



**IN THE MATTER OF** an application submitted by the Department of Citywide Administrative Services (DCAS), pursuant to Section 197-c of the New York City Charter, for the disposition of one (1) city-owned property located at 475 Brielle Avenue (Block 1955, p/o Lot 1), pursuant to zoning, Community District 2, Borough of Staten Island.

---

The application was filed by the Department of Citywide Administrative Services (DCAS) on June 17, 2015, for a disposition of City-owned property in association with a proposed development, located at 475 Brielle Avenue (Block 1955, p/o Lot 1), in the Special Natural Area District (NA-1) in the Borough of Staten Island, Community District 2.

#### **RELATED ACTIONS**

In addition to the disposition, which is the subject of this report (C 150428 PPR), 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. |
| C 150422 ZMR | Zoning Map Amendment to establish within an existing R3-2 District a C1-3 District.   |
| 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.

## **BACKGROUND**

DCAS is seeking disposition approval 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.

A full background discussion and description of this application appears in the related report for an amendment of the Zoning Map (C 150422 ZMR).

## **ENVIRONMENTAL REVIEW**

This application (C 150428 PPR), in conjunction with the related applications (N 150421 ZRR, C 150422 ZMR, N 150423 ZAR, N 150424 ZAR, N 150425 ZAR, N 150426 ZAR, N 150427 ZCR), 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 for 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 150428 PPR), in conjunction with the related application (N 150421 ZRR and C 150422 ZMR), 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 and other actions, which were 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 action (C 150428 PPR) and related actions (N 150421 ZRR, C 150422 ZMR, N 150423 ZAR, N 150424 ZAR, N 150425 ZAR, N 150426 ZAR, N 150427 ZCR) on September 15, 2015, and on October 20, 2015, by a vote of 24 in favor and 0 in opposition with 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, with the following conditions:

1. “All ingress-egress easements (private roads) on this property and under review by the Commission as part of attendant applications [listed below] should be filed with the NYC Tax Department and recorded at the Office of the County Clerk, The property in question is filed with the NYC Tax Department and has been issued tentative tax lot 225. The house number (#475) referenced in the docket description, will not apply to any development situated on the property in question. Separate house numbers have been issued for future development on tax lot 225.”
2. “Absent the requested easement filings, private road configurations will not appear on tax maps or the City Map and could negatively impact emergency response to buildings fronting these unmapped ways.”

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

On November 2, 2015 (Calendar No. 6), the CPC scheduled November 18, 2015, for a public hearing on this application (C 150428 PPR), in conjunction with the related applications (N 150421 ZRR, C 150422 ZMR, N 150423 ZAR, N 150424 ZAR, N 150425 ZAR, N 150426 ZAR, N 150427 ZCR). The hearing was duly held on November 18, 2015 (Calendar No. 18). There were four speakers in favor and none in opposition as described in the report on the related application for an amendment of the Zoning Map (C 150422 ZMR), and the hearing was closed.

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

The application (C 150428 PPR), in conjunction with the related applications (N 150421 ZRR, C 150422 ZMR, N 150423 ZAR, N 150424 ZAR, N 150425 ZAR, N 150426 ZAR, N 150427 ZCR), 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 actions 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 this application for a disposition of a city-owned property (C 150428 PPR) in conjunction with the related applications (N 150421 ZRR, C 150422 ZMR, N 150423 ZAR, N 150424 ZAR, N 150425 ZAR, N 150426 ZAR, N 150427 ZCR) is appropriate. A full consideration and analysis of issues and the reasons for approving this application appear in the related report for the amendment of the Zoning Map (C 150422 ZMR).

### **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 197-c and 201 of the New York City Charter that based on the environmental determination and the consideration and findings described in this report, the application submitted by the Department of Citywide Administrative Services (DCAS), pursuant to Section 197-c of the New York City Charter, for the disposition of one (1) city-owned property located at 475 Brielle Avenue (Block 1955, p/o Lot 1), pursuant to zoning, is approved, subject to the execution and recordation in the Office of the Richmond County Clerk of the Restrictive Declaration attached hereto as Exhibit A, with such administrative changes as are acceptable to Counsel to the Department of City Planning.

The above resolution (C 150428 PPR), duly adopted by the City Planning Commission on December 16, 2015 (Calendar No. 19), 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



Application #: C 150428 PPR  
CEQR #: 15DME006R

Project Name: **LANDMARK FARM 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 the Department of Citywide Administrative Services (DCAS), pursuant to Section 197-c of the New York City Charter, for the disposition of one (1) city-owned property located at 475 Brielle Avenue (Block 1955, p/o Lot 1), pursuant to zoning.

**Recommendation:**

Approve

Disapprove



Approve With Modifications/Conditions



Disapprove With Modifications/Conditions

*Explanation of Recommendation, Conditions or Modification:*

All ingress-egress easements (private roads) on this property and under review by the Commission as part of attendant applications listed below should be filed with the NYC Tax Department and recorded at the Office of the County Clerk. The property in question is filed with the NYC Tax Department and has been issued tentative tax lot number 225. The house number (#475) referenced in the docket description, will not apply to any development situated on the property in question. Separate house numbers have been issued for future development on tax lot 225. Absent the requested easement filings, private road configurations will not appear on tax maps or the City Map and could negatively impact emergency response to buildings fronting these unmapped ways.

**Related Applications:** C 150422 ZMR and N 150421 ZRR

**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

*James S. Oddo*

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 of 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”, the “Potter’s Field Remembrance”, “Field Stone Wall”, “Olmsted Green”, “The Knoll”, “Scenic Overlook” 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, except that the Private Roads shall be available to public pedestrians at all times, 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.



**Exhibit A**

**EXHIBIT A**

**Description of Subject Property**

**Exhibit A**

**EXHIBIT B**

**Certification of Parties in Interest**