



## CITY PLANNING COMMISSION

December 16, 2015/Calendar No. 13

C 150422 ZMR

**IN THE MATTER OF** an application submitted by NFC Associates, LLC and the NYC Economic Development Corporation pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section Nos. 26c and 27a, by establishing within an existing R3-2 District a C1-3 District bounded by Walcott Avenue, Brielle Avenue, a line 635 feet southwesterly of Walcott Avenue, a line 130 feet northwesterly of Brielle Avenue, a line 450 feet southwesterly of Walcott Avenue, a line 160 feet northwesterly of Brielle Avenue, a line 410 feet southwesterly of Walcott Avenue, a line 250 feet northwesterly of Brielle Avenue, a line 230 feet southwesterly of Walcott Avenue, and a line 160 feet northwesterly of Brielle Avenue, as shown on a diagram (for illustrative purposes only) dated October 19, 2015, Community District 2, Borough of Staten Island.

The application for an amendment of the Zoning Map was filed by NFC Associates, LLC and the NYC Economic Development Corporation on June 17, 2015 to rezone part of an R3-2 District, bounded by Walcott Avenue, Brielle Avenue, a line 635 feet southwesterly of Walcott Avenue, a line 130 feet northwesterly of Brielle Avenue, a line 450 feet southwesterly of Walcott Avenue, a line 160 feet northwesterly of Brielle Avenue, a line 410 feet southwesterly of Walcott Avenue, a line 250 feet northwesterly of Brielle Avenue, a line 230 feet southwesterly of Walcott Avenue, and a line 160 feet northwesterly of Brielle Avenue, to establish a C1-3 overlay in the Special Natural Area District (NA-1) in the Borough of Staten Island, Community District 2.

### **RELATED ACTIONS**

In addition to the zoning map amendment which is the subject on this report (C 150422 ZMR), 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 150421 ZRR Zoning Text Amendment of ZR Section 105-03 (District Plan) and 105-43 (Authorization to Modify Bulk, Parking, Grading and Private Roads Regulations) and related sections to allow modifications of private roads regulations on a Tier I site.
- N 150423 ZAR Authorization to modify topographic features on a Tier I site pursuant to ZR Section 10-421.
- N 150424 ZAR Authorization to modify botanic environment pursuant to ZR Section 105-425.
- N 150425 ZAR Authorization to modify yard, height & setback regulations and parking locations pursuant to ZR Section 105-432.
- N 105426 ZAR Authorization to modify requirements for private roads and driveways pursuant to ZR Section 105-434.
- N 150427 ZCR Certification for future zoning lot subdivision pursuant to ZR Section 105-90.
- C 150428 PPR Disposition of one (1) city-owned property located at 475 Brielle Avenue (Block 1955, p/o Lot 1), pursuant to zoning.

**BACKGROUND**

The proposed project site is a city-owned lot that is zoned R3-1/R3-2, located at 475 Brielle Avenue, and comprises approximately 1,891,564 square feet (43.42 acres) of Block 1955, part of existing Tax Lot 1 (tentative Tax Lots 225 and 375). It has an average percent of slope (APS) of 6.29% and is considered a Tier I site (a zoning lot or other tract of land having an APS of less than 10 percent) pursuant to the Special Natural Area District (NA-1) zoning. It is also part of the Lower Density Growth Management Area (LDGMA). It is mostly vacant and densely overgrown with trees and undergrowth, and includes 11 historic buildings and several utilitarian structures, which are damaged and decayed from vandalism and years of neglect.

The site has access from Brielle Avenue via County House Road, a 30-foot wide, gated, unmapped street dating from the mid-nineteenth century. This road connects all of the existing structures via an internal private street system of widths varying between 12-28 feet. There are

approximately 132,744 square feet existing paved roads outfitted with fire hydrants and storm water infrastructure. There are no extant parking spaces, driveways or curb cuts on the internal private road system.

The project site is part of the New York City Farm Colony - Seaview Hospital Historic District, which was designated by the New York City Landmarks Preservation Commission (LPC) on March 26, 1985 (Designation List 177 LP-1408). It was originally developed as the Richmond County Poor Farm, and renamed in 1902 as the New York City Farm Colony. The Farm Colony provided room-and-board to socially vulnerable populations in exchange for their labor on its farm and agricultural fields, and expanded twice between the years 1900 and 1940 with a series of dormitories and service buildings to serve its growing population. In 1915 the administration of Farm Colony merged with Seaview Hospital, which was historically set up for the treatment of tuberculosis, under the name Sea View Farms. The population of Farm Colony peaked during the 1940s with approximately 1,700 residents. Subsequently, it gradually declined until 1975 when the remaining residents were moved to the adjacent Sea View Hospital, and the facility ceased operations.

The surrounding area is predominantly characterized by R3-1, R3-2, and R3X residential districts and comprises one- and two-family attached and detached homes, as well as institutional and recreational uses. The Seaview Hospital Rehabilitation Center and Home and the proposed Seaview Senior Living Center project are located on the opposite side of Brielle Avenue, directly east. The Seaview Hospital Rehabilitation Center and Home is a long-term care facility that provides adult day health care programs, rehabilitation therapy, a traumatic brain injury center, and Alzheimer's and related programs. In addition to health related uses, the

complex houses the Staten Island Ballet, Center for the Arts, and the offices of Community Board 2. The buildings within the campus range in height from one- to five-stories. The Seaview Senior Living Center, currently under construction, will include 515 units of nonprofit housing for the elderly, 6 units of staff housing, a common building, and 234 accessory parking spaces on 15.39 acres of land. Further to the east and north is a four-story senior housing apartment building, Susan E. Wagner High School, the Jewish Community Center Lillian Schwartz Day Camp and Pouch Camp, and the Staten Island Greenbelt. The Greenbelt, under the Department of Parks & Recreation (DPR) jurisdiction, contains recreational trails, an accessory athletic building in a restored historic structure, and a soccer field. The Institute for Basic Research (IBR) in Developmental Disabilities, which is located on a large parcel on Forest Hill Road near Walcott Avenue, across the street from the northwest corner of the proposed project area, is housed in an approximately 60-foot tall building. Located directly to the south of the proposed project area, across County House Road, are two baseball fields under DPR jurisdiction and leased to a private operator. The Staten Island Residential Center, which is a special education middle school under the New York State Office of Children and Family Services, is located further south on Forest Hill Road.

The roads adjacent to the project site, and running through the surrounding area, are a mix of mapped streets not built to their full mapped width, as well as unmapped or private roads. To the north, the project site is bounded by Walcott Avenue (mapped at 80 ft. in width but 72-80 ft. irregular width in use, pursuant to Corporation Counsel Opinion (C.C.O.) dated 11/09/84) and by the rear lot lines of 21 residential homes; to the east, it is bounded by Brielle Avenue (mapped at 80 ft. in width 35-50 ft. irregular width in use, pursuant to C.C.O. dated 5/28/75); County House Road (30-ft. wide unmapped street), two baseball fields and the Staten Island

Greenbelt, both under DPR's jurisdiction to the south; and Colonial Avenue (mapped at 60 ft. in width, but in use at 31-38 ft. pursuant to C.C.O. dated 10/10/85), Steers Street (formerly part of County House Road, mapped at 60 ft. in width but in use at 25-58 ft. in use, pursuant to C.C.O. dated 12/05/63), and Forest Hill Road (100-ft. wide mapped street, with a C.C.O. dated 6/18/43 to note it as in use at an irregular width; it is built at approximately 35-40 ft. in width) to the west. Forest Hill Road and Brielle Avenue are major north-south roads that carry traffic through the neighborhood. Other major thoroughfares within the area include the Staten Island Expressway roughly 2,500 feet to the north, Rockland Avenue approximately 1,500 feet to the south, and Manor Road to the east. While there are no subway lines or subway stops adjacent to the site, the S54 and S57 bus lines run along Brielle Avenue and the X31, S61, and S91 bus lines run along Forest Hill Road.

The proposed development, which is primarily governed by the related Special Natural Area District (SNAD) actions and the related disposition action, includes the preservation and rehabilitation of 5 of the 11 existing historic buildings, the preservation of one building as a stabilized ruin, and the demolition of 5 buildings, the material of which would be reused in the rehabilitation of the existing buildings, according to the applicant. The proposal also includes the construction of 3 new 6-story buildings and 72 new 2-story attached cottage and carriage houses. A maximum of 344 residential units, comprising a total of 519,009 square feet, would be provided on site, in addition to approximately 19,106 square feet of commercial space and 26,739 square feet of accessory use to residential (storage and clubhouse). To facilitate the proposed development, a new private road system is proposed to access the buildings that would also provide an additional road connection for the public during daytime hours (according to the applicant, the private roads would be gated and closed to public vehicular and

pedestrian access at night). The site would be re-graded with approximately 30,000 cubic yards (CY) of cut and approximately 22,000 CY of fill.

The proposal also includes the provision of approximately 17 acres of publicly accessible open space, as reflected on the plans associated with the related SNAD actions and ensured through a Restrictive Declaration that will be recorded in connection with the disposition action, including the preservation of an existing Potter's Field (unnamed gravesite), and the removal of invasive species and targeted planting of native species throughout the site.

A detailed summary of the buildings proposed is as follows:

1. A maximum of 344 residential units in a variety of residential typologies, which include:
  - a. The Lofts (A1, A2, A3, A4): Four of the existing historic buildings (Dormitory 9A, 9C, 9D and Dining Hall) would be rehabilitated and converted to residential uses and would contain approximately 74 units with frontage along County House Road and a newly proposed private road, Madeline Lane;
  - b. The Flats (B1, B2, B3): Three new six-story apartment buildings containing approximately 198 units will be constructed with frontage along the proposed private road, Landmark Drive;
  - c. Carriage Houses: Two new residential buildings containing approximately 22 units total will be constructed with frontage along the newly proposed Summer Field Terrace;

- d. Cottages (C1, C2, C3, C4) – two new clusters of homes with 50 units will be constructed with frontage along the newly proposed private road, Summer Field Terrace.
2. Approximately 10,200 square feet of commercial use would be provided at the ground floor of Loft A1, which would be located within the proposed C1-3 rezoning area, and in a new detached one-story building, Retail (E), with frontage along Brielle Avenue.
3. Approximately 8,906 square feet of community facility and accessory recreational use would be provided in a new detached two-story building with swimming pool, Clubhouse (D).
4. Accessory storage space for residents would be provided in the rehabilitated existing historic Laundry Building, Residents' Storage (A5).
5. Approximately 732 parking spaces, which is explained in detail below under Parking.

10% of the proposed housing units, or 34 units, would be affordable to 1 and 2 person households earning 120-150% of the Area Median Income (AMI). According to the New York City Department of Housing and Urban Development (HUD), the AMI of the New York City region for 2015 is \$60,500 for an individual and \$69,100 for a family of 2. Therefore, 120-150% of the AMI would be \$72,600 - \$90,750 for an individual and \$82,920 - \$103,650 for a family of 2. Income guidelines are calculated annually and therefore subject to change on a yearly basis. According to the applicant, the one bedroom affordable housing units would be located in the Flats (B1, B2, and B3), intermingled with the market-rate units, providing 11-12 affordable units in each building. They would be built concurrently with the market rate units. Residents of the affordable units would have the same access to building and site amenities as the market rate residents.

The proposed FAR would be 0.29 for a total floor area of approximately 564,854 square feet, of which 519,009 square feet is residential and 19,106 square feet is commercial/community facility. The total lot coverage for the site is 200,161 square feet, 56,024 square feet of which is existing buildings to remain and 144,137 square feet of which include enlargements to existing buildings and new buildings. The entire zoning lot is 1,891,564 square feet (43.42 acres) of which 1,692,367 square feet (38.85 acres) would remain open space, which is approximately 89% of the site.

The primary points of ingress/egress to the site include two on Brielle Avenue, one on Forest Hill Road, and one on Walcott Avenue. Two additional driveways (one in, one out) will also be located on Brielle Avenue to access the commercial space. The proposed private road network includes: an extension of existing County House Road, which will be extended through the site to reconnect Brielle Avenue with Forest Hill Road; Landmark Drive on the north accessed from Brielle Avenue and ending at the center of the site; Summer Field Terrace a north-south loop linking Landmark Drive and County House Road; Madeline Lane at the southwest corner of the site connected to County House Road; and Memorial Drive, an entryway providing access to Landmark Drive from Walcott Avenue. Colony Court will provide access to Carriage House cluster C1 from County House Road on the south.

The applicant proposes public access to the site and its road network from dawn to dusk, after which time the roads would be gated. Gatehouses will be located at County House Road off of Brielle Avenue and Forest Hill Road, and at Landmark Drive off of Brielle Avenue. Public

access is reflected on the plans associated with the SNAD actions and ensured through a Restrictive Declaration that will be recorded in connection with the related disposition action.

Parking:

Parking is proposed to be located within buildings and in individual landscaped parking lots buffered with planting. The proposed project is required to provide 555 residential parking spaces and 24 commercial parking spaces pursuant to the Zoning Resolution. The applicant proposes to provide 575 residential parking spaces (191 off-street spaces enclosed and within buildings, 384 off-street spaces located on surface parking lots, and 68 on-street spaces) and 48 commercial parking spaces (on a surface parking lot along Brielle Avenue). Additionally, the development will include 20 spaces accessory to programmed public uses (8 for Potter's Field, 12 for the Knoll); 42 spaces accessory to the Clubhouse; and 32 spaces accessory to Residents' Garden, all of which would be located on surface parking lots. An additional 12 parking spaces for the DPR baseball fields are provided at the south end of the proposed project site on a surface parking lot as well.

A zoning map amendment (C 150422 ZMR), which is the subject of this report, is requested to establish within an existing R3-2 District, a C1-3 District on approximately 112,338 square feet portion of the site fronting Brielle Avenue, on Zoning Maps 26c and 27a, in order to facilitate the construction of 19,106 square feet of retail space that is proposed to be located on the ground floor of a mixed-use building (Building A1) and in a one-story retail pavilion (Building E). Retail use is not permitted as-of-right within the existing R3-2 district.

The nearest commercial overlay district is a C1-1 overlay on Manor Road at its intersection with Willowbrook Road, approximately eight blocks away from the proposed project site's north eastern corner. There are several C1-2 overlays and a C2-5 district over a mile away along Richmond Avenue.

A zoning text amendment (N 150421 ZRR) is requested to change Zoning Resolution Section 105-03 (District Plan); Section 105-43 (Authorizations to Modify Bulk, Parking, Grading and Private Roads Regulations) to allow modifications of private roads regulations on a Tier I site; Section 105-434 (Modification of requirements for private roads and driveways) to allow modifications of Section 26-20 (Special requirements for developments with private roads) and Section 26-30 (Requirements for developments with private roads in lower density growth management districts) within the NYC Farm Colony-Seaview Hospital Historic District; and Appendix A, (Map 2 – Site within the Farm Colony-Seaview Hospital Historic District).

Since the Zoning Resolution (ZR) does not provide a mechanism, such as an authorization by the City Planning Commission (CPC), to make modifications to the regulations for driveways and private roads on a Tier I site (an authorization is available for such modifications on a Tier II site), the applicant is requesting this text amendment to ZR Section 105-43 to make Tier I sites, such as the project site, eligible for a CPC authorization for modification of driveway and private road regulations.

A CPC authorization (N 150423 ZAR) is requested pursuant to ZR Section 105-421 (Modification of Topographic Features on Tier I Sites) to modify existing natural topography to accommodate roadways, site infrastructure and drainage, cut and fill, and the siting of new

buildings. The requested action would modify the requirements of ZR Section 105-20 (Protection of Natural Features), which states that none of the natural features described in Section 105-11 (Description of Natural Features) shall be removed, destroyed or altered unless permitted by certification, authorization or special permit of the City Planning Commission.

For the most part the topography would be altered within the footprints and within 15 feet of the proposed buildings, parking areas, and the private roadways, which alterations would be permitted as-of-right and would not require an authorization pursuant to ZR 105-421. The topographic modifications outside of these areas, and requiring authorization, would be located toward the western end of the site, west of proposed Summer Field Terrace in the area planned for low-rise Cottage clusters. The topography would be altered by 29,779 CY of cut and 22,394 CY of fill for the entire site. Currently, the site contains 195,092 square feet of impervious area (approximately 10.3%), which includes total existing building coverage and the existing private road network. The proposed development would increase the total impervious area to 755,346 square feet (approximately 40%), which includes building footprints, parking lots, sidewalks, driveways, pedestrian paths, and the private road network. Approximately 60% of the site would remain as pervious area.

A CPC authorization (N 150424 ZAR) is requested pursuant to ZR Section 105-425 (Modification of Botanic Environment) to modify ZR Section 105-31 (Botanic Environment and Tree Preservation Requirements) and Section 105-32 (Botanic Environment and Tree Planting Requirements) to facilitate a landscape plan that includes the removal of invasive tree species located in areas not occupied by buildings, driveways, private roads or within 15 feet of the existing and proposed buildings.

The landscape plan includes the restoration of native plant communities, the removal of invasive species, and the removal of trees and plants that pose a health or safety risk to residents. Of the trees on the zoning lot, 36% are invasive species, the majority of which are Norway Maples and Black Locusts. Both trees are featured on NYS Department of Environmental Conservation Advisory Invasive Plant List. Plants associated with the specific ecological conditions of this area of Staten Island would be planted. Areas of native woodland existing on-site would be preserved and enhanced by planting grasses, shrubs and trees that naturally occur within the same plant communities.

The existing zoning lot contains 2,940 trees, which equate to 7,851 tree credits. The site is required to provide at least 51% of the original site tree credits pursuant to the Special Natural Area District, which equates to 4,004 tree credits.

The proposed project would remove 2,144 existing trees, worth 5,198 tree credits and preserve or attempt to preserve 795 existing trees worth 2,652 credits. The proposed project would also plant 1,153 new trees of 3 inch caliper or more, representing 1,153 credits. In total, 3,308 tree credits would be provided, which is about 42% of the original tree credits.

In addition to restoring the native landscape, the applicant proposes to include publicly accessible open space such as, Olmsted Green, the Knoll (L1), Scenic Overlook (L3), and the Pond (L4); open space for the residents such as, unenclosed yards and courts and a Residents' Garden (L5); and sustainable features such as, bio-swales, rain gardens, and partially landscaped rooftops of the Flats with solar cells.

A CPC authorization (N 150425 ZAR) is requested pursuant to ZR Section 105-432 (Modification of Yard, Height and Setback Regulations and Parking Location Requirements) to allow modification of the underlying district regulations relating to bulk or parking in accordance with the provisions of ZR Section 105-432.

The modification would permit new buildings (The Flats and the Clubhouse) and the enlargements to the Lofts to exceed 35 feet and penetrate the sky exposure plane; allow a rear yard equivalent less than 60 feet between the C3 Cottages (50 feet 2 inches); permit a perimeter fence taller than 4 feet; modify the LDGMA 30-foot open space requirement at the rear of a residential building; allow a building on a through lot fronting on both a private road and a street to have one front yard less than the required 30 feet; and modify LDGMA and Special Natural Area District regulations to allow required parking spaces to be located in the space between the building wall and front yard.

The authorization would allow the required open area adjacent to the rear wall of a building or a building segment to be reduced to 24 feet from the required 30 feet for the northernmost unit in the C4 cluster at Colonial Avenue; and allow the open areas between the Cottages in the C3 cluster to be reduced to 25 feet adjacent to their rear walls, and allow a reduction of the open areas at the rear of the C1 cluster units to 20 feet.

In addition, the authorization would allow variations in required front, rear, and side yards and the required space between buildings on the same zoning lot and modify height and setback requirements.

Lofts A1, A2, and A3 are existing historic buildings located at the southern end of the site and would have rooftop additions, which increase the height of their midsections from 26 feet to 36 feet as measured from first floor to top of the roof.

The Flats B1, B2, B3 are aligned along their east-west axis and located adjacent to the Core Area. The buildings are 67 feet 4 inches tall from the first floor to the level of the rooftop, however as determined by the base plane, based on the average proposed final elevation around each building, the heights range from 68 feet 4 inches (Flat B1) to 69 feet 4 inches (Flat B2) to 70 feet 6 inches (Flat B3). These buildings are located approximately 190 feet, 360 feet, and 560 feet, respectively, from the northern curb line of Walcott Avenue. Building B3 is further west and is approximately 500 feet from the nearest house on Colonial Avenue and 430 feet to the nearest house on Walcott Avenue. The waiver for the height of the buildings varies between 35 feet and 36 feet; it would increase the allowed height by an additional 35 feet 4 inches for Building B1, 36 feet 4 inches for Building B2, and 35 feet 4 inches for Building B3. The existing Dining Hall, Building A4, is approximately 62 feet tall at its western end and is approximately 205 feet away from the nearest house on Colonial Avenue.

The Clubhouse Building D is a two-story structure, approximately 40 feet to curb line of Summer Field Terrace and is 220 feet to the nearest house on Walcott Avenue and 240 feet to the nearest house on Colonial Avenue.

Of the 575 proposed accessory residential parking spaces, 191 are enclosed and located within the proposed residential structures. Another 68 parking spaces are located on-street, and 82

parking spaces are located within the front yard of the proposed buildings B2, Carriage Houses, and Cottages as allowed within the SNAD LDGMA district. However, a waiver is requested for the remaining 234 parking spaces to be located in the space between the building wall and front yard.

A CPC authorization (N 150426 ZAR) is requested pursuant to ZR Section 105-434 (Modification of Requirements for Private Roads and Driveways) to modify Section 26-21 (Requirements for Private Roads) and reduce the minimum required width from 38 feet to 34 feet, curb to curb, along the entire length of proposed County House Road, Summer Field Terrace, Memorial Drive and Landmark Drive; authorize a 10-foot-wide planted median along the entire length of Memorial Drive; authorize the widening of an existing meandering historic roadway (Madeline Lane), between 14 and 20 feet curb to curb to 20 feet along its entire length; and authorize an increase of the maximum 18-foot width of curb cuts up to 24 feet to facilitate emergency vehicle access at the entrances to the parking areas for the Lofts (A1, A2, A3, and A 4), Flats (B1, B2, B3) and Clubhouse (D) and Retail Building (E).

On October 28, 2014 the NYC Landmarks Preservation Commission (LPC) approved the proposed Preservation Strategy, which includes demolition and dismantling of several historic buildings that are beyond repair, whose materials would be salvaged and used to restore the remaining historic buildings and incorporated into the landscape design and new buildings. In approving the master plan, the new building designs, enlargements and additions to historic buildings, stabilization measures, archaeological findings and landscaping, LPC also found the narrower road widths to be appropriate in terms of preserving the historic character. Refer to LPC Binding Report and Advisory Report issued by the LPC November 5, 2014.

According to the applicant, the narrowed roadway helps to preserve more of the existing natural features and creates a superior landscaping plan. It also reduces the amount of impermeable surface and increases the capacity of the site to absorb storm-water runoff. Runoff on the roadway will be directed to bio-swailes adjacent to the road, a retention basin and a rain garden at the south end of the site.

A CPC certification (N 150427 ZCR) is requested pursuant to ZR Section 105-90 (Future Subdivision) to subdivide an existing, City-owned, approximately 4,304,487 square feet (98.82 acres) zoning lot into two zoning lots. The existing zoning lot includes part of the Staten Island Greenbelt Recreation Center and the Verrazano Babe Ruth League baseball fields. The zoning lot for the proposed project site would comprise approximately 1,891,564 square feet (43.42 acres). The remaining 2,412,923 square feet (55.39 acres) would include the Staten Island Greenbelt Recreation Center and the Verrazano Babe Ruth League baseball fields and would remain in city ownership.

Department of Citywide Administrative Services (DCAS) is seeking disposition approval (C 150428 PPR) of Staten Island Block 1955, part of Lot 1. Once disposition is approved, DCAS intends to dispose of the property to the New York City Land Development Corporation (LDC), which would dispose of the property to the New York City Economic Development Corporation (EDC). EDC intends to sell the property to NFC Associates, LLC.

## **ENVIRONMENTAL REVIEW**

This application (C 150422 ZMR), in conjunction with the related applications (N 150421 ZRR, N 150423 ZAR, N 150424 ZAR, N 150425 ZAR, N 150426 ZAR, N 150427 ZCR, C 150428 PPR), 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 15DME006R. The lead agency is the Deputy Mayor's Office of the Housing and Economic Development.

After a study of the potential environmental impact of the proposed actions, a Negative Declaration was issued on October 15, 2015. In accordance with the terms of a Restrictive Declaration attached to the report for the related disposition action (C 150428 PPR), the maximum number of dwelling units permitted to be developed on the project site is 344. A Revised Negative Declaration was issued on November 16, 2015, to reflect the terms of the Restrictive Declaration.

#### **UNIFORM LAND USE REVIEW**

This application (C 150422 ZMR), in conjunction with related application (C 150428 PPR), was certified as complete by the Department of City Planning (DCP) on October 19, 2015, and was duly referred to Community Board 2 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b), along with the related zoning text amendment (N 150421 ZRR), which was referred for information and review in accordance with the procedures for non-ULURP matters.

### **Community Board Public Hearing**

Community Board 2 held a public hearing on this application (C 150422 ZMR) and related applications (N 150421 ZRR and C 150428 PPR) on September 15, 2015, and on October 20, 2015, by a vote of 24 in favor with 0 in opposition and 0 abstentions, adopted a resolution recommending approval of this application.

### **Borough President Recommendation**

This application was considered by the Borough President, who issued a recommendation approving the application on October 30, 2015.

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

On November 2, 2015 (Calendar No. 5), the CPC scheduled November 18, 2015, for a public hearing on this application (C 150422 ZMR), in conjunction with the related applications (N 150421 ZRR, N 150423 ZAR, N 150424 ZAR, N 150425 ZAR, N 150426 ZAR, N 150427 ZCR, C 150428 PPR). The hearing was duly held on November 18, 2015 (Calendar No. 17). There were four speakers in favor and none in opposition.

The applicant team was represented by the developer and his advisors, including a real estate consultant, design architects, and landscape architects. Two members of the team spoke, including the developer and a design architect. In addition, favorable testimony was provided by EDC and the New York City Housing Preservation and Development (HPD). The applicant spoke in favor of the application, stating that this development would bring much needed housing for the growing senior population of Staten Island. The applicant's architect also spoke in favor of the application, explaining the historic significance of the site and the plan to

preserve and reuse landmarked buildings, along with site-specific planning and landscape design and new building design. A representative of EDC also spoke in favor of the plan, stating this is the fourth attempt to activate this site by the City, which includes over \$100 million in private investment into the project by the developer. A representative of HPD also spoke in favor of the plan, explaining the efforts involved in establishing the ten percent affordable housing agreement for this project.

There were no other speakers and the hearing was closed.

#### **WATERFRONT REVITALIZATION PROGRAM CONSISTENCY REVIEW**

The application (C 150422 ZMR), in conjunction with the related applications (N 150421 ZRR, N 150423 ZAR, N 150424 ZAR, N 150425 ZAR, N 150426 ZAR, N 150427 ZCR, C 150428 PPR), was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 13, 1999 and by the New York State Department of State on May 22, 2002, pursuant to the New York State Waterfront Revitalization and Coastal Resource Act of 1981 (New York State Executive Law, Section 910 et seq.). The designated WRP number is 15-024.

The City Planning Commission, acting as the City Coastal Commission, having reviewed the waterfront aspects of this action, finds that the action will not substantially hinder the achievement of any WRP policy and hereby determines that this action is consistent with WRP policies.

## **CONSIDERATION**

The Commission believes that the application for the zoning map amendment (C 150422 ZMR), in conjunction with the related applications (N 150421 ZRR, N 150423 ZAR, N 150424 ZAR, N 150425 ZAR, N 150426 ZAR, N 150427 ZCR, C 150428 PPR), is appropriate.

The Commission notes that the project site is part of the New York City Farm Colony – Seaview Hospital Historic District, designated by the LPC in 1985. As such, the Commission believes that the requested actions are appropriate to facilitate the disposal and redevelopment of long vacant city-owned land through the preservation and rehabilitation of historic buildings and landmarked property, the provision of housing for the 55 and over population with 10% at affordable rate as well as 17.36 acres of public open space, while maintaining the goals of the Special Natural Area District.

### **Zoning Map Amendment – C 150422 ZMR**

The Commission believes that, by allowing for the development of new neighborhood retail, the proposed C1-3 overlay district would provide a convenience and benefit to the residents of the proposed development as well as the surrounding community, which is comprised primarily of R3-1, R3-2, and R3X residential districts and is currently commercially underserved.

The Commission notes that the retail use on the development site would be fenced off from the residential use to prevent non-residents from parking on residents' parking spaces and access to the retail space would be provided to on-site residents via pedestrian gates.

### **Zoning Text Amendment – N 150421 ZRR**

The Commission believes that the proposed zoning text amendment, which would establish appropriate regulations for modifications to the requirements for driveways and private roads on Tier I sites is appropriate and has findings that would maintain the character of the area while offering similar relief that is currently available to Tier II sites. These findings include, but are not limited to, greater environmental conservation or preservation of existing natural features; superior site and landscape plan that will not unduly disturb the drainage pattern and soil conditions of the area; greater preservation of historic buildings or other architectural elements of the Historic District; and is the least required to achieve the purpose for which the modification is granted.

The Commission recognizes that the project site is located within the Special Natural Area District (NA-1), which may require modifications to underlying zoning regulations such as lot coverage controls and yard, height, setback and parking regulations for the purpose of preserving natural features. The Commission also notes that the project site is located within the Lower Density Growth Management Area (LDGMA) as well, which regulates future development to match the capacity of supporting services and infrastructure through perimeter wall height limitations, floor area exemptions for parking spaces within buildings, and required parking and private road standards. The Commission notes that that the private road network will be publicly accessible from dawn to dusk to provide a connection through the site to adjacent streets as well as to the proposed development and the publicly accessible open space.

***Disposition of City-owned Property – C 150428 PPR***

The Commission believes that application for the disposition of City-owned property, in conjunction with the related applications, is appropriate. The project site would be disposed by

DCAS to LDC, for subsequent disposition and sale to the developer through EDC. The subject property is mostly vacant and densely overgrown with trees and undergrowth, and includes 11 historic buildings and several structures, which are damaged and decayed from vandalism and neglect.

The Commission believes that the proposed project facilitated by the requested actions complements the area's existing built context and scale, which are lower-density districts. The site plan associated with the SNAD authorizations, which includes a private road network that would be open to public vehicular and pedestrian traffic from dawn to dusk, would create new connections from Forest Hill Road to Brielle Avenue through the project site, new public access to open space/park features and improved linkages to existing City parks such as, the Staten Island Greenbelt, and new neighborhood retail and community facility space in a relatively underserved area. It would also provide much needed senior housing in Staten Island – a borough whose aging population increase is the most pronounced of all boroughs of New York City. Moreover, the proposed project would provide for the adaptive reuse and stabilization of landmarked buildings of the New York City Farm Colony to help preserve the architectural and historic legacy of the site. The Commission, therefore, believes that this application for a map amendment, in conjunction with related applications, is appropriate.

## **RESOLUTION**

**RESOLVED**, that having considered the Environmental Assessment Statement (EAS), for which a Revised Negative Declaration was issued on November 16, 2015 superseding a Negative Declaration issued on October 15, 2015, with respect to this application (CEQR No.

15DME006R), the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

**RESOLVED**, that the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action is consistent with WRP policies; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Sections 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 hereby amended by changing the Zoning Map, Section Nos. 26c and 27a, by establishing within an existing R3-2 District a C1-3 District bounded by Walcott Avenue, Brielle Avenue, a line 635 feet southwesterly of Walcott Avenue, a line 130 feet northwesterly of Brielle Avenue, a line 450 feet southwesterly of Walcott Avenue, a line 160 feet northwesterly of Brielle Avenue, a line 410 feet southwesterly of Walcott Avenue, a line 250 feet northwesterly of Brielle Avenue, a line 230 feet southwesterly of Walcott Avenue, and a line 160 feet northwesterly of Brielle Avenue, as shown on a diagram (for illustrative purposes only) dated October 19, 2015.

The above resolution (C 150422 ZMR), duly adopted by the City Planning Commission on December 16, 2015 (Calendar No. 13), is filed with the Office of the Speaker, City Council, and the Borough President, in accordance with the requirements of Section 197-d of the New York City Charter.

**CARL WEISBROD** Chair

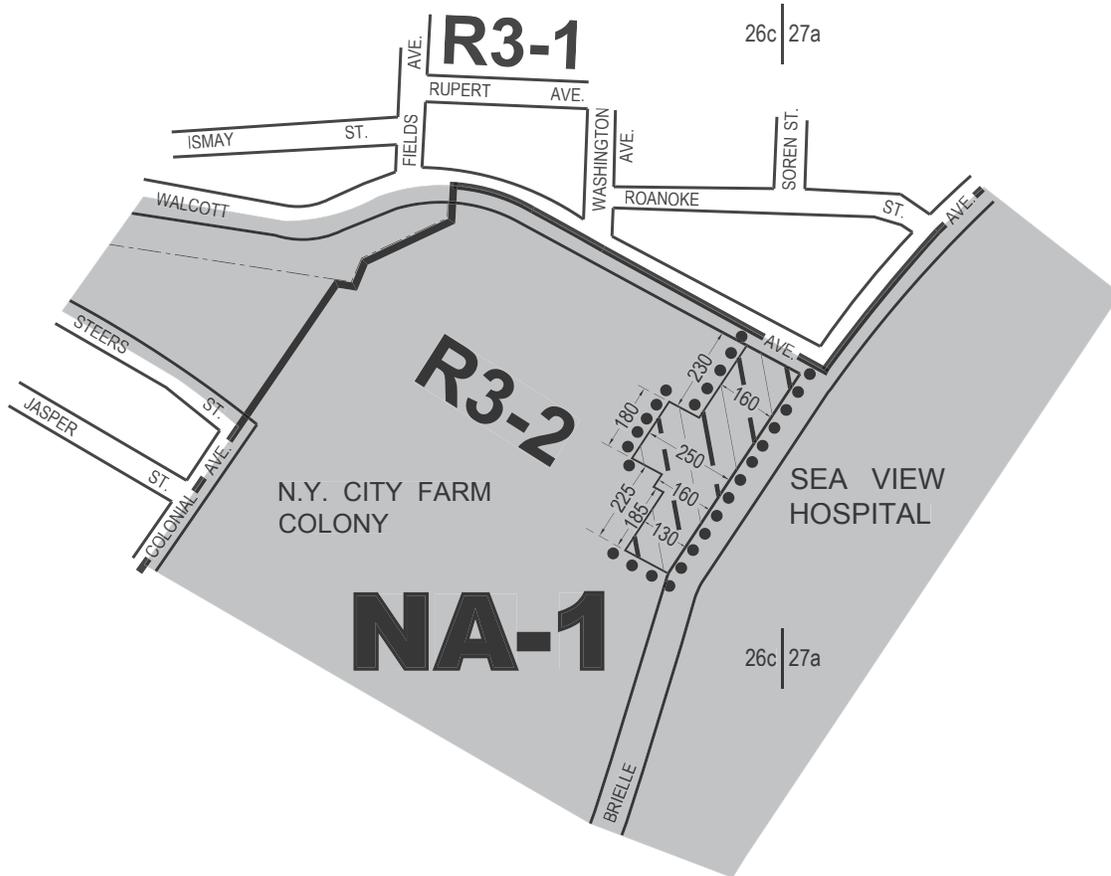
**KENNETH J. KNUCKLES, ESQ.**, Vice Chairman

**RAYANN BESSER, IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, III,**

**MICHELLE R. DE LA UZ, JOSEPH I. DOUEK, RICHARD W. EADDY,**

**CHERYL COHEN EFFRON, LARISA ORTIZ, ANNA HAYES LEVIN,**

**ORLANDO MARIN**, Commissioners



CITY PLANNING COMMISSION  
CITY OF NEW YORK  
DIAGRAM SHOWING PROPOSED

**ZONING CHANGE**

ON SECTIONAL MAP

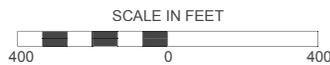
**26c & 27a**

BOROUGH OF

**STATEN ISLAND**

J. Miraglia, Director  
Technical Review Division

New York, Certification Date  
OCTOBER 19, 2015



NOTE:

-  Indicates Zoning District Boundary.
-  The area enclosed by the dotted line is proposed to be rezoned by establishing within an existing R3-2 a C1-3 District.
-  Indicates a C1-3 District.
-  Indicates a Special Natural Area District -1 (NA-1).



Application #: **C 150422 ZMR**  
CEQR #: **15DME006R**

Project Name: **LANDMARK COLONY**  
Borough(s): **STATEN ISLAND**  
Community District Number(s): **502**

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

*Docket Description:*

**IN THE MATTER OF** an application submitted by NFC Associates, LLC and the NYC Economic Development Corporation pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section (map) numbers 26c and 27a, by establishing within an existing R3-2 District, a C1-3 District bounded by Walcott Avenue, Brielle Avenue, a line 635 feet southwesterly of Walcott Avenue, a line 130 feet northwesterly of Brielle Avenue, a line 450 feet southwesterly of Walcott Avenue, a line 160 feet northwesterly of Brielle Avenue, a line 410 feet southwesterly of Walcott Avenue, a line 250 feet northwesterly of Brielle Avenue, a line 230 feet southwesterly of Walcott Avenue, and a line 160 feet northwesterly of Brielle Avenue, as shown on a diagram (for illustrative purposes only) dated October 19, 2015.

**Recommendation:**



Approve



Approve With Modifications/Conditions



Disapprove



Disapprove With Modifications/Conditions

*Explanation of Recommendation, Conditions or Modification:*

**Related Applications:** N 150421 ZRR and C 150428 PPR

**Contact:**

*Address questions about this recommendation to:*

**OFFICE OF THE STATEN ISLAND BOROUGH PRESIDENT  
ATTN: LAND USE DIRECTOR**

Address: 10 Richmond Terrace, Staten Island, NY 10301 (Room G-12)  
Phone: 718.816.2112  
Fax: 718.816.2060



30 October 2015

**James S. Oddo**  
President of the Borough of Staten Island

**DATE**

## Exhibit A

### DECLARATION OF RESTRICTIONS

THIS DECLARATION, made as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_ by NFC Associates, LLC, a New York limited liability company, having an address at 45A Marble Loop, Staten Island, New York, 10309 (“Declarant”).

#### WITNESSETH:

WHEREAS, The City of New York, a municipal corporation of the State of New York (“City”), having an address at City Hall, New York, NY 10007, is the fee owner of certain real property, which real property is located in the Borough of Staten Island, County of Richmond, City and State of New York, designated for real property tax purposes as Block 1955, part of Lot 1 (tentative lot numbers 225 and 375) on the Tax Map for the Borough of Staten Island; and

WHEREAS, Declarant is the contract-vendee of certain real property under that certain contract of sale made as of the 24<sup>th</sup> day of September 2013 (“Developer Contract”) between the City and Declarant, which real property is located in the Borough of Staten Island, County of Richmond, City and State of New York, designated for real property tax purposes as Block 1955, part of Lot 1 (tentative lot numbers 225 and 375) on the Tax Map for the Borough of Staten Island as more particularly described in Exhibit “A” annexed hereto and made a part hereof (“Subject Property”); and

WHEREAS, \_\_\_\_\_ has certified in a certification annexed hereto as Exhibit “B” and made a part hereof, that as of \_\_\_\_\_, the parties listed on such Exhibit are the only “Part(ies) in Interest” to the Subject Property, as “Part(ies) in Interest” is defined in subdivision (c) of the definition of “zoning lot” in Sec. 12-10 of the Zoning Resolution; and

WHEREAS, Declarant desires to improve the Subject Property with a 344-unit age-restricted homeownership residential development containing commercial and community facility uses within the New York City Farm Colony-Seaview Hospital Historic District, designated by the New York City Landmarks Preservation Commission in 1985 (“Landmark Colony”); and

WHEREAS, to facilitate the development of Landmark Colony, Declarant filed an application with the New York City Department of City Planning (hereinafter, “City Planning”)

for (1) a zoning map change for establishing within the existing R3-2 zoning district a C1-3 district along a portion of the Subject Property, fronting Brielle Avenue (ULURP No. C 150422 ZMR); (2) a zoning text amendment to the Zoning Resolution of the City of New York (“Zoning Resolution” or “ZR”) changing Section 105-43 (Authorizations to Modify Bulk, Parking, Grading and Private Roads Regulations) to allow modifications of private roads regulations on a Tier I site; Section 105-434 (Modification of requirements for private roads and driveways), to allow modifications of Section 26-20 (SPECIAL REQUIREMENTS FOR DEVELOPMENTS WITH PRIVATE ROADS) and Section 26-30 (SPECIAL REQUIREMENTS FOR DEVELOPMENTS WITH PRIVATE ROADS IN LOWER DENSITY GROWTH MANAGEMENT AREAS) within the Special Natural Area District (Application No. N 150421 ZRR); (3) zoning authorizations (the “SNAD Authorizations”) pursuant to Section 105-421 (Modification of topographic features on Tier I sites) to accommodate roadways, site infrastructure, drainage and cut and fill 15’ beyond proposed buildings; to Section 105-425 (Modification of botanic environment and tree preservation and planting requirements) to facilitate the development of an appropriate landscape plan and the removal of invasive tree species 15’ beyond proposed buildings; to Section 105-432 (Modification of yard, height and setback regulations, and parking location regulations) to allow buildings taller than 35’ and front yards less than 15’ and required rear yard equivalent less than 60’; and to Section 105-434 (Modification of requirements for private roads and driveways) to allow curb cuts greater than 18’, including splays and the paved width of a private road to be less than 38’ (Application Nos. N 150423 ZAR, N 150424 ZAR, N 150425 ZAR and N 150426 ZAR, respectively); and (4) a zoning certification pursuant to ZR Sec. 105-90 (Future Subdivision) to subdivide the existing zoning lot into two zoning lots (Application No. N 150427 ZCR); and

WHEREAS, the City, through its Department of Citywide Administrative Services (“DCAS”), filed an application with City Planning for the disposition of City-owned property (ULURP No. C 150428 PPR) ; (the “Disposition Application”, collectively with items (1) through (4) in the previous recital, “Land Use Applications”), which applications were approved by CPC on \_\_\_\_\_, 201\_\_, and items (1) and (2) above, along with the Disposition Application, were approved by the New York City Council on \_\_\_\_\_, 201\_\_ (respectively, the “Rezoning and Text Amendment Approval” and the “Disposition Approval”); and

WHEREAS, in connection with the Land Use Applications, Declarant submitted an Environmental Assessment Statement, dated October 15, 2015 and designated CEQR

No.15DME006R, for review by the Mayor’s Office of Sustainability, as lead agency, pursuant to the State Environmental Quality Review Act ("SEQRA") and the City Environmental Quality Review (“CEQR”) (the “CEQR Application”); and

WHEREAS, in conjunction with the review of the CEQR Application, the lead agency issued a Revised Negative Declaration dated November 16, 2015, superseding the Negative Declaration issued October 15, 2015, that is premised upon the analysis of 344 dwelling units, as set forth in the Environmental Assessment Statement’s reasonable worst case development scenario; and

WHEREAS, the Disposition Approval requires, as a condition of its exercise, the execution and recordation in the Office of the Richmond County Clerk (“County Clerk”) of a restrictive Declaration acceptable to the New York City Planning Commission (“CPC”), binding the Declarant and its successors and assigns; and

WHEREAS, this Declaration sets forth the maximum number of dwelling units (344) analyzed in the CEQR Application, limits development of additional dwelling units, rooming units or combinations thereof, pending further review, and ensures the provision of publicly accessible open space and public vehicular and pedestrian access to the private road network as proposed in the Land Use Applications; and

WHEREAS, Declarant desires to restrict the manner in which the Subject Property is developed in the future, and intends these restrictions to benefit all the land, including land owned by the City, lying within a one-half-mile radius of the Subject Property; and

WHEREAS, the Declarant intends this Declaration to be binding upon all successors and assigns;

NOW, THEREFORE, Declarant hereby declares, covenants and agrees that the Subject Property shall be held, sold, transferred and conveyed subject to the restrictions and obligations herein which shall run with the land, binding the successors and assigns of Declarant so long as they have any right, title or interest in the Subject Property or any part thereof, as follows:

1. Development of Subject Property. Declarant covenants that no more than 344 dwelling units or rooming units, or combination thereof, as such terms are defined in the Zoning

Resolution, or combination thereof, shall be developed, constructed, operated or maintained on the Subject Property. No dwelling units or rooming units or combination thereof (hereinafter, “Living Units”) in excess of 344 shall be permitted unless Declarant has submitted an application for a modification to this Declaration in accordance with the provisions of Section 6 of this Declaration, and such application has been approved. Declarant further covenants that it shall neither apply for nor accept building permits or temporary or final certificates of occupancy for more than the number of Living Units set forth herein, unless an application for a modification to this Declaration in accordance with Section 6 hereof has been approved.

2. Representation. Declarant represents and warrants that there is no restriction of record on the development, enlargement, or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the restriction and obligation to develop the Subject Property in accordance with the Approvals and as set forth herein.

3. Binding Effect. The restrictions, covenants, rights and agreements set forth in this Declaration shall be binding upon Declarant and any successor or assign of Declarant as of the Effective Date as set forth in Section 5; provided, that the Declaration shall be binding on any Declarant, only for the period during which such Declarant, or any successor or assign thereof, is the holder of an interest in the Subject Property, and only to the extent of such Declarant’s interest in the Subject Property. At such time as a Declarant or any successor to a Declarant no longer holds an interest in the Subject Property, such Declarant’s or such Declarant’s successor’s obligations and liability under this Declaration shall wholly cease and terminate, and the party succeeding such Declarant or such Declarant’s successor shall assume the obligations and liability of Declarant pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party assumes an interest in the Subject Property to the extent of such party’s interest in the Subject Property. For purposes of this Declaration, any successor to a Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of any interest in the Subject Property. 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.

4. Recordation. Declarant shall file and record this Declaration in the Office of the Richmond County Clerk, indexing it against the Subject Property within fifteen (15) days of the date which is the later of (a) final approval of the Land Use Applications by the CPC or the City Council, as the case may be (“Final Approval”), and (b) the date that Declarant takes title to the Subject Property (such date, “Recording Date”). Declarant shall promptly provide to the Chairperson of the CPC (the “Chairperson”) a copy of the Declaration as recorded, so certified by the County Clerk. If Declarant fails to so record this Declaration by the Recording Date, CPC may record a duplicate original of this Declaration, but all costs of recording, whether undertaken by Declarant or by CPC, shall be borne by Declarant.

5. Effective Date. This Declaration and the provisions and covenants hereof shall become effective as of the Recording Date.

6. Amendment, Modification and Cancellation. This Declaration may be amended, cancelled, or modified only upon application by Declarant with the express written consent of CPC or an agency succeeding to CPC’s jurisdiction, and no other approval shall be required from any other public body, private person, or legal entity of any kind. Any modification to Section 1 hereof increasing the number of Living Units permitted on the Subject Property shall be subject to CPC approval, and no modification to the Disposition Approval shall be required. Notwithstanding anything to the contrary contained herein, the Chairperson may by its express written consent, administratively approve modifications or amendments to this Declaration that, in the sole judgment of the Chairperson, are determined by the Chairperson to be a minor amendment or modification of this Declaration, and such minor modifications and amendments shall not require the approval of CPC, the City Council or any other agency or department of the City of New York.

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

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

Attn: Raymond Masucci, Manager

(ii) if to the Chairperson or to CPC:  
New York City Planning Commission  
22 Reade Street  
New York, New York 10007  
Attn: Chairperson

with a copy to:  
the general counsel of CPC at the same address

(iii) if to a Party in Interest other than Declarant:  
at an address which will have been provided in writing to CPC  
in accordance with this Section 7.

(iv) if to a Mortgagee:  
at an address which will have been provided in writing to CPC  
in accordance with this Section 7.

Declarant, CPC, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 7, change any name or address for purposes of this Declaration. In order to be deemed effective, any Notice shall be sent or delivered in at least one of the following manners: (A) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed delivered for all purposes hereunder five days after being actually mailed; (B) sent by overnight courier service, in which case the Notice shall be deemed delivered for all purposes hereunder on the date the Notice was actually received or was refused; or (C) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received. All Notices from CPC to Declarant shall also be sent to every Mortgagee of whom CPC has notice, and no Notice shall be deemed properly given to Declarant without such notice to such Mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the CPC shall be provided to all Declarants of whom CPC has notice.

#### 8. Offering Plan & Property Owners' Association

In the event that the Subject Property is subject to a declaration of condominium or if the Subject Property is owned by a cooperative cooperation, or is governed by a legal regime which shall require the organization of a homeowner's association or similar governing entity comprised of homeowners ("Association"), in accordance with the provisions of New York state law, from and after the date the declaration of condominium has been recorded in the Office of the City

Register, or the date that the Subject Property is conveyed to the cooperative corporation, or the date of organization of the Association, the Board of Directors, Board of Managers, or the Association as the case may be (the “Board”), shall be (a) deemed to be the sole Declarant and Party-in-Interest under this Declaration with respect to the premises owned by a homeowner in the case of an Association, the holder of a lien encumbering any such premises, the holder of any other occupancy or other interest in such premises, (b) with respect to the premises owned by the cooperative apartment corporation, and the owners of the shares of stock of the cooperative apartment corporation, the holder of a lien encumbering any such shares, the holder of any other occupancy or other interest in such cooperative apartment, (c) with respect to the premises held in condominium ownership, the holder of any unit in the condominium, the holder of a lien encumbering any such condominium unit and the holder of any other occupancy or other interest in such condominium unit, (each of the foregoing, hereinafter, a “Unit Interested Party”). Such Unit Interested Party shall not be deemed to be a Declarant or a Party-in-Interest. Each and every Unit Interested Party hereby (x) irrevocably consents to any amendment, modification, cancellation, revision or other change in this Declaration by the Board; (y) waives and subordinates any rights it may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration, and (z) nominates, constitutes and appoints the Board its true and lawful attorney-in-fact, coupled with an interest, to execute any documents or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

In the event that an Association is formed, the terms of this Declaration shall be included in any offering plan issued in connection therewith and the related declaration of condominium, by-laws, proprietary lease and/or other governing documents shall provide for the fulfillment of the applicable obligations with respect to the Publicly Accessible Open Areas and Private Roads under Section 12 hereof.

In the event that cooperative or condominium units, or units governed by a legal regime which shall require the organization of an Association are offered for sale on the Subject Property, a summary of the terms of this Declaration shall be included in any offering plan or “red herring” issued in connection therewith. Such offering plan or “red herring” shall clearly identify the rights and obligations pursuant to this Declaration of the unit owners or the owners of shares of stock in the cooperative cooperation, as the case may be, that may be formed.

9. Defaults and Remedies.

Declarant acknowledges that if Declarant, and/or its successors and assigns, fails to perform Declarant's obligation 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 City, and Declarant hereby consents to same. 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. Notwithstanding any provision of this Declaration, 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.

10. Applications to New York City Department of Buildings and other Agencies.

Declarant shall include a copy of this Declaration with any application made to the New York City Department of Buildings ("DOB") for a foundation, new building, alteration, or other permit (a "DOB Permit") for any portion of the Landmark Colony built on the Subject Property. Nothing in this Declaration shall be construed to prevent Declarant or any of Declarant's successors or assigns from making any application of any sort to any governmental agency or department (each, an "Agency") in connection with the development of the Subject Property; provided that Declarant shall include a copy of this Declaration in connection with any application for any such approval from the New York City Department of Transportation or from the New York City Department of Environmental Protection, or their successor Agencies, and provided that nothing in this Section 10 shall be construed as superseding the requirements, restrictions, or approvals that may be required under this Declaration or agreements with any other Agency or the City.

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

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

### 13. Publicly Accessible Open Space and Private Roads

#### (a) Publicly Accessible Open Areas

Declarant covenants that it 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 publicly accessible open areas, as shown on the plans approved in connection with the SNAD Authorizations, including the areas labeled as “The Colony Meadow”, “Potter’s Field Remembrance”, “Rain Garden”, “Residents’ Garden” and adjacent parking area, “Field Stone Wall”, “Olmsted Green”, “The Knoll”, “Scenic Overlook”, “Arrested Ruins” and adjacent DPR parking area, and such other areas designated as publicly accessible, and not including the areas designated as accessory to residential units, accessory to commercial uses, and designed for Club House, on drawing SP-10.3 (Urban Design-Landscape Diagrams (Open Space-Use Diagram)) which drawing is included in the Notice of Restrictions recorded simultaneously with this Declaration in connection with the SNAD Authorizations (the “Publicly Accessible Open Areas”), unobstructed from the surface thereof to the sky (easement area) for the purpose of (i) passive recreational use by the general public, and additional uses as permitted by Declarant and (ii) access for fire, police and other emergency services. Publicly Accessible Open Areas shall include pedestrian paths shown on such plans approved in connection with the SNAD Authorizations. Such easement (i) shall be effectuated without the necessity for recording a separate easement instrument; (ii) 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; and (iii) shall be subject to the hours of operation as set forth in paragraph (c) of this Section 13.

#### (b) Private Roads

Declarant further covenants that it 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 “private roads”, as such term is defined in the Zoning Resolution and as shown on the plans approved in connection with the SNAD Authorizations and labeled as “Primary Roads”, “Secondary Roads” and Tertiary Roads” on drawing SP-10.2 (Urban Design-Landscape Diagrams (Street Diagram)), which

drawing is included in the Notice of Restrictions recorded simultaneously with this Declaration in connection with the SNAD Authorizations (the “Private Roads”), unobstructed from the surface thereof to the sky (easement area) for pedestrian and vehicular circulation. Such easement (i) shall be effectuated without the necessity for recording a separate easement instrument; (ii) 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; and (iii) shall be subject to the hours of operation as set forth in paragraph (c) of this Section 13.

Nothing herein shall be construed so as to permit the use of the Publicly Accessible Open Areas and Private Roads by any member of the public for an activity or in a manner which 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 property or to any person.

(c) Hours of Operation and Maintenance

Declarant covenants that such Publicly Accessible Open Areas and Private Roads shall be open and accessible to the public from dawn to dusk, subject to paragraph (d) of this Section 13. Declarant shall provide for or shall cause to be provided all services required for the maintenance and repair of the Publicly Accessible Open Areas and Private Roads including cleaning, landscape maintenance and repairs, and hardscape and furniture maintenance and repairs, including but not limited to painting and paving.

(d) Closure

In addition to closure pursuant to the hours of operation provided herein, Declarant covenants only to close such Publicly Accessible Open Areas and Private Roads for periods as may be necessary to accomplish maintenance repairs or replacements, to make emergency repairs to mitigate hazardous conditions, and address other emergency conditions.

