-3356 and note "Attention of the Calendar Office"
- Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

Docket Description:

IN THE MATTER OF an application submitted by Forrest Lots, LLC pursuant to Sections 197-c and 199 of the New York City Charter for an amendment to the City Map involving:

- the establishment of Stanwix Street between Montieth Street and Forrest Street;
- the establishment of Noll Street between Stanwix Street and Evergreen Avenue;
- the extinguishment of a sewer easement; and
- the modification and adjustment of block dimensions and grades;

including authorization for any acquisition or disposition of real property related thereto, in Community District 4, Borough of Brooklyn in accordance with Map No. X-2722 dated June 9, 2010 and signed by the Borough President.

Applicant(s): Forrest Lots, LLC 4706 18th Avenue Brooklyn, New York 11204		Applicant's Representative: Mitchell A. Korbey, Esq. Herrick, Feinstein, LLP 2 Park Avenue New York, NY 10016 212-592-1456	
Recommendation submitted by: Brooklyn Community Board 4			
Date of public hearing: June 19, 2013		Location: 195 Linden Street , Brooklyn, NY 11221	
Was a quorum present? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>		<i>A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.</i>	
Date of Vote: July 29, 2013		Location: 272 Moffat Street, Brooklyn, NY 11207	
RECOMMENDATION			
<input type="checkbox"/> Approve		<input checked="" type="checkbox"/> Approve With Modifications/Conditions	
<input type="checkbox"/> Disapprove		<input type="checkbox"/> Disapprove With Modifications/Conditions	
Please attach any further explanation of the recommendation on additional sheets, as necessary.			
Voting			
# In Favor: 29		# Against: 3	
# Abstaining:		Total members appointed to the board: 45	
Name of CB/BB officer completing this form Nadine Whitted		Title District Manager	Date 8/9/2013

August 9, 2013

NYC Department of City Planning
Brooklyn Office
16 Court Street
Brooklyn, New York 11201

Re: ULURP Application #C0700250MMK

To Whom It May Concern:

On June 19, 2013, Brooklyn Community Board # 4 held a public hearing and full board meeting where the above captioned application was presented by the applicant's representatives who outlined the specifics of the ULURP Application- Rezoning, Inclusionary Housing Text Amendment and Street Mapping. These actions being necessary to facilitate the development of nine hundred and seventy seven units of housing- of which 24% of the units to be affordable to families earning 60% AMI.

The official vote for this ULURP Application took place on Monday, July 29, 2013 at which time the board voted in favor of this application. However, a great number of the members voted with the stipulation of increasing the number of affordable units. Inasmuch as the 24% of affordable units which is proposed seems to be an unrealistic number in comparison to the number of market rate units that are proposed.

Community Board #4 embraces all projects that promote the development housing that is affordable for local residents- specifically those families whose earnings may not be on par with newer residents entering the community from Manhattan, Greenpoint and other parts of the city.

We are hopeful that our request doesn't fall on death ears; and that this administration would endorse our request for a greater number of affordable units of which current local residents would be eligible to apply to.

We are thanking you in advance for your support.

Respectfully,

Nadine Whitted

Nadine Whitted
District Manager

THE CITY OF
NEW YORK



BUSHWICK

Community Board No. 4
1420 Bushwick Avenue, Room 370
Brooklyn, New York 11207

Telephone: 718-628-8400
Fax: 718-628-8619
Email: bk04@cb.nyc.gov
Website: www.nyc.gov/brooklyn4

Julie Dent- Chairperson
Nadine Whitted - District Manager

ELECTED OFFICIALS

Hon. Marty Markowitz
Borough President
Hon. Diana Reyna
34th Council District
Hon. Erik Martin Dilan
37th Council District

OFFICERS

MARTHA BROWN
1st Vice Chairperson
VICTORIA FERNANDEZ
2nd Vice Chairperson
CIRILO NUNEZ
Recording Secretary
ELISEO RUIZ
Financial Secretary
AVELLAR HANSLEY
Treasurer
VIRGIE JONES
Correspondence Secretary
ODOLPH WRIGHT
Parliamentarian

Calendar Office
NYC City Planning Commission
22 Reade Street
New York, NY 10007

To Whom It May Concern:

This letter is written to advise that the recommendation submitted on the Rheingold ULURP application # C-070250MMK is applicable to all other actions (including: C-080322-ZMK and N-110179ZRK)

Thank you very much.

August 13, 2013

Sincerely,

Nadine Whitted

Nadine Whitted



Brooklyn 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 representatives as indicated on the Notice of Certification.

APPLICATION #: 070250 MMK; 080322 ZMK; 110179 ZRK

In the matter of applications submitted by Forrest Lots, LLC pursuant to Sections 197-c and 199 of the New York City Charter and Section 5-430 of the New York City Administrative Code for amendments to: the City Map to establish the section of Stanwix Street from Montieth Street to Forrest Street as mapped streets; the Zoning Map to change the zoning from M3-1 and M1-1 to M1-2, R6A and R7A with a C2-4 commercial overlay; and the Zoning Text to modify Sections 23-922 of the NYC Zoning Resolution to make the newly mapped R6A and R7A districts inclusionary housing designated areas for an approximate 6 block area. These actions will allow for a new residential development consisting of 977 units, of which 242 are affordable and 47 of the affordable would be for senior housing; approximately 54,000 square feet for local retail, and a total of 504 parking spaces.

COMMUNITY DISTRICT NO. 4

BOROUGH OF BROOKLYN

RECOMMENDATION – 070250 MMK - 080322 ZMK - 110179 ZRK

APPROVE

APPROVE WITH

MODIFICATIONS/CONDITIONS

DISAPPROVE

DISAPPROVE WITH

MODIFICATIONS/CONDITIONS



BOROUGH PRESIDENT

September 4, 2013

DATE

**RECOMMENDATION FOR A PROPOSED ZONING, TEXT, AND CITY MAP
AMENDMENT
070250 MMK – 080322 ZMK – 110179 ZRK**

PUBLIC HEARING

On July 1, 2013, the Borough President held a public hearing on applications by Forrest Lots LLC which seeks approval for the amendment of the zoning, text and City maps to facilitate the development of 10 new residential buildings with a maximum of 977 residential units. Through the requested mapping of the Inclusionary Housing Program as part of the proposed rezoning area and additional affordable units being volunteered by the developer, twenty-four percent of the units (242) would be affordable housing, of which 47 would be for senior housing.

The Borough President expressed a few concerns in terms of a potential lack of parking and possible overcrowding of nearby schools. The representative for the applicant briefly explained that in terms of parking, should the estimates be insufficient to handle the demand for parking, further evaluations in the later phases can occur. With regard to schools, the representative reported that the School Construction Authority (SCA) is having ongoing discussions with area schools over possible mitigation measures that are believed to handle possible overcrowding. It was stated that these discussions should be fully worked out by the end of the ULURP process.

CONSIDERATION

Community Board 4 (CB4) voted in favor of the land use actions with a condition that the number of affordable units is increased for the benefit of current local residents.

It is the Borough President's policy to support land use changes that reflect the built character of the area proposed to be rezoned and provide appropriate opportunities for residential growth. He supports such rezonings that may facilitate an increase in the supply of housing for Brooklyn residents, especially when such projects result in affordable housing. Such units should remain "Affordable Forever" where feasible. He is concerned that too many borough residents leave because they can no longer afford to live in Brooklyn. With the great demand for affordable housing, he believes that every attempt should be made to provide these opportunities. Furthermore, it is the policy of the Borough President to utilize the process of rezoning privately-owned land for residential development in order to provide opportunities for more affordable housing for neighborhood residents.

The proposed rezoning exists in an area zoned for manufacturing where there is no longer a concentration of industrial activity. As a result of the rezoning, future development opportunity would expand while providing incentives for affordable housing through the Inclusionary Housing Program (IHP). Under the rezoning, there is an opportunity to facilitate approximately 1,080 housing units, of which 215 would be affordable, approximately 580 parking spaces and more than 74,000 square feet of retail development adjacent to the recently developed Rheingold Gardens and Rheingold Estates with their mix of 271 affordable moderate- and low-income residential units.

The units that are realized through the IHP are eligible to be financed through city, state, and federal affordable housing subsidy programs. Development per the IHP has the availability of on-site and off-site options to provide the maximum flexibility to ensure the broadest possible utilization of the program under various market conditions. Should a subsidy program such as the 421-a Real Estate Tax Abatement be used, it would require for such units to be provided on-site. This rezoning would

also bring into compliance 23 noncompliant existing residential uses containing approximately 170 dwelling units.

Rezoning to residential would result in development that is consistent with the trend towards more costly housing and a higher income population, as demonstrated by considerable increases in median household income population since the turn of the century. Home values and rental rents have climbed and new residential units have been constructed nearby. The affordable units that could result from this rezoning are expected to rent at prices comparable or below most existing rents in the surrounding area.

The mapping of the M1-2 district in place of the existing M3-1 district is a more appropriate zoning designation for being adjacent to where residential uses are expected to remain and where residential development is anticipated, as it does not permit heavy industry.

The rezoning might result in nearly 3,200 new residents, though 9 households would be displaced if a certain site not controlled by the applicant is redeveloped. It could provide for more than 220 permanent jobs, which is nearly 180 more than today as 46 jobs in seven businesses including automotive, wholesale, warehousing and retail, including a C-Town supermarket, might be displaced.

The developer of this project intends to develop approximately 975 new dwelling units (approximately 240 of these units will be affordable, with 47 likely to be set aside for senior housing in a stand-alone building), with more than 500 parking spaces and more than 54,000 square feet (sf) of retail on underutilized lots currently used for vehicle/open storage. Of the property controlled by the applicant, Site 1 is intended to contain a seven- and eight-story building containing 132 residential units, 76 parking spaces and 16,000 sf of retail. Site 2 intends to contain a seven- and eight-story building containing 326 residential units and 168 parking spaces. Site 3 intends to contain an eight-story building containing 300 residential units and 154 parking spaces. Site 4 intends to contain a seven-story building containing 219 residential units and 108 parking spaces.

A Restrictive Declaration would assure implementation of environmental mitigation measures as identified in the Environmental Impact Statement. Best Management Practices (BMP) are anticipated to be implemented by the developer to minimize storm water impacts.

The Borough President supports the applicant's formal request that makes the Zoning Resolution's IHP applicable to the requested zoning map change. The IHP's affordable housing set aside is consistent with the Borough President's "Affordable Forever" initiative as floor area would remain affordable for the life of the development. According to the IHP, the affordable housing units would accommodate families earning up to 80 percent (approximately \$60,000 for a family of four) area median income (AMI). However, public funding sources might dictate that AMI not exceed 60 percent (approximately \$45,000 for a family of four).

While the Borough President is generally supportive of this application, he has several concerns including: the lack of a guarantee regarding the proposed affordable housing; how school capacity and open space impacts would be addressed; the potential loss of an existing supermarket; availability of parking; and, the commitment to construct the streets in a timely manner.

Affordable Housing

The Borough President is committed to providing opportunities for Brooklyn's working families to have access to affordable housing. This commitment is followed through in each discretionary land

use action that seeks his approval, as he advocates for “Affordable Forever” measures where possible. When applicable, it is the Borough President’s policy for new residential developments, subject to ULURP, to provide a minimum of 20 percent affordable units. He believes it is appropriate for development in this section of Bushwick to target the affordability of units to the incomes of area families, with income tiers established at 40 percent and 50 percent while not exceeding 60 percent AMI. The applicant intends to provide 20 percent of its units as affordable for families making a maximum of 60 percent AMI, according to the income limits tied to obtaining a 421-a real estate tax abatement.

The Borough President believes that the increasing demand for senior citizen housing should be addressed where appropriate. Many seniors continue to live in substandard accommodations and/or are forced to spend an excessive amount of their income on their housing. The increasing demand for decent affordable senior citizen housing is not being met by the rate of production and needs to be addressed through the construction of quality accommodations. The Borough President commends the applicant for offering a percentage of its total floor area for the provision of affordable senior housing, in addition to the 20 percent affordable units set aside. However, he is concerned that the offered 47 units might be a challenge for which to secure government financing as it could be an insufficient offering of units. Thus, he believes the developer should provide more senior units to have a more attractive funding request while going further in addressing the need for affordable senior housing. The Borough President believes that five percent of the floor area should be earmarked for affordable housing for senior citizens. As this area has a senior population in need of affordable housing options, he urges the applicant to also seek out funding sources for other forms of affordable housing that will allow the number of senior housing units offered to expand.

While the Borough President appreciates the developer’s intent to provide affordable housing, such commitment is lacking a guarantee. Residential construction should proceed only according to the filing of a legal instrument that assures that an appropriate percentage of the units would be permanently affordable, including that 20 percent of the floor area would be pursuant to a building permit that includes the floor area bonus approved by the Commissioner of the Department of Housing Preservation and Development (HPD). A legal instrument should also bind the commitment to include affordable housing for the elderly.

The Borough President is also committed to seeking opportunities for Brooklyn’s working families to have access to affordable housing. The concern is that too many of the borough’s residents, especially within the middle income community, leave because they can no longer afford to live in Brooklyn. He believes that it is appropriate for this proposal to provide a percentage of affordable housing units devoted to middle income families with tiers of income not exceeding 165 AMI. Such households are represented by teachers, civil servants and uniformed services currently residing in the community, and this would provide them with quality housing without overtaxing their household income. Doing so would increase the number of households that could apply for these units. The Borough President encourages the developer to seek and apply annually for additional funding, such as Reso A funding. He encourages the developer to call on the next Borough President and local Council Member for funding allocations because the government has an obligation to leverage opportunities for more affordable housing. He believes that it is a legitimate public purpose to balance the costs in developing this site with government financial resources to obtain additional public benefits through this project. Should funding sources become available, the Borough President believes the developer should be obligated to provide additional affordable housing units for households at such income tiers.

It is the Borough President's policy to obtain a written commitment or explanation that conveys a suitable assurance that the affordable housing will be built. In a letter sent to the Borough President dated August 21, 2013 (attached), the developer has indicated the intent to pursue the maximum permitted FAR allowable on the site by utilizing the zoning bonus granted by the IHP. This commitment would be stipulated in conjunction with the approval of the rezoning. The applicant also indicated intent to seek real estate tax abatement according to the City's 421-a tax program, which will mandate the affordable units would be restricted to be developed on site not exceeding 60 percent AMI. The applicant also committed to providing an additional four percent of the project's units for affordable housing for seniors. In addition, the applicant committed to pursue other government funding sources, should they become available, in order to provide more affordable unit options going forward.

As the land use review process continues, the Borough President believes that stipulations referred by the applicant needs to be drafted in consultation with the City Council to assure development may only proceed according to IHP, 421-a, and the provision of senior housing being increased to bring the total affordable floor area to not less than 25 percent of the overall floor area.

Open Space

There would be a significant impact on existing open space resources with the additional population. The applicant is considering designating a publicly accessible corridor between Stanwix Street and Evergreen Avenue, consisting of nearly 18,000 sf open space between two of their residences. The applicant has also indicated that there have been discussions related to funding the Department of Parks and Recreation (DPR) to incorporate upgrades at Green Central Knoll Park. This funding as well as the timing and construction schedule on the applicant's site will be further detailed in a Restrictive Declaration in conjunction with the Final Environmental Impact Statement (FEIS). DPR has expressed an interest in providing adult fitness equipment at this park as a result of receiving such funds from the developer. CB4 has expressed concern with both the opening of this corridor to public use as well as the inclusion of adult fitness equipment at Knoll Park. The Borough President requested that his staff review the situation and provide possible alternatives.

One option is to renovate PS 120's yard (18 Beaver Street) through the City's Schoolyard to Playground program. In addition to serving PS 120 students, a redesigned schoolyard could better connect with Garden Playground, a DPR property just north of the schoolyard.

Garden Playground, which has not been fully renovated since the 1960s, warrants such action as it's mostly hardscaped surface offers minimal play value. Improving the Playground's Flushing Avenue side, which is basically an uninviting, raised wall, would create a sense of more open space in the neighborhood.

Finally, since the baseball field at Green Central Knoll Park is heavily used, adding a synthetic turf field and/or lighting, would greatly extend the season on both a seasonal and daily basis.

In a letter received August 21, 2013 (attached) the applicant detailed its intent to landscape and improve a 17,850 sf open space as well as plans to provide funds to DPR for upgrades to Green Central Knoll Park. While the applicant is aware that such funds have a suggested use by DPR that is contrary to what community desires, they have committed to pursue, in consultation with DPR and DCP, alternate ways in which the funding for Green Central Knoll Park can be utilized. The Borough President commends the applicant's willingness to pursue the alternative sites noted in his consideration. He believes that the outcome of where to apply these funds should be pursued in

conjunction with CB 4 and local elected officials subject to a funding agreement that requires use of these funds prior to the issuance of any Certificate of Occupancy on the applicant's properties. He further advises CB 4 to provide its input to the City Council prior to Council action of these applications.

Although the intent is for the onsite open space to be used publicly, the Borough President believes it should be further memorialized with a public access easement being recorded. Such document should specify that this open space is to be completed before the issuance of a Certificate of Occupancy for the adjoining buildings.

Supermarket

The Borough President is concerned with the limited access to affordable fresh food stores in many neighborhoods. It is a top priority of the Borough President to create and/or maintain access to healthy food options. In order for all of Brooklyn to flourish, it is imperative that the Borough's residents have an adequate supply of supermarkets and grocery stores in their neighborhoods to access fresh and affordable foods. He understands that supermarkets receive no incentives to open and that rental prices continue to hamper their existence. In light of this, the Borough President has been seeking to establish more supermarkets throughout Brooklyn as well as to ensure that existing locations are afforded the opportunities to remain in operation.

The Borough President is concerned that the C-Town supermarket, located along Flushing Avenue near Beaver Street, will be in danger of becoming a development site as the proposed rezoning has the potential to entice its redevelopment. Should the store become a development site as a result of this rezoning, there is no guarantee that the property owner of the supermarket would include a replacement supermarket comparable to what is there now. The Borough President believes that it is not in the neighborhood's best interest to extend the proposed rezoning to include the site of the supermarket. He believes property between Beaver and Garden Streets, fronting Flushing Avenue, should be removed from the application by the City Planning Commission and/or City Council.

Parking

The Borough President believes that the demand for parking will continue to be on the rise due to the increased interest for residing within Bushwick. Too often, new developments only meet the minimum on-site parking required despite the possible car ownership rates of the new building occupants. Thus, the adequacy of the available on-street parking continues to be further compromised, making it more difficult for long-time residents with cars. Based on the latest data available, the projected number of parking spaces added by off-site spaces in the new development, when combined with on-street parking spaces and including those parts of the street segments intended to be constructed, was disclosed to be expected to exceed overnight demand for parking. The Borough President remains concerned as the analysis did not account for trends based on those newer arrivals to the neighborhood with more disposable income.

The Borough President believes that measures can be put in place to ensure that parking does not become a problem as this proposal reaches its full build out. Although the applicant relies on current data to support its projected number of parking spots, the Borough President urges the developer to monitor actual automobile ownership of the market rate units from the first phase of development and commit to providing more than the zoning minimum, should statistics demonstrate demand warrants that additional parking should be provided.

Representatives of CB4 also expressed concern that the development might lead to an inadequate number of on street parking spaces. Members believe that some streets surrounding the development are wide enough to accommodate angled parking as a means to increase supply. They believe the feasibility of angled parking should be explored. The Borough President concurs with these community board members with exploring the possibility of incorporating angled parking as a way to maximize the number of parking spaces that can be achieved in the area. Such analysis could be furthered by a study prepared by the applicant's consultant in consultation with the Department of Transportation (DOT) to determine the feasibility of such a parking scheme. If feasible, the applicant should pay for any costs to implement such angled parking.

For those accessory parking spaces that are triggered by the zoning requirement for affordable housing units, the applicant has indicated that such space would be offered at a half the monthly rental of those of market rate units. The Borough President appreciates the applicant's intent to provide off street parking opportunities for those with less household income.

The applicant provided the Borough President with a letter (attached) dated August 21, 2013 that expressed a commitment to reevaluate the parking demand after 25 percent of the project has been completed and to work with the Department of Transportation (DOT) and CB 4 to initiate a study to determine the feasibility of angled parking in the surrounding neighborhood. The letter also expressed a commitment by the developer to stipulate in conjunction with the zoning to provide those parking spaces accessory to the affordable units at a price 50 percent discounted of that of the market rate units.

The Borough President commends the applicant on these decisions and urges DOT to provide timely guidance to the applicant to complete such a feasibility study prior to consideration by the City Council. He believes the City Council should see to it that the stipulation is carried out as part of its approval.

Reopening of Streets

The street mapping action would restore the street grid and thus connect the existing neighborhoods to the east and west of the applicant's properties by extensions of Stanwix and Noll streets. In the vicinity of the rezoning traffic, directions would change as follows: Montieth Street would change from eastbound operation to westbound operation; Forest Street would change from westbound operation to eastbound operation; Stanwix Street would change from northbound operation to southbound operation; and, Noll Street would be changed from eastbound operation to westbound operation. A new traffic signal is anticipated to be installed at the intersection of Bushwick Avenue with Noll Street. A total of 15 curbside spaces might be eliminated weekdays along Forest Street at Bushwick Avenue, Arion Place at Bushwick Avenue and Melrose Street at Bushwick Avenue.

The Borough President supports the reopening of these streets as intended mitigation to assure that traffic flows smoothly and for pedestrians to cross safely. Certain aspects of these street openings will assure improved pedestrian access to Noll Street Park and PS 145.

The Borough President believes that construction of each street segment should be completed in a timely manner in relation to the intended occupancy of various phases of construction. The applicant noted in a letter received August 21, 2013 (attached) that such streets will be constructed according to City standards and requirements and the timing of this construction will be part of the required mapping agreement with the City's Corporation Counsel. He calls on the City Council to

incorporate in this agreement that such street segments are constructed prior to the issuance of a Certificate of Occupancy for construction on Stanwix Sand Noll Street.

Schools

The anticipated development would result in significant adverse impacts to nearby public elementary schools, if not mitigated, as there might be a shortfall of over 400 seats, with approximately 265 students attributed to the new developments. Possible remediation disclosed includes reconfiguring certain existing administrative and support space within P.S. 145 to create additional classroom space and/or having new classroom space provided in a building of the applicant's property. CB 4 leaders expressed concern that the leadership of PS 145 has not adequately been consulted.

The Borough President requested that his staff review the situation and provide possible alternatives to accommodate the increase in the number of students that would result from the projected growth of the area, including the development. He urges the Department of Education to consult with the Administration and parent community of PS 145 at all stages planning for any reconfiguration of space within PS 145.

RECOMMENDATION

Be it resolved that the Borough President of Brooklyn, pursuant to section 197-c of the New York City Charter, recommends that the City Planning Commission and City Council **approve** the zoning map and text amendment proposal subject to the following **conditions**:

1. That prior to City Council review, the applicant provides its intended stipulation to the Council indicating that the development would be pursued according to:
 - a) the filing of an affordable housing plan approved by the Department of Housing Preservation and Development;
 - b) the filing for 421-a benefits pursuant to not less than 20 percent of the floor area not exceeding 60 percent AMI; and,
 - c) establishing a mechanism to provide a percentage of low-income senior housing (without the need to pay rent in excess of 30 percent of household income),and that the City Council have such stipulations implemented prior to granting its approval.
2. That the senior housing component be increased so that the number of affordable units be 25 percent of the overall floor area.
3. That the developer adheres to the written commitment to further reduce the percentage of market rate development should discretionary Capital Budget dollars be appropriated to the development site for additional affordable housing above and beyond the inclusionary housing or affordable senior housing commitment.
4. That the Restrictive Declaration facilitate open space mitigation options, including those cited by the Borough President, pursued in consultation with CB 4 and local elected officials as an alternative to the mitigation described in the EIS regarding Green Central Knoll Park
5. That the Restrictive Declaration for the 17,850 sf onsite open space, in addition to binding the developer's several hundred dollar commitment for the privately-held proposed open

space between Stanwix and George Streets, incorporates a public access easement and that such open space be completed prior to the issuance of a Certificate of Occupancy on the properties controlled by the applicant or successors.

- 6.** That the frontage along Flushing Avenue from Beaver Street to Garden Street (Block 3138), an area that includes an existing supermarket, retain its existing M1-1 district, in lieu of the proposed R6A/C2-4.
- 7.** That prior to City Council review, the applicant provides its intended stipulation indicating that that required parking triggered by affordable housing units would be indexed to be half the monthly rental of spaces of the market rate spaces and that such number of spaces be leased to those residing in the affordable housing units, and that the City Council has stipulation implemented.
- 8.** That the City Council incorporates the applicant's commitment to monitoring the actual automobile ownership of the market rate units from the first phase of development and the commitment to provide more than the zoning minimum should statistics demonstrate demand warrants that additional parking should be provided.
- 9.** That, prior to a determination by the City Council, the applicant fund and implement a study, in consultation with the Department of Transportation and Community Board 4, to determine if there is any feasibility to establish angled parking for streets that abut the applicant's property, and to the extent deemed acceptable to DOT, to pay for any costs to implement such parking scheme.
- 10.** That the mapping agreement for the new street segments ensure that they are constructed by the applicant prior to the issuance of a Certificate of Occupancy for construction on Block 3141 (Stanwix Street) and Block 3152 (Noll Street).

Be it further resolved that the Department of Education consults with the Administration and parent community of PS 145 in at all stages planning for any reconfiguration of space within PS 145.

August 21, 2013

VIA FEDERAL EXPRESSHonorable Marty Markowitz
Brooklyn Borough President
Office of the Borough President
Borough Hall
209 Joralemon Street
Brooklyn, NY 11201Re: ULURP No. 080322 ZMK, ULURP No. 110179 ZRK,
ULURP No. 070250 MMK
Rheingold Rezoning (the "Rezoning")

Dear Borough President Markowitz:

On behalf of our client, Forrest Lots LLC ("the Applicant") and in response to questions and concerns raised by you at the July 1, 2013 public hearing for the Rezoning, we respectfully submit the following:

1. Inclusionary Housing Program

As you know, zoning districts proposed by the Rezoning are Inclusionary Zoning Districts, which require that 20 percent of the residential floor area for any portion of the Rezoning area be set aside for low-income housing in order to develop at the maximum permitted 4.6 FAR in the R7A district and 3.6 FAR in the R6A district. Based on a comprehensive financial analysis and affordable housing study by our project consultant, we have determined that our proposed mixed-use development project within the Rezoning Area ("the Project") is only feasible if developed at the maximum permitted FAR. Therefore, the Applicant hereby commits to utilizing the Inclusionary Bonus by including on-site, permanently affordable, low income housing. The Applicant hereby agrees to stipulate the aforementioned commitment to affordable housing in conjunction with the approval of the Rezoning.

In addition, the Applicant hereby commits to pursuing the Section 421-a real estate tax exemption, which will require that at least 20 percent of the units within the Project are affordable to families making a maximum of 60% AMI. Upon completion of the ULURP process, the Applicant will file an affordable housing plan at HPD to incorporate low-income housing into the Project's four development sites (pursuant to the Inclusionary Housing Program), so that at least 20 percent of the residential floor area in each development site are affordable to families making a maximum of 60% of the Area Median Income ("AMI"). If

Honorable Marty Markowitz
August 21, 2013
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government funding sources for the affordable units become available at the time of the Project's construction, then the Applicant hereby commits to increasing the number of affordable units and/or the tiers of affordability, provided that it is financially feasible to do so.

2. Additional Affordable Housing

In addition to the Inclusionary Housing discussed above, the Applicant is committed to providing an additional 4% of the Project's units as affordable, so that a total of 24% of the Project's units (or approximately 242 units) will be permanently affordable. It is the Applicant's intention that these additional affordable units will be housing for seniors. The Applicant has analyzed the overall economic feasibility of this project with an affordable housing consultant, and believes that the Project is sustainable with a total of 24% affordable units. The Applicant hereby agrees to stipulate the aforementioned commitment to affordable housing in conjunction with the approval of the Rezoning.

3. Affordable Parking Spaces

The Applicant commits to provide the parking spaces that are accessory to the Project's affordable housing units to the tenants of those units at a price that is a 50% discount of that of the market-rate units. The Applicant hereby agrees to stipulate the aforementioned commitment to affordable parking spaces in conjunction with the approval of the Rezoning.

4. Street Mapping

The Rezoning includes the mapping of two public streets: Stanwix Street between Montieth and Forrest Streets, and Noll Street between Stanwix Street and Evergreen Avenue. We are required to enter into a Mapping Agreement with the City's Corporation Counsel, which will be recorded against the property and will detail the timing of the construction of these two streets. The streets will be constructed according to City standards and requirements and will, upon completion, become public streets.

5. Open Space

The project includes an approximately 17,850 square foot open space, which will be landscaped and improved with amenities and seating, and will be completely open and accessible to the public ("the Open Space"). The Open Space will be maintained by the Project development.

Additionally, the Applicant intends to contribute funding to the Department of Parks and Recreation for upgrades to the adjacent Green Knoll Park. The financial commitment and the construction schedule for the Open Space and the timing and precise amount of the funding will be described in detail in a restrictive declaration that we are required to enter into

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with the City in conjunction with the Final Environmental Impact Statement.
The DEIS may be found here:
http://www.nyc.gov/html/dcp/pdf/env_review/rheingold/noc_deis.pdf.

The Parks Department has suggested that the funding for Green Knoll Park be utilized to provide adult fitness equipment in that Park. The Applicant recognizes that the Community Board and Borough President have suggested alternative ways in which the funding for Green Knoll Park may be utilized, and commits to pursue these alternatives with the Parks Department and the Department of City Planning.

4. Car Ownership and Parking

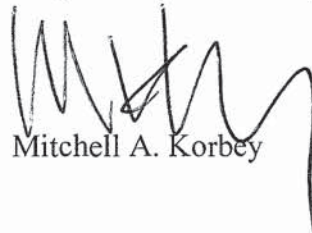
The Applicant's environmental consultant, Philip Habib & Associates ("PHA"), has determined that the surrounding households own an average of 0.48 vehicles per household. Utilizing this data, the Project is expected to generate a peak residential parking demand of approximately 469 cars, which would occur during the overnight period. This determination is based on the latest Census data for both rental and home ownership households. The Project will provide a total of 504 off-street accessory parking spaces, at a rate of 50% of the units and 1 per 1,000 square feet of retail uses. PHA believes that this will be more than sufficient parking to accommodate the Project's projected demand.

The Applicant will reassess the parking demand upon completion of 25% of the units in the Project to determine if additional parking is warranted.

The Applicant commits to work with the NYC DOT and with Community Board Four on a study to determine the feasibility of angled parking and will reach out now to DOT to initiate such a study.

We look forward to working closely with you and your staff as we complete the ULURP process for the Rezoning and would be pleased to provide additional information. Please note that all commitments made above are subject to the City's final approval of the Rezoning Application by in the form certified by the Department of City Planning.

Respectfully submitted,



Mitchell A. Korbey

RESTRICTIVE DECLARATION

THIS RESTRICTIVE DECLARATION (this “**Declaration**”), dated as of [_____], 2013 and effective as of the Effective Date (hereinafter defined), by **FORREST LOTS LLC**, a limited liability company having an address 4706 18th Avenue, Brooklyn, NY 11204 (the “**Declarant**”).

WITNESSETH:

WHEREAS, Declarant is the fee owner of certain real property located in the Borough of Brooklyn, County of Kings, City of New York and State of New York, designated for real property tax purposes as: (a) Lots 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 of Block 3139; (b) Lots 1, 5, 6, 7, 8, 10, 11, 12, 14, 15, 18, 20, 21, 22, 23 and 36 of Block 3141; and (c) Lots 1, 2, 3, 45, 48, 56, 58, 62, 63, 64, and 66 of Block 3152 (collectively, the “**Subject Property**”) on the Tax Map of the City of New York, which real property is more particularly described on **Exhibit A** annexed hereto;

WHEREAS, Declarant intends to develop the Subject Property by constructing certain ten (10) new residential and mixed-use buildings on the Subject Property (collectively, the “**Projected Development**”), as reflected in the FEIS (hereinafter defined);

WHEREAS, in connection with the Projected Development, Declarant has filed with the City Planning Commission of the City of New York (the “**Commission**”) applications proposing: (a) the rezoning (under application # 080322 ZMK) of portions of Subject Property from (i) M1-1 to R6A, (ii) M1-1 to R7A, (iii) M1-1 to R6A with a C2-4 commercial overlay, (iv) M1-1 to R7A with a C2-4 commercial overlay, and (v) from M3-1 to M1-2 (the “**Rezoning**”); (b) a zoning text amendment (under application # 110179 ZRK) to apply the Inclusionary Housing program to portions of the Subject Property; and (c) a mapping of Stanwix Street between Montieth St. and Forrest Street and a mapping of Noll Street between Stanwix Street and Evergreen Avenue (under application # 070250 MMK (collectively, the “**Applications**”);

WHEREAS, the Commission acting as lead agency for the City Environmental Quality Review Application No. 09DCP002K 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 (“**SEQRA**”), and issued a Notice of Completion for the Final Environmental Impact Statement (the “**FEIS**”) prepared in connection with environmental review of the Applications on October 22, 2013;

WHEREAS, at the time of the Commission’s Approval of the Applications the Commission found, as required pursuant to SEQRA, that the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that the adverse impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions of the decision those mitigative measures that were identified in the FEIS as practicable;

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 FEIS upon which the Commission has made its findings, and that the development of the Subject Property incorporates certain requirements for mitigation of significant adverse environmental impacts as conditions of the Commission’s decision on the Applications, Declarant has agreed to restrict the development, operation, use and maintenance of the Subject Property in certain respects, which restrictions are set forth in this Declaration, including but not limited to the agreement of Declarant to: (i) construct the Public Access Area in accordance with the terms of this Declaration; (ii) transfer to the City and the general public permanent access easements over the Public Access Area upon substantial completion thereof; and (iii) assume responsibility for the maintenance and repair of the Public Access Area;

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

WHEREAS, pursuant to the certificate annexed hereto as **Exhibit B**; [_____] has certified that, as of [_____] , 2013, Declarant and [_____] 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 instruments annexed hereto, which instruments are intended to be recorded simultaneously with this Declaration;

NOW, THEREFORE, Declarant hereby declares 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 Declarant and its heirs, successors and assigns.

ARTICLE I

CERTAIN DEFINITIONS

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

“**Affordable Housing**” shall have the meaning set forth in Section 23-911 of the Zoning Resolution.

“**Affordable Housing Unit**” shall mean (i) a residential unit consisting solely of Affordable Housing or (ii) a Superintendent Unit; provided, however, that there shall not be more than one (1) Superintendent Unit in each building located in the Projected Development.

“**Annex**” shall mean a school space to serve as an annex to an existing DOE public school facility, with a maximum of 10,000 square feet (subject to increase if requested by DOE and SCA and consented to by Declarant) within the Projected Development for approximately

four (4) classrooms (or any number of classrooms sufficient to increase capacity by a minimum of 73 seats) and related space for DOE use, such space to be provided consistent with the SCA's Standard Room Layouts, in full compliance with standards acceptable to DOE and SCA, and to be configured in a manner acceptable to DOE and SCA. The location of such annex shall be acceptable to DOE and SCA, and shall be located as close as possible to the front entrance of the existing P.S. 145 school building, with a dedicated, separate entrance on either Evergreen Avenue or Melrose Street. Any open space on the Subject Property required and provided in connection with the annex shall be provided in accordance with SCA guidelines and be sized to reflect the number of school seats in the annex. Such open space shall be in addition to and shall not substitute for any open space provided as open space mitigation.

"Annex Option" shall have the meaning set forth in Section 3.04 of this Declaration.

"Annex Option Agreement" shall have the meaning set forth in Section 3.04 of this Declaration.

"Applications" shall have the meaning set forth in the Recitals to this Declaration.

"Approvals" shall mean the Applications approved by the Commission relating to the Projected Development or otherwise with respect to the Subject Property.

"Assessment Property" shall have the meaning set forth in Section 0.09 of this Declaration.

"Association" shall have the meaning set forth in Section 9.02 of this Declaration.

"Association Members" shall have the meaning set forth in Section 9.06 of this Declaration.

"Association Obligation Date" shall have the meaning set forth in Section 9.03 of this Declaration.

"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.

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

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

“**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.

“**Design Criteria**” shall have the meaning set forth in Section 3.03(a)(ii) of this Declaration.

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

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

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

“**DPR Rules and Regulations**” shall mean the Rules and Regulations of the DPR, as the same may be amended from time to time.

“**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.

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

“**FEIS Requirement**” shall mean any measure set forth in the FEIS that is required in order for the Commission to find in the Commission’s Approval of the 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 those mitigative measures that were identified in the FEIS 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.

“Final Completion” or **“Finally Complete”** shall mean the completion of all relevant items of work, including any so-called “punch-list” items that remain to be completed upon Substantial Completion.

“Final Public Access Area Plan” shall mean that certain plan illustrating to the Chair’s satisfaction that the location, dimensions, amenities, materials and treatment of the Public Access Area conforms with the intended design and intended public usage of the Public Access Area.

“Force Majeure Event” shall mean occurrences beyond the reasonable control of Declarant which delay the performance of Declarant’s obligations hereunder, provided that Declarant has taken all reasonable steps reasonably necessary to control or to minimize such delay, and which occurrences shall include, but not be limited to: (i) a strike, lockout or labor dispute; (ii) the inability to obtain labor or materials or reasonable substitutes therefor; (iii) acts of God; (iv) restrictions, regulations, orders, controls or judgments of any Governmental Authority; (v) undue material delay in the issuance of approvals by any Governmental Authority, provided that such delay is not caused by any act or omission of Declarant; (vi) enemy or hostile government action, civil commotion, insurrection, terrorism, revolution or sabotage; (vii) 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 Association, as applicable, 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 Article IX.

“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.

“Individual Assessment Interest” shall have the meaning set forth in Section 6.03(a) of this Declaration.

“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.

“Mitigation Measure” shall mean the measures set forth in Article III of this Declaration that are required to mitigate the significant adverse impacts identified in the FEIS.

“Modified Public Access Area Certification Plans” shall have the meaning set forth in Section 3.03(c)(iii) of this Declaration.

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

“Mortgagee” shall mean the holder of a Mortgage.

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

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

“Notice of Final Completion” shall have the meaning set forth in Section 3.03(d)(ii)(1) of this Declaration.

“Notice of Substantial Completion” shall have the meaning set forth in Section 3.03(d)(1)(A) of this Declaration.

“NYPD” shall have the meaning set forth in Section 3.03(i) of this Declaration.

“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.

“Park Improvement Mitigation Measure” and **“Park Improvement Payment”** shall have the meanings set forth in Section 3.02 of this Declaration.

“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.

“Possessory Interest” shall have the meaning set forth in Section 9.09(d) of this Declaration.

“Principal” shall have the mean the principal of that certain elementary school operated by DOE within New York City Geographic District #32, known as P.S. 145, and known as the “Andrew Jackson School”.

“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 FEIS 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.

“Projected Development Site 1” shall mean the portion of the Subject Property identified as Applicant Owned Projected Development Site 1 in the FEIS, and designated for real property tax purposes as Lots 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36 of Block 3139.

“Projected Development Site 2” shall mean the portion of the Subject Property identified as Applicant Owned Projected Development Site 2 in the FEIS, and designated for real property tax purposes as Lots 1, 5, 6, 7, 8, 10, 11, 12, 14, 15, 18, 20, 21, 22, 23 and 36 of Block 3141.

“Projected Development Site 3” shall mean the portion of the Subject Property identified as Applicant Owned Projected Development Site 3 in the FEIS, and designated for real property tax purposes as a portion of each of Lots 3 and 48 of Block 3152.

“Projected Development Site 4” shall mean the portion of the Subject Property identified as Applicant Owned Projected Development Site 4 in the FEIS, and designated for real property tax purposes as Lots 1, 2, 45, 56, 58, 62, 63, 64, and 66 of Block 3152, and a portion of each of Lots 3 and 48 of Block 3152.

“Public Access Area” shall mean that certain publicly accessible on-site open space consisting of 17,850 square feet of area, located within Projected Development Site 3, as more

particularly described in the metes and bounds description annexed hereto as **Exhibit C** and made a part hereof.

“Public Access Area Plan” shall mean that certain plan showing the intended illustrative development of Public Access Area, which Public Access Area Plan is annexed hereto for illustration purposes only as **Exhibit D**, entitled Open Space Plan, dated June 11, 2013, prepared by Magnusson Architecture and Planning PC (consisting of one (1) sheet) (it being agreed, however, that the final Public Access Area Plan shall be subject to review and certification by the Chair in accordance with the provisions of this Declaration for compliance with the Required Elements and Design Criteria set forth herein.

“Public Access Area Trigger Development” shall have the meaning set forth in **Section 3.03(a)(i)** of this Declaration.

“Public Access Area Work” shall mean the work necessary to construct the Public Access Area in accordance with this Declaration.

“Public Access Easement” shall have the meaning set forth in **Section 3.03(e)** of this Declaration.

“Public School Mitigation Measure” shall have the meanings set forth in **Section 3.04** of this Declaration.

“Punch List” shall have the meaning set forth in **Section 3.03(d)(i)(A)** of this Declaration.

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

“Required Elements” shall have the meaning set forth in **Section 3.03(a)(iii)** of this Declaration.

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

“SCA” shall have the meaning set forth in **Section 3.04** of this Declaration.

“School Conversion Option” shall mean the funding or construction by the Declarant of the conversion of existing rooms in the existing P.S. 145 building to increase the capacity of that building by a minimum of seventy-three (73) additional seats. The School Conversion Option shall be subject to acceptance by SCA and DOE in consultation with the Principal.

“School Conversion Option Agreement” shall have the meaning set forth in **Section 3.04** of this Declaration.

“School Conversion Option Payment” shall have the meaning set forth in **Section 3.04** of this Declaration.

“**School Mitigation interested Parties**” and “**School Mitigation Notice**” shall have the meaning set forth in Section 3.04(a)(i) of this Declaration.

“**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.

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

“**Superintendent Unit**” means a residential unit which is reserved for the use of a building superintendent.

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

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

“**Unit Owner(s)**” shall have the meaning set forth in Section 9.09(a) of this Declaration.

“**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, Declarant covenants and agrees that the PCREs and Mitigation Measures 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 Related to Construction (“**PCREs**”) and Mitigation Measures in accordance with the FEIS and as further set forth in this Article III for any development pursuant to Section 2.01 of the Subject Property, as such PCREs and Mitigation Measures may be modified in accordance with the provisions of Section 3.05.

3.01 **Project Components Related to the Environment Related to Construction**

(a) **Hours of Work** shall conform with the hours of work for construction related activities as set forth in Chapter 15 of the FEIS.

(b) **Maintenance and Protection of Traffic Measures.**

(i) Prior to Construction Commencement, Declarant shall prepare a plan which provides diagrams of proposed temporary lane and sidewalk alterations, the duration such alterations will be implemented, the width and length of affected segments, and sidewalk protection measures for pedestrians, which shall be necessary during work associated with such development phase (the “**Maintenance and Protection of Traffic Plan**” or “**MPT**”). Declarant shall submit the MPT to DOT for review and approval, provided, however, that completion and submission of the MPT shall not be necessary for preliminary site work, unless DOT advises Declarant that a MPT is required.

(ii) Declarant shall include provisions in the contracts of all relevant contractors and subcontractors requiring adherence in all material respects to the provisions of the MPT plan.

(c) **Construction Air Emission Control Measures.**

(i) Prior to Construction Commencement, Declarant shall (x) develop a plan for implementation of and (y) thereafter implement, a plan for the prevention of construction air emissions from construction-related activities during the development of the Subject Property, which shall contain the following measures in all substantial respects:

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

(B) *Best Available Tailpipe Reduction Technologies.* Nonroad diesel engines with a power rating of 50 horsepower (hp) or greater and controlled truck fleets (i.e., truck fleets under long-term contract with the project) including but not limited to concrete mixing and pumping trucks, shall utilize the best available tailpipe (BAT) technology for reducing DPM emissions. Diesel particle filters (DPFs) have been identified as being the tailpipe technology currently proven to have the highest reduction capability. Construction contracts shall specify that all diesel non-road engines rated at 50 hp or greater would utilize DPFs, either installed on the engine by the original equipment manufacturer (OEM) or a retrofit DPF verified

by the EPA or the California Air Resources Board verification programs, and may include active DPFs, if necessary, or other technology proven to achieve equivalent emissions reduction;

(C) *Utilization of Newer Equipment.* All non-road construction equipment in the proposed project with a power rating of 50 hp or greater shall meet at least the USEPA's Tier 3 emissions standard. All non-road engines in the project rated less than 50 hp would meet at least the USEPA's Tier 2 emissions standard;

(D) *Source Location.* In order to reduce the resulting concentration increments, large emissions sources and activities such as concrete trucks and pumps shall be located away from residential buildings and publicly accessible open spaces to the extent practicable and feasible.

(E) *Dust Control.* In order to prevent the emission of dust from construction related activities the following measures shall be implemented:

(1) Stabilized truck exit areas shall be established for washing off the wheels of all trucks that exit the construction site;

(2) Truck routes within the sites shall be either watered as needed or, in cases where such routes would remain in the same place for an extended duration, the routes shall be stabilized, covered with gravel, or temporarily paved to avoid the re-suspension of dust;

(3) All trucks hauling loose material shall be equipped with tight fitting tailgates and their loads securely covered prior to leaving the sites

(4) Chutes shall be used for material drops during demolition;

(5) Water sprays shall be used for all excavation, demolition, and transfer of spoils to ensure that materials are dampened as necessary to avoid the suspension of dust into the air;

(6) Loose materials shall be watered, stabilized with a biodegradable suppressing agent, or covered; and

(7) All necessary measures shall be implemented to ensure that the New York City Air Pollution Control Code regulating construction-related dust emissions is followed; and

(F) *Idle Restriction.* On-site vehicle idle time will be restricted to three minutes for all equipment and vehicles that are not using their engines to operate a loading, unloading, or processing device (e.g., concrete mixing trucks) or otherwise required for the proper operation of the engine;

(ii) Declarant shall include contractual requirements with its contractors (and require the contractors to include enforceable contractual requirements with their subcontractors) to implement in all material respects the provisions of this Section, with respect to applicable work at the Subject Property.

(d) **Construction Noise Reduction Measures**

(i) Prior to Construction Commencement, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, a plan for the reduction of construction noise from construction-related activities during the development of the Subject Property shall contain the following measures:

(A) Equipment that meets the sound level standards specified in Subchapter 5 of the New York City Noise Control Code would be utilized from the start of construction;

(B) As early in the construction period as logistics will allow, diesel- or gas-powered equipment would be replaced with electrical-powered equipment such as welders, water pumps, bench saws, and table saws (i.e., early electrification) to the extent feasible and practical;

(C) Where feasible and practical, construction sites would be configured to minimize back-up alarm noise;

(D) All trucks shall not be allowed to idle more than three minutes at the construction site based upon New York City Local Law;

(E) Contractors and subcontractors shall be required to properly maintain their equipment and mufflers;

(F) Where logistics allow to the extent feasible and practical, noisy equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, would be located away from and shielded from sensitive receptor locations. Once building foundations are completed, delivery trucks would operate behind construction fences, where possible;

(G) Noise barriers constructed from plywood or other materials shall be utilized to provide shielding (e.g., the construction sites would have a minimum 12-foot barrier and, where logistics allow, truck deliveries shall take place behind these barriers once building foundations are completed);

(H) Path noise control measures (i.e., portable noise barriers, panels, enclosures, and acoustical tents, where feasible) shall be used for certain dominant noise equipment to the extent feasible and practical, i.e., asphalt pavers, drill rigs, excavators with ram hoe, hoists, impact wrenches, jackhammers, power trowels, powder actuated devices, rivet busters, rock drills, concrete saws, and sledge hammers.

(ii) Declarant shall include enforceable contractual requirements with its contractors (and require the contractors to include enforceable contractual requirements with their subcontractors) to implement in all material respects the provisions of this Section 4.01(c) with respect to applicable work at the Subject Property.

3.02 **Environmental Mitigation Relating to Open Space – Park Improvement Payment**

(a) The FEIS has identified that a significant adverse impact to open space occurs upon occupancy of two hundred sixty (260) residential units, and further sets forth that, in full satisfaction of its obligations to partially mitigate such impact, the Declarant shall provide DPR with a monetary contribution to be used for improvements to active open space resources in the study area (the “**Park Improvement Mitigation Measure**”) in the amount of \$350,000 (the “**Park Improvement Payment**”).

(b) **Park Improvement Payment.**

(i) Declarant shall not apply for or accept and DOB shall not issue a TCO for the Projected Development, or any portion thereof, that results in occupancy of two hundred sixty (260) residential units or more on the Subject Property, until DPR has certified to the Declarant and DOB that the Declarant has provided the Park Improvement Payment to DPR as required in accordance with this Declaration. The Park Improvement Payment shall be used by DPR in connection with the funding for improvement of adult fitness equipment or other active open space improvements to Green Central Knoll Park, or for other improvements or enhancements of active open spaces in the study area to increase their utility, safety and capacity to meet identified needs as may be determined by DPR, in consultation with the Community Board and DCP (as the lead agency), at a time when the funding becomes available and for no other purpose.

(ii) Notwithstanding anything to the contrary, following the acceptance by DPR of the Park Improvement Payment, Declarant shall have no further obligations whatsoever under this Declaration or the FEIS relating in any way to the Park Improvement Mitigation Measure.

(c) The Park Improvement Payment shall be paid by check payable to DPR at its principal office or such other office within the City as DPR may from time to time designate, or by wire transfer to an account designated by DPR, or in any other form acceptable to the City.

(d) Declarant shall have no liability to the City, DPR, its agents, officers, employees, affiliates, successors or principals for, and the City shall indemnify, defend and hold Declarant harmless from and against any loss, cost, liability, claim, damage, expense, including reasonable attorneys’ fees and disbursements, incurred in connection with or arising from the use of the Park Improvement Payment.

3.03 **Environmental Mitigation Relating to Open Space – Public Access Area**

(a) **Obligation to Construct Public Access Area**

(i) The FEIS has identified that a significant adverse impact to open space occurs upon occupancy of two hundred sixty (260) new residential units, and further sets forth that, in full satisfaction of its obligations to partially mitigate such impact, the Declarant shall construct the Public Access Area substantially in accordance with the provisions of this Section 3.03 upon issuance of a Building Permit for construction of any dwelling units on the

later to be developed with any dwelling units of: (x) Projected Development Site 3; and (y) Projected Development Site 4 (such later development, the “**Public Access Area Trigger Development**”). The general purpose of the Public Access Area will be to serve as a neighborhood open space, provide amenities for residents, workers, and the general public, and provide passive recreational space, including a variety of seating types and areas, including social seating.

(ii) The Public Access Area shall be open to the public, 365 days per year, during the hours of operation as set forth in Section 3.03(f) herein. No portion of the Public Access Area may be enclosed by a gate or fence during such hours of operation. Notwithstanding the foregoing, the Declarant may close the Open Space one day in each calendar year for private events, and as otherwise provided herein in Section 3.03(i).

(iii) At a minimum, the Public Access Area shall include in all substantial respects the following required elements (“**Required Elements**”) and conform in all substantial respects with the design criteria set forth below (collectively, the “**Design Criteria**”):

(A) **Seating:**

(1) **Seating:** At least three different types of seating shall be provided, which seating types may include: moveable seating, fixed individual seats, fixed benches with and without backs, and design-feature seating such as seat walls, planter ledges, or seating steps. Seating shall have a minimum depth of 18 inches. Seating with 36 inches or more in depth is permitted, provided there is access to both sides of such seat. When seating is provided on a planter ledge, such ledge must have a minimum depth of 22 inches;

(2) Seating shall have a height not less than 16 inches nor greater than 20 inches above the level of the adjacent walking surface. Seating steps may have a height not to exceed 30 inches and seating walls may have a height not to exceed 24 inches;

(3) At least 30 percent of the linear feet of fixed seating shall have backs at least 14 inches high and a maximum seat depth of 20 inches. Walls located adjacent to a seating surface shall not count as seat backs. All seat backs must either be contoured in form for comfort or shall be reclined from vertical between 10 to 15 degrees;

(4) All moveable seats must have backs and a maximum seat depth of 20 inches. If moveable seats are included, one table shall be provided for every four such moveable seats. Moveable seats shall not be chained, fixed, or otherwise secured while the Public Access Area is open to the public; moveable seats, however, may be removed during the hours when the Public Access Area is not open to the public as set forth in Section 3.03(c) of this Declaration;

(5) Seating steps shall not include any steps intended for circulation and must have a height not less than six inches nor greater than 30 inches and a depth not less than 18 inches. Seating walls shall have a height not greater than 18 inches; such seating walls, however, may have a height not to exceed 24 inches if they are located within 10 feet of an edge of the Open Space; and

(6) Seats that face walls must be a minimum of six feet from such wall.

(B) **Steps:** Any steps provided within the Open Space must have a minimum height of four inches and a maximum height of six inches. Steps must have a minimum tread of 17 inches; steps with a height of five inches, however, may have a minimum tread of 15 inches.

(C) **Prohibitions:** Devices or forms affixed or incorporated into planter ledges, steps, sills, or other horizontal surfaces that would otherwise be suitable for seating that are intended to prevent, inhibit or discourage seating (such as spikes, metal bars, or pointed, excessively rough, or deliberately uncomfortable materials or forms) shall be prohibited. Deterrents to skateboards, rollerblades and other wheeled devices are permitted on seating surfaces if they do not inhibit seating, maintain a minimum distance of five feet between deterrents, and are integrated into the seating surface at the time of manufacture or construction or should be constructed of materials that are consistent with the materials and finish quality of the seating surface.

(D) **Access for Persons with Disabilities:** The Open Space shall conform with applicable laws pertaining to access for persons with disabilities.

(E) **Plantings and Trees:**

(1) At least ten percent (10%) of the Open Space area shall be comprised of planting beds with a minimum dimension of two feet, exclusive of any bounding walls;

(2) The Open Space shall provide four trees plus an additional four caliper inches in additional trees or multi-stemmed equivalents for each additional 1,000 square feet of Open Space in excess of 6,000 square feet, rounded to the nearest 1,000 square feet;

(3) At least 50 percent of required trees shall be planted flush-to-grade or planted at grade within planting beds with no raised curbs or railings. Trees planted flush-to-grade shall be surrounded by a porous surface (such as grating or open-joint paving) that allows water to penetrate into the soil for a minimum radius of two feet, six inches. Such porous surface shall be of sufficient strength and density to accommodate pedestrian circulation, including all requirements related to accessibility for the disabled, and shall be of a design that allows for tree growth. Installed fixtures such as lighting stanchions, electrical outlets or conduits shall not be located within the required porous area of any tree planted flush-to-grade;

(4) Where trees are planted within the Open Space, they shall measure at least four inches in caliper at the time of planting, unless alternative, multi-stemmed equivalents are specified in the Open Space plans. Each tree shall be planted in at least 200 cubic feet of soil with a depth of soil of at least three feet, six inches;

(5) Planting beds shall have a soil depth of at least 18 inches for grass or other ground cover, three feet for shrubs and three feet, six inches for trees. No planters or planting beds shall have bounding walls that exceed 18 inches in height above an adjacent walking surface or the highest adjacent surface where the bounding wall adjoins two or more walking surfaces with different elevations. Any planting bed containing required trees shall

have a continuous area of at least 75 square feet for each tree exclusive of bounding walls. Furthermore, each tree located within a planting bed shall be surrounded by a continuous permeable surface measuring at least five feet square. Any lawns or turf grass planting beds shall not exceed six inches above any adjacent walking surfaces;

(6) All planted areas shall either be automatically irrigated or shall consist of species that do not require regular watering;

(7) All planted areas located above subsurface structures such as cellars or garages shall have drainage systems to prevent collection and pooling of water within planted areas; and

(F) **Lighting and Electrical Equipment:**

(1) The Open Space shall be illuminated to provide for safe use and enjoyment of all areas of the Open Space. Special attention should be provided in lighting steps and other changes in elevation and areas under tree canopies and permitted canopies within the Open Space;

(2) The Open Space shall be illuminated with a minimum level of illumination of not less than two horizontal foot candles (lumens per foot) throughout all walkable and sitting areas, including sidewalks directly adjacent to the Open Space, and a minimum level of illumination of not less than 0.5 horizontal foot candles (lumens per foot) throughout all other areas. All lighting sources used to satisfy this illumination requirement shall be located outdoors on Site 5. Such level of illumination shall be maintained from one hour before sunset to one hour after sunrise, including any nighttime closure. A lighting schedule, including fixtures, wattage and their locations and designs together with a diagram of light level distribution, with light levels indicated at intervals of no more than every 20 square feet. Electrical power shall be supplied by one or more outlets furnishing a total of at least 1,200 watts of power for every 4,000 square feet, or fraction thereof, of the area of the Open Space; and

(3) All lighting sources that illuminate the Open Space and are mounted on or located within buildings adjacent to the Open Space shall be shielded from direct view. In addition, all lighting within the Open Space area shall be shielded to minimize any adverse effect on surrounding residences.

(G) **Litter Receptacles:** One litter receptacle shall be provided for every 1,500 square feet of Open Space area, or portion thereof. All litter receptacles must have a volume capacity of at least 25 gallons and shall be located in visible and convenient locations. All top or side openings must have a minimum dimension of 12 inches.

(H) **Bicycle Parking:** The Open Space shall provide parking for at least two bicycles. Bike racks must be provided on the sidewalk directly adjacent to the Open Space in accordance with DOT standards, unless DOT has determined that the sidewalk area adjacent to the Open Space cannot accommodate the required bicycle parking.

(I) **Signage**: The Open Space shall comply with all the provisions of ZR Section 37-751 (Public Space Signage) as in effect on the date of this Declaration, as modified herein. All references therein to #public plaza# shall be replaced with the words “Public Access Area”. Section ZR 37-751(a)(3) shall be modified as follows: the hours of operation set forth in Section 4(a)(iii) of this Declaration shall replace the words “Open 24 hours” and the words “Open to the public” shall precede those hours of operation. There shall also be provided one operating rules sign. A maximum of one such sign may be located within the Public Access Area. Such sign shall not exceed one foot square dimension, may not be freestanding, and shall contain no lettering greater than ¾ inch in height.

(J) **Permitted Obstructions**: The provisions of ZR Section 37-726 (Permitted Obstructions) as in effect on the date of this Declaration shall apply to the Open Space. A Kiosk shall be considered a permitted obstruction for purposes of applying ZR Section 37-726 to the Open Space. Such Kiosk shall be substantially transparent and shall occupy no more than 100 square feet, and such Kiosk, including seating, may occupy no more than ten percent (10%) of the Open Space.

(b) **CPC Chair Review and Certification of Design**

(i) Declarant shall not accept and DOB shall not issue a Building Permit (other than a permit for demolition, site preparation or excavation) for the Public Access Area Trigger Development unless and until the Chair certifies to Declarant and DOB that the design of the Public Access Area contains the Required Elements and complies with the Design Criteria and contains a minimum size of 17,850 square feet (the “**Public Access Area Certification**”).

(ii) Certification of acceptance of the Final Public Access Area Plan may be made only upon the written approval of the Chair, which approval shall not be unreasonably withheld or delayed. To initiate Chair review, Declarant shall submit drawings, including a single plan drawing showing the status of the Projected Development at the time of submission, a site plan of Projected Development Site 3, and a dimensioned site plan for the Public Access Area with sufficient details to enable the Chair to determine whether the Required Elements are present and whether the Design Criteria have been complied with (“**Public Access Area Certification Plans**”).

(iii) Within thirty (30) days of such submission, the Chair shall either (A) issue the Public Access Area Certification, or (B) notify Declarant in writing of any lacking Required Elements or of any failure to comply with the Design Criteria, in which case Declarant shall submit revised Public Access Area Certification Plans which shall address such defects, and the Chair shall issue the Public Access Area Certification within fifteen (15) days after receipt thereof.

(c) **Construction of the Public Access Area**

(i) **Performance of Public Access Area Work**. Declarant agrees that the Public Access Area Work shall be performed in accordance with all Legal Requirements and the provisions of this Declaration, it being expressly acknowledged by the City that: (i) no

permits or approvals from any government entity are necessary as a condition precedent to the construction of the Public Access Area Work as shown on the Final Public Access Area Plan; and (ii) the Declarant intends to construct the Public Access Area substantially in accordance with the Final Public Access Area Plan.

(ii) **Manner of Performance of the Construction Work; Permits.**

Declarant shall, at its sole cost and expense, undertake and complete the performance of the Public Access Area Work so as to construct the Public Access Area as required pursuant to the provisions of this Declaration. Declarant shall perform the Public Access Area Work in a good and workerlike manner and in accordance with Legal Requirements.

(iii) **Non-material Modifications to the Public Access Area Certification Plans.** Declarant shall have the right to make non-material modifications to the Public Access Area Certification Plan to respond to unanticipated field conditions or similar unanticipated construction-related circumstances. All material modifications to the Public Access Area Certification Plan may be made only upon the written approval of the Chair, which approval shall not be unreasonably withheld or delayed. To initiate Chair review of material modifications, Declarant shall submit a modified Public Access Certification Plan with sufficient details to enable the Chair to determine whether the modified Public Access Certification Plan continues to include the Required Elements and whether the Design Criteria continue to be complied with (the **“Modified Public Access Area Certification Plans”**). Within fifteen (15) days of such submission, the Chair shall either (A) accept the Modified Public Access Area Certification Plans, or (B) notify Declarant in writing of any lacking Required Elements or of any failure to comply with the Design Criteria, in which case Declarant shall submit revised Modified Public Access Area Certification Plans which shall address such defects, and the Chair shall issue the Public Access Area Certification within fifteen (15) days after receipt thereof.

(d) **Completion of Construction.**

(i) **TCO.** Declarant shall not accept and DOB shall not issue a TCO with respect to the Public Access Area Trigger Development until the Chair has certified to the Declarant and DOB that the Chair has issued a Notice of Substantial Completion for the Public Access Area pursuant Section 3.03(d)(i)(A) of this Declaration. If, by reason of the occurrence of a Force Majeure Event, Declarant has obtained a TCO prior to the issuance of Notice of Substantial Completion for the Public Access Area, upon cessation of the Force Majeure Event, Declarant shall, as promptly as possible, pursue the issuance of such Notice of Substantial Completion.

(A) **Notice of Substantial Completion.** Declarant shall notify the Chair at such time as it believes that the Public Access Area is Substantially Complete and shall request that the Chair issue a certificate, in the form of **Exhibit E** annexed hereto (a **“Notice of Substantial Completion”**), to Declarant certifying Substantial Completion of the Public Access Area Work. No later than twenty (20) calendar days after receipt of such request, the Chair shall either issue the Notice of Substantial Completion or deliver to Declarant a notice setting forth in detail the reasons why the Public Access Area Work is not Substantially Complete and the items which need to be completed. If the Chair notifies Declarant that such Public Access Area Work has not been Substantially Completed, such notice shall contain a

detailed statement of the reasons for such non-acceptance in the form of a so-called “punch list” of items remaining to be completed or unsatisfactorily performed (a “**Punch List**”). The Punch List shall not include items which, pursuant to the definition of Substantial Completion, are not required to be completed prior to Substantial Completion. Declarant shall promptly perform the work specified on the Punch List, after which it shall notify the Chair of such completion. No later than ten (10) calendar days after receipt of such notice, the Chair shall either issue the Notice of Substantial Completion or notify Declarant that it has not completed the Punch List. This process shall continue until the Chair has issued a Notice of Substantial Completion. If the Chair fails to provide a notice to Declarant within the time periods set forth in this Section, then the Chair shall be deemed to have issued a Notice of Substantial Completion for the Public Access Area.

(ii) **PCO.** Declarant shall not accept and DOB shall not issue a PCO with respect to the Public Access Area Trigger Development until the Chair has certified to the Declarant and DOB that the Chair has issued a Notice of Final Completion for the Public Access Area pursuant Section 3.03(d)(ii)(A) of this Declaration. If, by reason of the occurrence of a Force Majeure Event, Declarant has obtained a TCO prior to the issuance of Notice of Final Completion for the Public Access Area, upon cessation of the Force Majeure Event, Declarant shall, as promptly as possible, pursue the issuance of such Notice of Substantial Completion.

(A) **Notice of Final Completion.** Declarant shall notify the Chair at such time as it believes that the Public Access Area is Finally Complete and shall request that the Chair issue a certificate, in the form of **Exhibit F** (a “**Notice of Final Completion**”), to Declarant certifying Final Completion. No later than twenty (20) days after receipt of such request, the Chair shall either issue the Notice of Final Completion or deliver to Declarant a notice specifying in detail the reasons why the Public Access Area is not Finally Complete. If the Chair notifies Declarant that such Public Access Area Work has not been Finally Completed, such notice shall include a detailed statement of the reasons for such non-acceptance in the form of a Punch List. Declarant shall promptly perform the work specified on the Punch List, after which it shall notify the Chair of such completion. No later than twenty (20) days after receipt of such notice, the Chair shall either issue the Notice of Final Completion or notify Declarant that it has not completed the Punch List (which notice shall specify which items of the Punch List remain incomplete). This process shall continue until the Chair has issued a Certificate of Final Completion. If the Chair fails to provide either of such notices to Declarant within the time periods set forth in this Section, then the Chair shall be deemed to have issued a Notice of Final Completion. The issuance of a Notice of Final Completion shall be conclusive evidence with respect to Declarant that the Public Access Area Work has been constructed in accordance with the design and construction specifications approved by the Chair.

(e) **Public Access Easements**

(i) Declarant covenants that, immediately upon the issuance of a Notice of Final Completion, it (as the burdened party) shall grant, convey and transfer to the City and the general public (as the benefitted party) a permanent, perpetual and non-exclusive public access easement over and encompassing the Public Access Area unobstructed from the surface thereof to the sky (easement area) for the purpose of (i) passive recreational use by the general

public and (ii) access for fire, police and other emergency services. Such easement (i) shall be effectuated without the necessity for recording a separate easement instrument and (ii) upon such issuance of a Notice of Final Completion, shall be prior in interest to any property interest on the Subject Property or any portion thereof that is recorded after the date of this Declaration.

(ii) The City agrees that with respect to any activities carried on in all or any part of the Public Access Area, no member of the public shall use the Public Access Area for an activity or in a manner which injures, endangers or unreasonably disturbs the comfort, peace, health or safety of any person, or disturbs or causes injury to plant or animal life, or causes damage to the property or any person.

(f) **Hours of Operation.** Declarant acknowledges that the hours of operation of the Public Access Area shall be determined by the City. Notwithstanding the foregoing, the City has advised Declarant that it intends that the Public Access Area shall be open and accessible from dawn to dusk. If the City wishes to change these hours, it shall consult with Declarant prior to implementing such change; provided, however, that nothing contained in this Section or elsewhere in this Declaration shall prevent, or interfere with the ability of Declarant or any member of the public to use the Public Access Area at any time (including outside the aforesaid hours of operation) for the purpose of pedestrian access to the Subject Property.

(g) **Rules and Regulations.** Declarant shall have the right, but not the obligation, to establish rules and regulations governing public use of, and behavior in, the Public Access Area, which rules and regulations shall not conflict with DPR Rules and Regulations (56 RCNY §1-01 et seq.). In addition, Declarant may from time to time modify the DPR Rules and Regulations, with the consent of the Chair. Declarant shall operate the Public Access Area in conformity with the DPR Rules and Regulations unless and until it promulgates rules and regulations of its own for use of the Public Access Area.

(h) **Maintenance and Operation.**

(i) Declarant shall provide or, in Declarant's sole discretion, cause to be provided, all services required for the maintenance and repair of the Public Access Area, and any paving, landscaping, equipment or furniture provided therein, as and when reasonably needed to preserve the Public Access Area and the amenities contained therein neat, clean and in good working order and condition as set forth in the following manner:

(A) **Cleaning.**

(1) Trash shall be collected regularly. Litter and other obstructions shall be removed as needed.

(2) Walkways and paths shall be cleaned and cleared as needed and maintained in good condition.

(3) Appropriate measures shall be taken to control rodents and pigeons

(4) Graffiti shall be promptly removed or painted over.

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

(6) Snow shall be promptly removed from walkways, and fallen branches and trees shall be removed promptly.

(B) Landscape and Feature Maintenance.

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

(2) Adequate lighting levels shall be maintained, and lighting equipment shall be repaired or replaced as necessary.

(3) Water features within the Public Access Area, if any, shall be maintained in good condition and shall be required to be operational from no later than April 1 to at least October 1.

(C) Repairs and Replacements. Repairs and replacements of features in the Public Access Area shall occur as needed to maintain the Public Access Area in a state of good repair. All repairs and replacements shall occur promptly and in substantial compliance with the Public Access Area Certification Plans certified by the Chair pursuant to this Declaration. Repairs shall include, but are not limited to, the following items:

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

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

(3) Paving: All paved surfaces shall be maintained in a safe and attractive condition.

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

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

(6) Construction Defects and Hazardous Conditions: The Public Access Area shall be periodically inspected for construction defects and hazardous conditions, and any portion or feature that exhibits defects or hazardous conditions shall be promptly repaired or replaced.

(i) **Public Access and Continuation of Use.** Except as provided in this Section 3.03(g), the Public Access Area shall be open and accessible to the public in accordance with Section 3.03(e) of this Declaration. Declarant may close the Public Access Area or portions thereof for periods as may be necessary in order to: (i) accomplish maintenance repairs or replacements; (ii) make emergency repairs to mitigate hazardous conditions; and (iii) address other emergency conditions. Emergency conditions for which the Public Access Area may be closed pursuant to (iii) above shall be limited to actual or imminent emergency situations, including but not limited to, security alerts, riots, casualties, disasters, or other events engendering public health, safety or property, provided that no such closure shall continue for more than twelve (12) consecutive hours without Declarant having consulted with the New York City Police Department (the “**NYPD**”) or DOB, as appropriate, and having followed the NYPD’s or DOB’s direction, if any, with regard to the emergency situation. Declarant will close or permit to be closed only those portions of the Public Access Area which must or should reasonably be closed to effect the repairs, replacements or mitigation of hazardous site conditions to be undertaken pursuant to (i) and (ii) above, and will exercise due diligence in the performance of such repairs, replacements or mitigation such that they are completed expeditiously and the temporarily closed areas (or any portions thereof) are re-opened to the public promptly. Declarant shall provide notice to the Chair of any closure of the Open Space associated with scheduled repairs or replacements under (i) above, and anticipated closure time frame, and shall post information regarding same at appropriate locations at entrances to and within the Open Space, not less than seven (7) days prior to such closure.

3.04 **Environmental Mitigation Relating to Community Facilities**

(a) The FEIS has identified a significant adverse impact to public elementary schools that occurs upon occupancy of six hundred nineteen (619) new residential units (the number of units introduced into the study area that are projected to increase the collective utilization rate of the public elementary schools in the study in excess of 5% between the No-Action and With-Action conditions), and that in order to fully mitigate the impact the Declarant shall, subject to the provisions set forth herein, increase the elementary school capacity in the study area by 73 seats (the number of seats necessary to reduce the collective utilization rate of public elementary schools in the study area to no greater than a 5% increase over the No-Action condition), and further sets forth that in full satisfaction of its obligations to fully mitigate such impact, Declarant (i) shall provide the School Conversion Option, or (ii) if the School Conversion Option is not accepted by the School Mitigation Interested Parties (hereinafter defined) then Declarant shall provide the Annex (the “**Annex Option**”), in accordance with the provision of this Section 3.04 (the School Conversion Option and the Annex Option collectively known as the “**Public School Mitigation Measures**”). Prior to implementation of the Public School Mitigation Measures set forth herein, the Declarant may conduct an additional analysis, in accordance with CEQR Technical Manual guidelines, to determine whether, based on the data available at the time of the additional analysis, the extent of the impacts and/or timing of when the impacts on public elementary schools are projected to occur varies from that which had been identified in the FEIS. Where the additional analysis conducted by the Declarant demonstrates, to the reasonable satisfaction of the SCA and DOE, in consultation with DCP, as lead agency, that the extent of the impacts and/or timing of when the impacts are projected to occur varies from that set forth in the FEIS, the Public School Mitigation Measures shall be adjusted accordingly to

reflect the reduction or increase, as the case may be, in minimum number of elementary school seats necessary to reduce the increase in collective utilization of public elementary schools in the study area to no greater than a 5% increase over the No-Action condition.

(i) Declarant shall give DOE and the SCA (collectively the DOE and the SCA the “**School Mitigation Interested Parties**”) at least six (6) months notice prior to starting preliminary design of any portion of the Projected Development for which the Declarant reasonably anticipates filing for Building Permits to commence the Projected Development, which together with all Projected Development on the Subject Property that has previously received a Building Permit for the construction of a new residential units, would result in the occupancy of six hundred nineteen (619) or more new residential units on the Subject Property (the “**School Mitigation Notice**”). The School Mitigation Notice shall include a proposed plan, developed by the Declarant in consultation with the Principal, which demonstrates the proposed School Conversion Option would achieve a net increase in the capacity of the P.S. 145 building by the minimum 73 public elementary school seats necessary to fully mitigate the impact in accordance with the FEIS. The space to be converted by the Declarant shall be equal to the number of classrooms necessary to achieve the required net increase of 73 public elementary school seats as mandated by the targeted class size capacity in effect that DOE/SCA is using for its Enrollment Capacity and Utilization Report when proposed plan for providing the School Conversion Option is prepared. Within ninety (90) days of receiving the School Mitigation Notice, subject to DCP concurrence, the School Mitigation Interested Parties shall certify whether the plan submitted in connection with the School Mitigation Notice achieves the minimum net increase in 73 public elementary school seats necessary to fully mitigate the impact in accordance with the FEIS and shall notify the Declarant whether they accept or reject the School Conversion Option. If the School Mitigation Interested Parties reject the School Conversion Option they shall simultaneously notify the Declarant whether they accept the Annex Option.

(ii) If the School Mitigation Interested Parties do not respond in the timeframe set forth above, then the Declarant will have no further obligation under this Section. In such event, or in the event that the School Mitigation Interested Parties accept the School Conversion Option, Declarant shall be entitled to use the floor area in the Projected Development otherwise required for the Annex Option for any purpose permitted pursuant to the Rezoning.

(iii) **Selection of School Conversion Option.**

(A) Where the School Mitigation Interested Parties accept the School Conversion Option, Declarant shall not accept and DOB shall not issue a Building Permit for any portion of the Projected Development, which together with all portions of the Projected Development on the Subject Property that have previously received a Building Permit for the construction of a new residential units, would result in the occupancy of 619 or more new residential units on the Subject Property, unless and until the School Mitigation Interested Parties certify to DOB that the Declarant has provided funding for the School Conversion Option in a form acceptable to the City (the “**School Conversion Option Payment**”) or has executed an agreement in form and substance acceptable to the City, in its reasonable discretion, to perform

the work necessary to implement the School Conversion Option (the “**School Conversion Option Agreement**”).

(B) Where the Declarant and the City enter into the School Conversion Option Agreement, the Declarant shall not apply for or accept and DOB shall not issue a TCO for any portion of the Projected Development, which together with all portions of the Projected Development on the Subject Property that have previously received a TCO for the occupancy of a new residential units, would result in the occupancy of 619 or more new residential units on the Subject Property, unless and until the School Mitigation Interested Parties certify to the DOB that the Declarant has, in the City’s reasonable discretion, performed all the work pursuant to the School Conversion Option Agreement that is necessary to implement the School Conversion Option.

(iv) **Annex Option.**

(A) Where the School Mitigation Interested Parties reject the School Conversion Option but accept the Annex Option, the Declarant shall not apply for or accept and DOB shall not issue a Building Permit for any portion of the Projected Development, which together with all portions of the Projected Development on the Subject Property that have previously received a Building Permit for the construction of a new residential units, would result in the occupancy of 619 or more new residential units on the Subject Property, unless and until the School Mitigation Interested Parties certify to the DOB that the following conditions have been met:

(1) Declarant and SCA have executed an agreement (the “**Annex Option Agreement**”) requiring, among other things, that:

- (aa) Declarant shall be responsible for the cost of construction of the core and shell of the Annex, with SCA and DOE responsible for all other costs relating to the design, construction, equipping, fit-out and operation of the Annex;
- (bb) Declarant shall lease the Annex to the DOE for a term of no less than fifty (50) years for \$1.00 per annum;
- (cc) Declarant shall be responsible for the testing and remediation of any existing hazardous materials located on site of the Annex that are required to be remediated pursuant to any Remedial Action Plan for the Subject Property approved by the New York City Mayor’s Office of Environmental Remediation and that Declarant shall provide the SCA with results of hazardous materials testing promptly following completion thereof;

(2) Declarant has engaged in a collaborative design development with DOE and SCA, which shall include collaboration on schematic design, design

development and contract documentation to ensure that the Annex is constructed to DOE and SCA standards;

(3) The SCA and DOE have reviewed and accepted the construction plans for the Annex.

(B) Where the School Mitigation Interested Parties have certified to DOB the condition of 3.04(iv)(A) have been met, the Declarant shall not apply for or accept and DOB shall not issue a TCO for Permit for any portion of the Projected Development, which together with all portions of the Projected Development on the Subject Property that have previously received a TCO for the occupancy of a new residential units, would result in the occupancy of 619 or more new residential units on the Subject Property, unless and until the School Mitigation Interested Parties certify to DOB that the Declarant has completed the core and shell of the Annex, and leased the Annex to DOE, all in accordance with the Annex Option Agreement.

(b) Notwithstanding anything to the contrary, following either: (i) the School Mitigation Parties do not respond to the School Mitigation Notice in accordance with Section 3.04(a)(ii), (ii) the acceptance by the City of the School Conversion Option Payment, (iii) notification to DOB pursuant to Section 3.04(a)(iii)(B) that the Declarant has performed all work necessary to implement the School Conversion Option, or (iv) notification to DOB pursuant to Section 3.04(iv)(B) that the Declarant has completed the core and shell of the Annex, Declarant shall have no further obligations whatsoever under this Declaration or the FEIS relating in any way to the Public School Mitigation Measures.

(c) Declarant shall have no liability to the City, SCA (except as expressly set forth in the SCA Agreement), DOE, its agents, officers, employees, affiliates, successors or principals for, and the City shall indemnify, defend and hold Declarant harmless from and against any loss, cost, liability, claim, damage, expense, including reasonable attorneys' fees and disbursements, incurred in connection with or arising from the use of (x) the School Conversion Option Payment or (y) the Annex.

3.05 **Force Majeure Involving a Mitigation Measure.** Notwithstanding any provision of this Declaration to the contrary, if Declarant is unable to perform a Mitigation Measure required by the FEIS by reason of the occurrence of a Force Majeure Event, as determined by the Chair, pursuant to the procedures set forth in Section 4.01, then Declarant shall not be excused from performing such Mitigation Measure that is affected by Force Majeure Event unless and until the Chair has made a determination in his or her reasonable discretion that the failure to implement the mitigation measure during the period of the Force Majeure Event, or implementing an alternative proposed by Declarant, would not result in any new or different significant environmental impact not addressed in the FEIS.

3.06 **Incorporation of FEIS Requirements in Mitigation Measures.** If this Declaration inadvertently fails to incorporate a FEIS Requirement, such FEIS Requirement shall be deemed incorporated herein by reference as a Mitigation Measure. If there is any inconsistency between a FEIS Requirements as set forth in the FEIS and as incorporated in this

Declaration as Mitigation Measures, the FEIS Requirement as set forth in the FEIS shall be applicable.

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

(a) **Innovation and Alternatives.** In complying with any Mitigation Measure set forth in Article III of this Declaration or by incorporation by inclusion in the FEIS, Declarant may, at its election, implement innovations, technologies or alternatives that are or hereafter become available, which Declarant demonstrates to the reasonable satisfaction of DCP would result in equal or better methods of achieving the relevant Mitigation Measure, than those set forth in this Declaration, (such measures, “**Alternative Mitigation 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 Mitigation Measure required under this Declaration could be reduced or eliminated without diminishment of the environmental standards that would be achieved by implementation of the Mitigation Measure (“**Elimination of Mitigation Measure**”), Declarant may, at its election, seek to reduce or eliminate the Mitigation Measure, where Declarant demonstrates to the reasonable satisfaction of DCP that the reduction or elimination of the Mitigation Measure would not result in the diminishment of the environmental standards that would be achieved by implementation of the Mitigation Measure, 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 Mitigation Measure required by the FEIS (including but not limited to Substantially Complete or Finally Complete the Public Access Area) 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. 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 or Mitigation Measure(s) (including but not limited to the Public Access Area Work), as applicable. As a condition to granting relief as aforesaid, the Chair may require that Declarant post a letter of credit or other security, in a form

reasonably acceptable to the Chair and naming the City as beneficiary, to secure Declarant's obligation to Finally Complete the Public Access Area upon the cessation of the Force Majeure Event. Such security shall be in a sum equal to 175% of the estimated cost of the remaining work required to Finally Complete the Public Access Area, as certified by Declarant's architect or landscape architect. Declarant shall be obligated to re-commence construction of the Public Access Area to Substantially Complete or Finally Complete same at the end of the Force Majeure Event specified in the Delay Notice, or such lesser period of time as the Chair reasonably determines 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 for Substantial Completion or Final Completion, as the case may be. If Declarant fails to resume performance of the Public Access Area Work within three (3) months after the cessation of the Force Majeure Event (as reasonably determined by the Chair), the City may undertake performance of the Public Access Area Work, and draw upon the aforesaid security, to the extent required to complete the Public Access Area Work. Upon Final Completion of the Public Access Area Work (either by Declarant or the City), the City shall return the aforesaid security (or the undrawn balance thereof) to Declarant. Declarant hereby grants the City a license to enter upon such portions of the Subject Property as shall be required to exercise the self-help rights conferred upon the City by this Article. The City hereby agrees to indemnify, defend and hold each Indemnified Party harmless from and against any Claims arising by reason of its exercise of the self-help rights set forth in this Article, except to the extent such claim is caused by or contributed by the negligence of the Indemnified Parties.

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 **Denial of Public Access.** If the City has reason to believe that the use and enjoyment of the Public Access Area by any member of the public has, without reasonable cause, been denied by Declarant, and the City determines that such denial of access with respect to the right of public access under the Public Access Easements is in violation of the provisions of this Declaration, the City shall have, after (a) notice to Declarant and (b) an opportunity for Declarant to present evidence disputing such alleged denial of access, in addition to such other rights as may be available at law or equity, the right to seek civil penalties at the New York City Environmental Control Board for a violation relating to privately owned public space.

5.03 **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 or entity to have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the 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, all holders of all holders of mortgages secured by any condominium unit or other individual residential unit located within the Subject Property and, from and after the Association Obligation Date, the Association, shall have any right to enforce the provisions of this Declaration. This Declaration shall not create any enforceable interest or right in any Person, other than Declarant, any Mortgagee and, from and after the Association Obligation Date, the Association, any of which shall be deemed to be a proper Person to enforce the provisions of this Declaration, and nothing contained herein shall be deemed to allow any other Person, any interest or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Applications.

5.04 **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, except in the event Declarant has prohibited access to the Public Access Area other than as permitted under Section 3.03 hereof (in which case the cure period for providing such access shall be reduced to twenty-four (24) hours), 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), or within twenty four (24) hours with respect to a denial of access to the Public Access Area, 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. Notwithstanding the foregoing, in the event of a denial of public access to the Public Access Area, Declarant shall have the opportunity to effect a cure of such denial within twenty-four (24) hours of receipt thereof. If such denial of access continues beyond such period, the City may thereupon exercise any and all of its rights, including seeking a mandatory injunction, and the provisions of this Section 5 shall not apply to the denial of public access. 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), and all holders of mortgages secured by any condominium unit or other individual residential unit located within the Subject Property (provided that no such individual unit 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's or such Declarant's successor's obligations and liability under this Declaration shall wholly cease and terminate and the party succeeding such Declarant or such Declarant's successor shall assume the obligations and liability of Declarant pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party assumes an interest in the Subject Property to the extent of such party's interest in the Subject Property. For purposes of this Declaration, any successor to a Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of any interest in the Subject Property.

(b) 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.

(c) Notwithstanding anything to the contrary contained in this Declaration, (i) the Association and any Unit Interested Party (except that where the Declarant is also a Unit Interested Party, it shall remain obligated as Declarant pursuant to the provisions of this Declaration) shall not have any obligations under this Declaration to construct the Public Access Area, and (ii) any owner of an Affordable Housing Unit shall not have any obligation with respect to maintenance of the Public Access Areas. Notwithstanding the foregoing, in the event that a TCO or PCO has been issued for any portion of the Proposed Development prior to the receipt of a Notice of Substantial or Final Completion for the Public Access Area required in connection with the portion of the Proposed Development, due to a Force Majeure Event or any

other reason, whether or not Declarant is a Unit Interested Party, Declarant shall remain obligated as Declarant until a Notice of Final Completion has been issued for the Public Access Area even where Declarant has subsequently transferred ownership of the Projected Development to the Association after issuance of the PCO.

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. In the event that any building in the Projected Development is converted to condominium form of ownership, every condominium unit (other than an Affordable Housing Unit) shall, as successor in interest to Declarant, be subject to levy or execution for the satisfaction of any monetary remedies of the City, to the extent of each Unit Interested Party's Individual Assessment Interest, and provided that such enforcement procedures shall be taken simultaneously against all the condominium units in the Projected Development and not against selected individual units only. The "**Individual Assessment Interest**" shall mean the Unit Interested Party's percentage interest in the common elements of the condominium in which such condominium unit is located applied to the assessment imposed by the Association on the condominium in which such condominium unit is located. In the event of a default in the obligations of the Association as set forth herein, the City shall have a lien upon the property owned by each Unit Interested Party solely to the extent of each such Unit Interested Party's unpaid Individual Assessment Interest, which lien shall include such Unit Interested Party's obligation for the costs of collection of such Unit Interested Party's unpaid Individual Assessment Interest. Such lien shall be subordinate to the lien of any Mortgage, the lien of any real property taxes, and the lien of the board of managers of any such condominium for unpaid common charges of the condominium, and the lien of the Association pursuant to the provisions of Article XII. The City agrees that, prior to enforcing its rights against a Unit Interested Party, the City shall first attempt to enforce its rights under this Declaration against Declarant, the Association and the boards of managers of any condominium association. In the event that the Association shall default in its obligations under this Declaration, the City shall have the right to obtain from the Association and/or boards of managers of any condominium association, the names of the Unit Interested Parties who have not paid their Individual Assessment Interests.

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

6.08 **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 the Association any indemnification obligations other than with respect to the obligations set forth in Section 10.09 and 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, DPR 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 its 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 its employees.

6.09 **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.

6.10 **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 its rights under this Declaration.

6.11 **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.

6.12 **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) 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; provided that a modification or amendment to this Declaration that would permit a change in use of those portions of the Projected Development currently designated for community facility use to any other kind of use shall require in addition the approval of the City Council.

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, including, without limitation, any present or future Party-in-Interest.

7.03 The Mitigation Measures set forth in Article III of this Declaration may only be modified pursuant to Section 3.07 of this Declaration and in accordance with this Section provided a determination has been made that the Alternative Mitigation Measure or Elimination of Mitigation Measure will not result in any greater adverse environmental impacts than have been identified in the FEIS. In the event that Declarant seeks to implement an Alternative Mitigation Measure or Elimination of Mitigation Measure, it shall set forth the basis for its determination that the Alternative Mitigation Measure or Elimination of Mitigation Measure will not result in any greater adverse environmental impacts than have been identified in the FEIS in

a Technical Memorandum submitted to City Planning. Upon the acceptance of a Technical Memorandum by City Planning demonstrating that the Alternative Mitigation Measure or Elimination of Mitigation Measure will not result in any greater adverse environmental impacts than have been identified in the FEIS, the requirements of this Declaration with respect to the Mitigation Measures discussed in such Technical Memorandum may be modified to reflect the Alternative Mitigation Measure or the Elimination of Mitigation Measure. If Declarant implements an approved Alternative Mitigation Measure or Elimination of Mitigation Measure, 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 or Mitigation Measures set forth in Article III until the Chair certifies to DOB that a Technical Memorandum has been submitted to City Planning demonstrating that the proposed Alternative Mitigation Measure or Elimination of Mitigation Measure will not result in any greater adverse environmental impacts than have been identified in the FEIS, 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, for so long as Declarant (including any successor to its interest as fee owner of all or any portion of the Subject Property, other than a Unit Interested Party) shall hold any fee interest in the Subject Property, or any portion thereof, (i) all Unit Interested Parties, (ii) all boards of managers of any condominium association, and (iii) the Association, hereby (x) irrevocably consent to any amendment, modification, cancellation, revision or other change in this Declaration by Declarant; (y) waive and subordinate any rights they may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration, and (z) nominate, constitute and appoint Declarant, their true and lawful attorney-in-fact, coupled with an interest, to execute any document or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

7.05 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.

7.06 From and after the date that no Declarant holds any fee interest in the Subject Property or any portion thereof (other than one or more individual residential or commercial condominium units), and provided the Association shall have been organized as provided in this Declaration, the Association shall be deemed to be the sole Declarant and Party-in-Interest under

this Declaration for that portion of the Proposed Development upon that portion of the Subject Property for which the Association was formed. In such event, the Association shall be the sole party with any right to amend, modify, cancel, revise or otherwise change this Declaration, or make any application therefor, and each and every Unit Interested Party hereby (x) irrevocably consents to any amendment, modification, cancellation, revision or other change in this Declaration by the Association; (y) waives and subordinates any rights it may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration, and (z) nominates, constitutes and appoints the Association its true and lawful attorney-in-fact, coupled with an interest to execute any documents or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

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: FORREST LOTS LLC
[_____]
[_____]
[_____]

With a copy to: Herrick, Feinstein LLP
2 Park Avenue
New York, New York 10016
Attention: Mitchell Korbey, Esq.

If intended for the City, to: Director,
Department of City Planning
22 Reade Street
New York, New York 10007

and

Commissioner,
Department of Parks and Recreation
The Arsenal, Central Park
New York, New York 10021

With a copy to: Office of the General Counsel
New York City Department of Parks & Recreation

The Arsenal, Central Park
830 Fifth Avenue
New York, New York 10021

If intended for DCP, to: Director,
Department of City Planning
22 Reade Street
New York, New York 10007

With a copy to: Office of the General Counsel
New York City Department of City Planning
22 Reade Street
New York, New York 10007

If intended for DPR, to: Commissioner,
Department of Parks & Recreation
The Arsenal, Central Park
830 Fifth Avenue
New York, New York 10021

With a copy to: Office of the General Counsel
Department of Parks & Recreation
The Arsenal, Central Park
830 Fifth Avenue
New York, New York 10021

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

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

(b) Declarant, DCP or DPR 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

PROPERTY OWNERS' ASSOCIATION

9.01 **Applicability.** The provisions of this Article IX shall only apply if Declarant shall form an Association with respect to the Subject Property.

9.02 **Property Owners' Association.** In order to perform Declarant's maintenance obligations with respect to the Public Access Area, and not to prevent access by the public to the Public Access Area in violation of the provisions hereof, Declarant shall cause to be organized a property owners' association (the "**Association**") upon the earliest of the following occurrences: (i) the issuance of a TCO for any portion of the Projected Development (A) governed by a condominium regime, (B) conveyed to a housing corporation to be governed by a cooperative regime, or (C) governed by such other legal regime which shall require the organization of a homeowner's association or similar governing entity comprised of homeowners, and (ii) the date of Substantial Completion of the Public Access Area required in connection with Public Access Area Trigger Development, provided, however, that the Public Access Area Trigger Development is governed by a condominium regime, conveyed to a housing corporation to be governed by a cooperative regime, or such other legal regime which shall require the organization of a homeowner's association or similar governing entity comprised of homeowners.

9.03

The obligations of the Association under this Declaration shall commence the date of its organization (the "**Association Obligation Date**"), whether required to be formed as set forth above or otherwise, upon which time the provision of this Article IX shall be operative.

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

9.05 **Obligations.** The Association shall be established to, among other things, assume Declarant's maintenance obligations of the Public Access Area as set forth in this Declaration.

9.06 **Members.** The members of the Association (the "**Association Members**") shall consist of (a) the fee owners of any portion of the Projected Development other than the City and any Unit Interested Party, (b) the boards of managers of such portion of the Projected Development as are subject to a declaration of condominium, and (c) the boards of directors of such portion of the Projected Development as are subject to a cooperative regime.

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

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

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

(c) bring and defend actions and negotiate and settle claims to recover fees or assessments owed to the Association pursuant to this Article XII;

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

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

9.08 **Successors.** Every deed conveying title to, or a partial interest in, the Subject Property (other than a deed to an Affordable Housing Unit), every lease held or granted by a cooperative corporation owning the Subject Property or any portion thereof, every lease of all or substantially all of the Subject Property, or the declaration of condominium imposed on any portion of the Subject Property shall contain a recital or other provision that (a) the Unit Interested Party (other than a Unit Interested Party that owns an Affordable Housing Unit) is liable for its pro rata share of the assessment by the Association to the condominium in which such unit is located for the Association's obligations under this Declaration, and (b) maintenance of the Public Access Area, and the cost of maintenance of the Public Access Area, and all other obligations of the Association under this Declaration, are essential elements of the City actions permitting the development of the Projected Development in accordance with the provisions of this Declaration and in accordance with any other approvals granted by the City.

9.09 **Assessments.**

(a) The Association shall assess all real property within the Subject Property, other than the portion thereof consisting of the and other than Affordable Housing Units, (the "**Assessment Property**") in order to obtain funds for the Public Access Area obligations of the Association pursuant to this Declaration. The Assessment Property shall be assessed on a reasonable prorated basis as determined by Declarant, in compliance with all applicable laws. For Association Members who are the boards of managers of a condominium, a reasonable basis for such proration shall be conclusively established if the Attorney General of the State of New York accepts for filing an offering plan for the sale of interests in such condominium, as applicable, which plan describes such proration. The boards of managers of each condominium shall collect such assessments from the owners of individual residential or commercial units ("**Unit Owners**"), other than the Affordable Housing Unit for delivery to the Association in accordance with the condominium declarations. The liability of any fee owner of any portion of the Assessment Property shall be limited to such owner's interest in the Assessment Property, on an in rem basis only, for the collection of any money judgment recovered against such owner, and no other property of such owner shall be subject to levy, execution, or other enforcement procedure for satisfaction of such judgment and such owner shall have no personal liability under this Declaration, and the liability of any Unit Owner is limited to such Unit Owner's obligation to pay his or her prorated share of the periodic assessment to the Association or to the condominium association.

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

(c) The periodic assessments shall be a charge on the land and a continuing lien upon the property owned by the Association Member against which each such assessment is made, except that if the Association Member is the board of managers of a condominium, such lien shall be subordinate to the lien of any prior recorded mortgage in respect of such property given to a bank or other institutional lender (including but not limited to a governmental agency), the lien of any real property taxes, and the lien of the board of managers of such condominium for unpaid common charges of the condominium. The periodic assessments charged to an Association Member which is the board of managers of a condominium shall be included within the common charges of the condominium. The Association may bring an action to foreclose the Association's lien against the property owned by such Association Member, or a Unit Interested Party (other than the owner of an Affordable Housing Unit), as the case may be, to recover such delinquent assessment(s), including interest and costs and reasonable attorneys' fees of any such action. Any Unit Interested Party, other than the owner of an Affordable Housing Unit, by acceptance of a deed or a lease to a portion of the Assessment Property, thereby agrees to the provisions of this Section. Any Unit Owner may eliminate the Association's lien described above on his or her unit by payment to the Association of such Unit Owner's prorated share of the periodic assessment by the Association to the condominium in which such Unit is located. No Association Member or Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Public Access Area or abandonment of the Association's property, or by renunciation of membership in the Association, provided, however, that a Unit Owner's liability with respect to future assessments ends upon the valid sale or transfer of such Unit Owner's interest in the Assessment Property. A Unit Owner may give to the Association nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

(d) Notwithstanding any contrary term set forth in this Declaration, the Association Members who may be assessed for the operation and maintenance of the Public Access Area shall not include the holder of a mortgage or other lien encumbering (i) the fee estate in the Assessment Property or any portion thereof, or (ii) the lessee's estate in a ground lease of all or substantially all of the Assessment Property or all or substantially all of any Parcel or portion thereof, or (iii) any single building to be built on the Assessment Property, unless and until any such mortgagee succeeds to either (x) a fee interest in the Assessment Property or any portion thereof or (y) the lessee's estate in a ground lease of all or substantially all the Assessment Property or all or substantially all of any Parcel or portion thereof (the interests

described in sub-clauses (x) or (y) immediately preceding being each referred to as a “**Possessory Interest**”) by foreclosure of the lien of the mortgage or other lien or acceptance of a deed or other transfer in lieu of foreclosure or exercise of an option to convert an interest as mortgagee into an Possessory Interest in any such fee or ground leasehold estate in the Assessment Property or by other means permitted under Legal Requirements from time to time; and no such mortgagee or lien holder shall be liable for any assessment imposed by the Association pursuant to this Article until the mortgagee or lien holder succeeds to such Possessory Interest.

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

FORREST LOTS LLC, a
[_____] limited liability company

By: _____
Name:
Title:

The City hereby joins in the execution of this Declaration solely for the purpose of confirming its obligations hereunder.

THE CITY OF NEW YORK

By: _____
Name:
Title:

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EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B

PARTIES-IN-INTEREST CERTIFICATION

(attached)

EXHIBIT C

PUBLIC ACCESS AREA METES AND BOUNDS DESCRIPTION

(attached)

EXHIBIT D

PUBLIC ACCESS AREA PLAN

(attached)



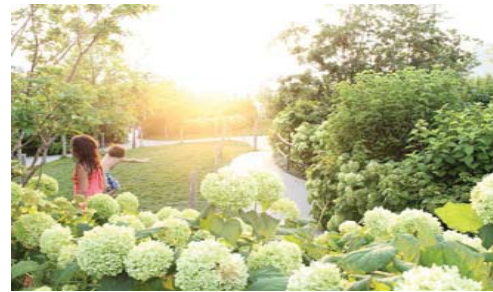
Shade structure precedent



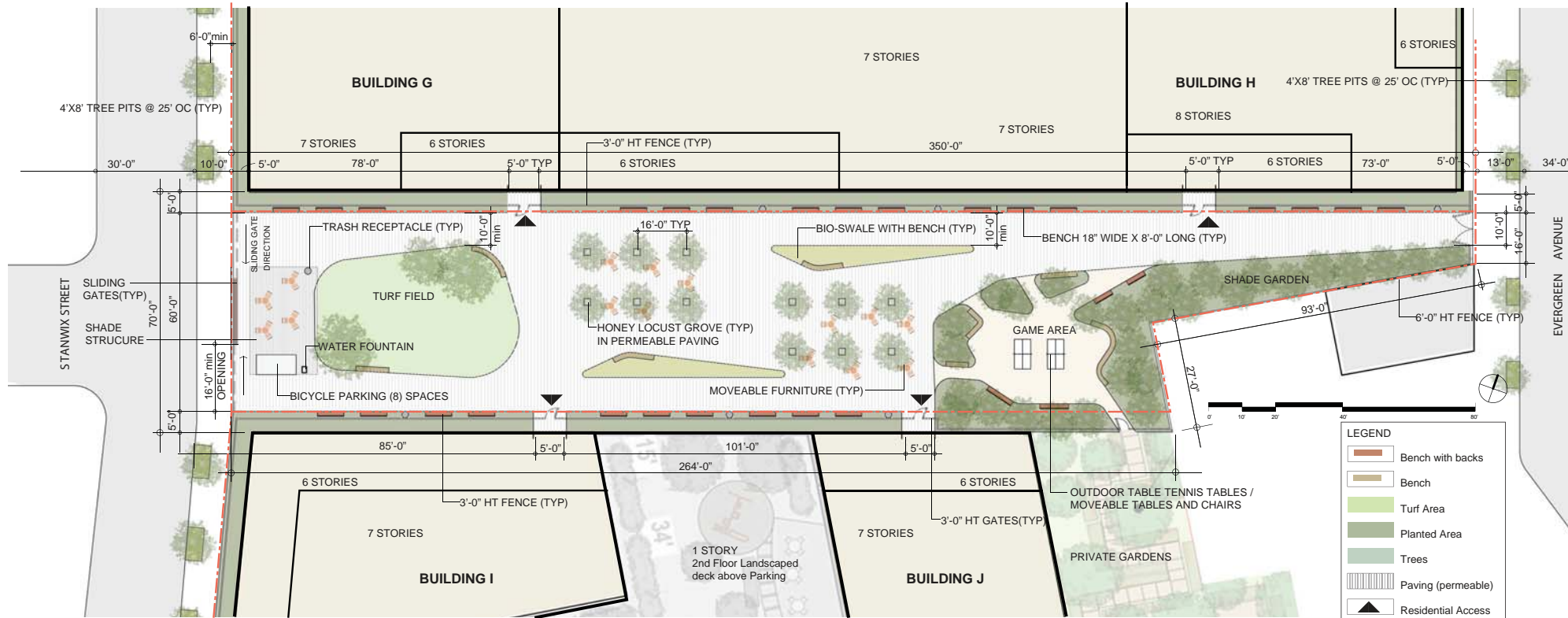
Honey Locusts within permeable pavers precedent



Bio-swale with integrated bench

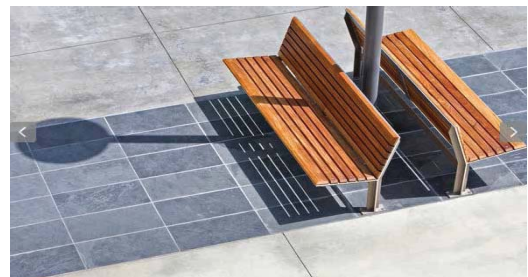


Layers of Planting



NOTE: FOR ILLUSTRATIVE PURPOSES ONLY TOTAL OPEN SPACE: 17,850 SF

Suspended Park Lighting (not shown on plan for clarity)



Benches with backs



Benches



Trash receptacles



Moveable tables and chairs



Drinking Fountain



Bicycle parking



Suspended Park Lighting (not shown on plan for clarity)



Table tennis in the park



Gate design precedent / sliding and folding

June 11, 2013
for illustrative purposes only

EXHIBIT E

FORM OF NOTICE OF SUBSTANTIAL COMPLETION

[Letterhead of the Commissioner of Parks & Recreation]

[Date]

NOTICE OF SUBSTANTIAL COMPLETION

Re: Block _____, Lot _____, Brooklyn, New York, New York

Dear _____:

This letter constitutes the Notice of Substantial Completion of the _____ pursuant to Section 7.02 of the Restrictive Declaration made by FORREST LOTS LLC dated as of _____, _____ (the "Declaration").

By this notice, the undersigned, for the Department of Parks and Recreation, confirms that the Public Access Area (as defined in the Declaration) has been Substantially Completed (as defined in the Declaration) in accordance with all requirements of the Declaration.

Yours very truly,

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

EXHIBIT F

FORM OF NOTICE OF FINAL COMPLETION

[Letterhead of the Commissioner of Parks & Recreation]

[Date]

NOTICE OF FINAL COMPLETION

Re: Block _____, Lot _____, Brooklyn, New York, New York

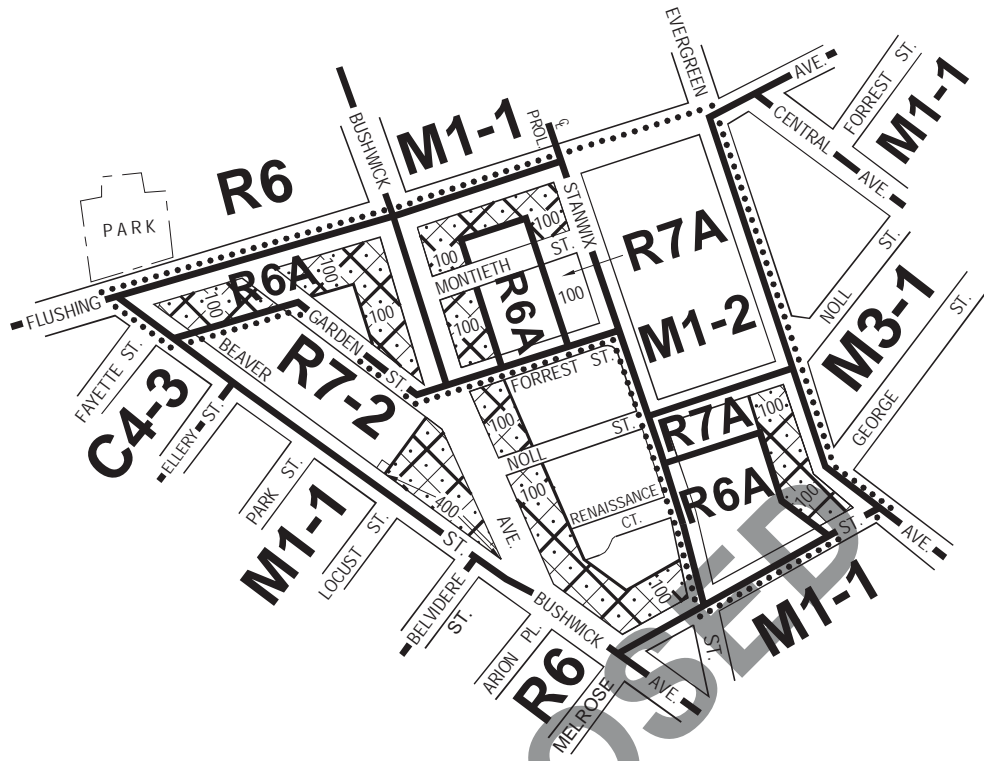
Dear _____:

This letter constitutes the Notice of Final Completion of the _____ pursuant to Section 6.02 of the Restrictive Declaration made by FORREST LOTS LLC dated as of _____, _____ (the "Declaration").

By this notice, the undersigned, for the Department of Parks and Recreation, confirms that Public Access Area (as defined in the Declaration) has been Substantially Completed (as defined in the Declaration) in accordance with all requirements of the Declaration.

Yours very truly,

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



PROPOSED
 CITY PLANNING COMMISSION
 CITY OF NEW YORK
 DIAGRAM SHOWING PROPOSED
ZONING CHANGE
 ON SECTIONAL MAP
13b
 BOROUGH OF
BROOKLYN

New York, Certification Date
JUNE 3, 2013

Director of Technical Review



- NOTE:**
- Indicates Zoning District Boundary.
 - The area enclosed by the dotted line is proposed to be rezoned by changing M1-1 and M3-1 Districts to R6A, R7A and M1-2 Districts, and by establishing C2-4 Districts within proposed R6A and R7A Districts.
 - Indicates a C2-4 District.

NOTE: THIS DIAGRAM IS FOR ILLUSTRATIVE PURPOSES ONLY.
 THIS DIAGRAM REFLECTS PROPOSED CHANGES IN THE CITY MAP
 PURSUANT TO RELATED MAPPING APPLICATION C 070250 MMK