



IN THE MATTER OF an application submitted by Gun Hill Square, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-531 of the Zoning Resolution to modify the requirements of:

1. Section 36-12 (Maximum Size of Accessory Group Parking Facilities) to allow an accessory group parking facility with a maximum capacity of 1169 spaces; and
2. Section 36-11 (General Provisions) to allow some of such off-street parking spaces to be located on the roof of a building;

in connection with a proposed mixed-use development on a property located at 1769-1771 East Gun Hill Road (Block 4804, part of Lot 100), in a C4-3 District, within a large-scale general development, Borough of the Bronx, Community District 12.

This application (C 170222 ZSX) for a special permit pursuant to Section 74-531 of the Zoning Resolution was filed by Gun Hill Square, LLC on January 3, 2017 to modify the parking requirements of Section 36-12 and 36-11 to facilitate the development of a new pedestrian-oriented open-air urban shopping complex and a single residential building containing approximately 180 units of affordable senior housing within a large-scale general development located at 1769-1771 and 1825 East Gun Hill Road (Block 4804, p/o Lot 100) in the Baychester neighborhood of the Bronx, Community District 12.

RELATED ACTIONS

In addition to the special permit (C 170223 ZSX) that is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

C 170217 PPX Disposition of City-owned property;

C 170218 ZMX Zoning map amendment to change an M1-1 District to a C4-3 District;

- C 170221 ZSX Special permit to allow the location of buildings without regard for height, setback, and rear yard requirements within a large-scale general development;
- C 170222 ZSX Special permit to modify signage requirements within a large-scale general development;
- N 170219 ZRX Zoning text amendment to allow a physical culture or health establishment and to designate a Mandatory Inclusionary Housing (MIH) area.

BACKGROUND

A full background discussion and description of this application appears in the report for the related application for a disposition of City-owned property (C 170217 PPX).

ENVIRONMENTAL REVIEW

This application (C 170223 ZSX), in conjunction with the related actions (C 170217 PPX, C 170218 ZMX, N 170219 ZRX, C 170221 ZSX, and C 170222 ZSX), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 14DME010X. The lead is the Deputy Mayor for Housing and Economic Development.

A summary of the environmental review, including the Final Environmental Impact Statement (FEIS), issued on June 9, 2017, appears in the report on the related application for the related disposition action (C 170217 PPX).

UNIFORM LAND USE REVIEW

This application (C 170223 ZSX), in conjunction with the applications for the related actions (C 170217 PPX, C 170218 ZMX, C 170221 ZSX, and C 170222 ZSX), was certified as complete by

the Department of City Planning on January 17, 2017, and was duly referred to Community Board 12 and the Bronx Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b) along with the related application for a zoning text amendment (N 170219 ZRX), which was referred for information and review in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Community Board 12 held a public hearing on the application (C 170223 ZSX) on March 20, 2017. On March 23, 2017, by a vote of 29 in favor, five opposed, and with two abstentions, adopted a resolution recommending approval of the application.

Borough President Recommendation

This application (C 170223 ZSX) was considered by the Bronx Borough President, who held a public hearing on April 4, 2017 and issued a recommendation on April 26, 2017 for approval of this application with conditions. A summary of the Borough President's recommendation appears in the report for the related disposition action (C 170217 PPX).

City Planning Commission Public Hearing

On April 26, 2017 (Calendar No. 6), the City Planning Commission scheduled May 10, 2017 for a public hearing on this application (C 170223 ZSX) and the applications for the related actions. The hearing was duly held on May 10, 2017 (Calendar No. 39).

There were a total of 14 speakers at the hearing, seven in favor of the application and seven in opposition, as described in the report for the related disposition action (C 170217 PPX), and the hearing was closed.

CONSIDERATION

The Commission believes that the application for the special permit (C 170223 ZSX), in conjunction with the related actions, is appropriate. A full consideration and analysis of issues and the reasons for approving this application appear in the related report for the disposition action (C 170217 PPX).

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-531 of the Zoning Resolution:

- a) that such #use# is so located as to draw a minimum of vehicular traffic to and through local #streets# in residential areas;
- b) that such #use# has adequate reservoir space at the vehicular entrance to accommodate either 10 automobiles or five percent of the total parking spaces provided by the #use#, whichever amount is greater, but in no event shall such reservoir space be required for more than 50 automobiles;
- c) that the #streets# providing access to such #use# will be adequate to handle the traffic generated thereby; and
- d) that where roof parking is permitted, such roof parking is so located as not to impair the essential character or future use or development.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the actions described herein having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on June 9, 2017, with respect to this application (CEQR No. 14DME010X) the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and Regulations have been met and that:

1. Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one which avoids or minimizes adverse environmental impacts to the maximum extent practicable; and

2. The adverse environmental impacts identified in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval, those project components related to the environment and mitigation measures that were identified as practicable; and

3. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached hereto as Exhibit A, with such administrative changes as are acceptable to Counsel to the Department of City Planning, has been executed and recorded in the Office of the Register, New York County. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.

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

RESOLVED, by the City Planning Commission, pursuant to Section 197-c and 200 of the New York City Charter, that based on the environmental determination and the consideration and findings described in this report, the application submitted by Gun Hill Square, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-531 of the Zoning Resolution to modify the requirements of:

1. Section 36-12 (Maximum Size of Accessory Group Parking Facilities) to allow an accessory group parking facility with a maximum capacity of 1169 spaces; and
2. Section 36-11 (General Provisions) to allow some of such off-street parking spaces to be located on the roof of a building;

in connection with a proposed mixed-use development on a property located at 1769-1771 East Gun Hill Road (Block 4804, part of Lot 100), in a C4-3 District, within a large-scale general development, Borough of the Bronx, Community District 12 is approved, subject to the following terms and conditions.

- 1) The property that is the subject of this application (C 170223 ZSX) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by BLT Architects Michael L. Prifti, filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
200.B	Site Plan	6-16-17
201	Zoning Analysis	6-16-17
214.A	Garage Floor Plans	6-16-17

- 2) Such development shall confirm to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plan listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
- 3) Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
- 4) All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
- 5) Upon failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.

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

The above resolution (C 170223 ZSX), duly adopted by the City Planning Commission on June 21, 2017 (Calendar No. 15) is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

MARISA LAGO, *Chair*

KENNETH J. KNUCKLES, Esq., Vice Chair

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, HOPE KNIGHT, ANNA HAYES LEVIN,

ORLANDO MARIN, LARISA ORTIZ, *Commissioners*

DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT

THIS DECLARATION, made as of this _____ [insert day] of _____ [month], 2017 by Gun Hill Square LLC, a _____ limited liability company, having an address at c/o Grid Properties Inc., 2309 Frederick Douglass Blvd., New York, New York, 10027 (“Declarant”).

WITNESSETH:

WHEREAS, the Declarant is the fee owner of certain real property located in the Borough of the Bronx, County of the Bronx, City and State of New York, designated for real property tax purposes as Block 4804, Part of Lot 100, which real property is more particularly described in **Exhibit A** annexed hereto and made a part hereof (the “Subject Property” or “Project Site”) and

WHEREAS, Declarant desires to improve the Subject Property as a “large-scale general development” meeting the requirements of Section 12-10 of the Zoning Resolution (Definition) definition of “large-scale general development” (such proposed improvement of the Subject Property the “Large Scale Development Project”); and

WHEREAS, In connection with the Large-Scale Development Project Declarant has filed an application with the New York City Department of City Planning (hereinafter “City Planning”) for approval by New York City Planning Commission (the “Commission”) of: (1) a zoning map amendment (Zoning Sectional Map 4a) to change the zoning on the Project Site from the existing M1-1 zoning district to a C4-3 zoning district (Application No.

170218ZMX); (2) a zoning text amendment to Zoning Resolution (“ZR”) § 74-744(a) to modify applicable district regulations to allow a physical culture establishment (fitness center) as part of a Large-Scale General Development (“LSGD”), and to modify Appendix F to designate the Project Site as included in the Mandatory Inclusionary Housing program (Application No. 170219ZRX); (3) a zoning special permit pursuant to ZR § 74-74 for a LSGD to modify (i) rear yard (ZR §§ 23-47, 33-26 and 35-23), (ii) height and setback regulations (ZR §§ 35-23, 23-641, 23-62) (Application No. 170221ZSX); and (iii) signage regulations to allow signs with greater height and surface area (ZR §§ 32-641, 32-644, 32-655, 32-656, and 32-657) (Application No. 170222ZSX); (4) a zoning special permit pursuant to ZR § 74-53 to allow an accessory group parking facility with more than the prescribed maximum number of parking spaces for an LSGD and roof parking (ZR §§ 36-12, 36-11) (Application No. 170223ZSX); and (5) disposition of the project site, a surplus property leased to the Metropolitan Transit Authority (“MTA”), comprising the southern 550,185 square foot portion of Lot 100 on Block 4804 (the “Project Site”) by the City of New York to EDC pursuant to New York City Charter Section 197(c) for subsequent sale to GHS (Application No. 170217PPX) (items (3) and (4) collectively, the “Large Scale Special Permits”, and items (1) through (6) collectively, the “Land Use Approvals”); and

WHEREAS to insure that (i) the development of the Subject Property is consistent with the analysis in the Final Environmental Impact Statement (“FEIS”) issued for City Environmental Quality Review Application No. 14MEO10X pursuant to Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY § 5-01 et seq. (“CEQR”) and the State Environmental Quality Review Act, New York State Environmental

Conservation Law § 8-0101 et seq. and the regulations promulgated thereunder at 6 NYCRR Part 617 (“SEQRA”) and incorporates certain requirements for mitigation of significant adverse environmental impacts, and (ii) the development of the Subject Property includes certain project components related to the environment which were material to the analysis of environmental impacts in the FEIS (“PCREs”), Declarant has agreed to (a) provide for the implementation of “Project Components Related to the Environment” (i.e., certain project components which were material to the analysis of environmental impacts in the FEIS) and (b) undertake the mitigation measures identified in Chapter 17 of the FEIS;

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

WHEREAS, _____ (the “Title Company”) has certified in the certification (the “Certification”) attached hereto as **Exhibit B-1** and made a part hereof, that as of _____, Declarant [and _____] is [are] the sole party [parties] -in-interest (the “Party [Parties] -in-Interest”) in the Subject Property, as such term is defined in the definition of “zoning lot” in Section 12-10 of the Zoning Resolution;

WHEREAS, all parties-in-interest to the Subject Property have either executed this Declaration or waived their right to execute and subordinated their interest in the Subject Property to this Declaration by written instrument annexed hereto as **Exhibit B-2** and made a part hereof, which instrument is intended to be recorded simultaneously with this Declaration;

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.

NOW THEREFORE: Declarant hereby declares covenants and agrees as follows:

ARTICLE I

DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

1.1 Designation of Large Scale General Development. Declarant hereby declares and agrees that, following the Effective Date (as defined in Section 2.3 hereof), the Subject Property, if developed pursuant to the Large Scale Special Permits, shall be treated as a large-scale general development site and shall be developed and enlarged as a single unit.

1.2 Development of Large Scale Development Site. If the Subject Property is developed in whole or part in accordance with the Large Scale Special Permits, Declarant covenants that the Subject Property shall be developed in substantial conformity with the Plans prepared by BLT Architects Group LLC. Listed below, approved as part of the Large Scale Special Permits and annexed hereto in **Exhibit C** and made a part hereof as such plans may be modified in accordance with Section 2.7 hereof:

Drawing No.	Title	Date
200.B	Site Plan	6-16-17
200.D	Detailed Open Space Plan	6-16-17
201	Zoning Analysis	6-16-17
204.A	Elevations/Signage Modifications	6-16-17
204.B	Elevations/Signage Modifications	6-16-17
204.C	Elevations/Signage Modifications	6-16-17
204.D	Elevations/Signage Modifications	6-16-17
204.E	Signage Waiver Plan	6-16-17
205	Waiver Plans and Sections	6-16-17
206.B	Details of Waiver Sections	6-16-17
208	Landscape Plan/Open Space	6-16-17
214.A	Garage Floor Plans	6-16-17

1.3 In the event that Declarant seeks to develop the Subject Property other than pursuant to the Large Scale Special Permits, Declarant may not develop the Subject Property except as permitted by the zoning district regulations and any other restrictions made applicable to the Subject Property pursuant to the Zoning Map Amendment and any other Land Use Approvals other than the Large Scale Special Permits.

1.4 Open Space Phasing.

(a) The residential buildings being developed as senior affordable housing on the Project Site as shown on **Exhibit C**, Plan 200.D, titled Detailed Open Space Plan, may be constructed in two phases, as indicated on Plan 2 of **Exhibit D** annexed hereto, with “Phase I” consisting of the westerly residential building, with a front entrance on Gun Hill Road, and

“Phase II” consisting of the easterly residential building, with a front entrance on the open space.

(b) As a condition to obtaining a temporary certificate of occupancy (“TCO”) for Phase I before Phase II, Declarant shall substantially complete the temporary open space area for Phase I in accordance with Plan 1 on **Exhibit D** annexed hereto.

(c) In the event that construction of Phase II has not commenced within two (2) years of the first TCO or PCO, whichever is issued first, for Phase I, the Declarant shall, within six (6) months of such two (2) year anniversary, provide temporary open space as shown on Plan 3 of **Exhibit D**, which temporary open space may be discontinued upon commencement of construction of Phase II. Failure to construct the open space in accordance with this Section 1.4(c) shall constitute a non-compliance with respect to the residential component of the Special Permit.

(d) In the event that construction of neither Phase I nor Phase II has commenced within two (2) years of the first TCO or PCO, whichever is issued first, for the commercial space in the Project, the Declarant shall, within two (2) months of such two (2) year anniversary, provide temporary open space as shown on Plan 4 of **Exhibit D**, which temporary open space may be discontinued upon commencement of construction of Phase I and/or Phase II. Failure to construct the open space in accordance with this Section 1.4(d) shall constitute a non-compliance with respect to the residential component of the Special Permit.

(e) In the event that construction of neither Phase I or Phase II has commenced within three (3) years of the first TCO or PCO, whichever is issued first, for the

commercial space in the Project, the Declarant shall, within six (6) months of such three (3) year anniversary, provide temporary open space as shown on Plan 5 of **Exhibit D**, which temporary open space may be discontinued upon commencement of construction of Phase I and/or Phase II. Failure to construct the open space in accordance with this Section 1.4(e) shall constitute a non-compliance with respect to the residential component of the Special Permit.

(f) Minor amendments to the configuration and design of the open space areas shown on Plan 200.D and on **Exhibit D** may be approved administratively by the Chairperson of the City Planning Commission, provided that the total size of the open space (excluding any driveways or parking spaces) and the amount of seating on such plan is not materially reduced.

1.5 Representation. Declarant hereby 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 and enlarge the Subject Property as a large-scale general development as set forth herein.

ARTICLE II

2.1 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;

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.

2.2 Recordation. Declarant shall File and record this Declaration in the Office of the City Register of the City of New York (the "Register's Office"), indexing it against the Subject Property on or after the date of the disposition of the Subject Property pursuant to ULURP Application No. 170217PPX (such date, the "Recording Date"). Declarant shall promptly provide to the Chair of the CPC a copy of the Declaration as recorded, so certified by the City Register. 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.

2.3 Effective Date. This Declaration and the provisions and covenants hereof shall become effective as of the date of recordation of this Declaration in accordance with Section 2.2 above (the “Effective Date”).

2.4 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:

(a) if to Declarant:

to the address at the commencement of this Declaration Attention: Drew Greenwald

(b)
with copies to:

Gotham Organization Inc.
432 Park Avenue South, 2nd Floor
New York, NY 10016
Attention: Mr. Joel Picket
Email: jpicket@gothamorganization.com

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
Attention: Gary R. Tarnoff
Email: gtarnoff@kramerlevin.com

(c) if to CPC:

New York City Planning Commission
120 Broadway, 31st Floor
New York, New York 10271
Attention: Chairperson

with a copy to:

the general counsel of CPC at the same address

(d) if to a Party in Interest other than Declarant:

at the address provided in writing to CPC in accordance with this Section 2.4

(e) if to a Mortgagee:

at the address provided in writing to CPC in accordance with this Section 2.4.

Declarant, CPC, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 2.4, 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 City or the CPC shall be provided to all Declarants of whom CPC has notice.

2.5 Defaults and Remedies.

(a) Declarant acknowledges that the restrictions, covenants, and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as

benefit the City. If Declarant fails to perform any of Declarant's obligations under this Declaration, the City shall have the right to enforce this Declaration against Declarant and exercise any administrative legal or equitable remedy available to the City, and Declarant hereby consents to same; provided that this Declaration shall not be deemed to diminish Declarant's or any other Party in Interest's right to exercise any and all administrative, legal, or equitable remedies otherwise available to it, and provided further, that the City's rights of enforcement shall be subject to the cure provisions and periods set forth in Section 2.5(c) hereof. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive and that the City and any agency thereof may pursue other remedies not specifically set forth herein including, but not limited to, a mandatory injunction compelling Declarant to comply with the terms of this Declaration and a revocation by the City of any certificate of occupancy, temporary or permanent, for any portion of the Large Scale Development Project on the Subject Property subject to the Large Scale Special Permits; provided, however, that such right of revocation shall not permit or be construed to permit the revocation of any certificate of occupancy for any use or improvement that exists on the Subject Property as of the date of this Declaration;

(b) Notwithstanding any provision of this Declaration, only Declarant, and Declarant's successors and assigns and the City, acting through CPC, shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration. Nothing contained herein should be construed or deemed to allow any other person or entity to have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Large Scale Special Permits.

(c) Prior to City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, City shall give Declarant, every mortgagee of all or any portion of the Property (a "Mortgagee") and every Party in Interest thirty (30) business days written notice of such alleged violation, during which period Declarant, any Party in Interest and Mortgagee shall have the opportunity to effect a cure of such alleged violation or to demonstrate to City why the alleged violation has not occurred. If a Mortgagee or Party in Interest performs any obligation or effects any cure Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including CPC and City, as if performed by Declarant. If Declarant, any Party in Interest or Mortgagee commences to effect such cure within such thirty (30) day period (or if cure is not capable of being commenced within such thirty (30) day period, Declarant, any Party in Interest or Mortgagee commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid thirty (30) day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as Declarant, any Party in Interest or Mortgagee continues to proceed diligently with the effectuation of such cure. In the event that more than one Declarant exists at any time on the Subject Property, notice shall be provided to all Declarants from whom City has received notice in accordance with Section 8 hereof, and the right to cure shall apply equally to all Declarants.

(d) If, after due notice and opportunity to cure as set forth in this Declaration, Declarant, Mortgagee or a Party in Interest shall fail to cure the alleged violation, the City

may exercise any and all of its rights, including without limitation those delineated in this Section 2.5(d) and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Declarant is in default of a material obligation under this Declaration.

2.6 Applications.

(a) 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 "Permit") for any portion of the Large Scale Development Project subject to the Large Scale Special Permits. Subject to Section 1.4 above, nothing in this Declaration including but not limited to the declaration and covenant made in Section 1.1 hereof to develop and enlarge the Subject Property as a single unit, shall be construed to prohibit or preclude Declarant from filing for, or DOB from issuing, any permit for all or any portion of the Large Scale Development Project, in such phase or order as Declarant sees fit in Declarant’s sole discretion.

(b) 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 discretionary approval, and provided that nothing in this Section 2.6(b) shall be construed as superseding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

2.7 Amendment, Modification and Cancellation.

(a) 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.

(b) Notwithstanding anything to the contrary contained in Section 2.7(a) hereof, the Chair of CPC may by its express written consent administratively approve modifications or amendments to this Declaration that, in the sole judgment of the Chair, are determined by the Chair to be a minor amendment or modification of this Declaration, and such minor modifications and amendments shall not require the approval of CPC.

2.8 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.

2.9 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.

IN WITNESS WHEREOF, the undersigned has executed this Declaration this

_____ [insert date].

By:

Name:

Title:

[Standard Acknowledgment]

Exhibit A

Legal Description of Subject Property

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND WITH THE BUILDINGS AND IMPROVEMENTS THEREON ERECTED, SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE NORTHERLY SIDE OF GUN HILL ROAD WITH THE WESTERLY SIDE OF EDSON AVENUE,

THENCE ALONG THE NORTHERLY STREETLINE OF GUN HILL ROAD 1146.16' TO A POINT,

THENCE IN A NORTHEASTERLY DIRECTION HAVING INTERIOR ANGLE WITH THE LAST COURSE 59 DEGREES 33 MINUTES AND 21 SECONDS (59d-33'-21") A DISTANCE OF 437.88' TO A POINT,

THENCE 90 DEGREES TO THE RIGHT FROM THE LAST COURSE 145.38' TO A POINT,

THENCE 90 DEGREES TO THE LEFT FROM THE LAST COURSE 490.00' TO A POINT ON THE SOUTHERLY STREET LINE OF EDSON AVENUE,

THENCE ALONG THE SOUTHERLY STREET LINE OF EDSON AVENUE 600.00' TO A POINT,

THENCE ALONG THE SAME SOUTHERLY STREET LINE OF EDSON AVENUE 380.25' ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 240.00' AND AN INTERIOR ANGLE OF 90 DEGREES 46 MINUTES AND 37 SECONDS (90d-46'-37") TO A POINT,

THENCE 114.14' ALONG THE SAME EDSON AVENUE TO THE INTERSECTION WITH THE NORTHERLY STREET LINE OF GUN HILL ROAD BEING THE POINT AND PLACE OF BEGINNING.

Exhibit B-1

Parties in Interest Certification

Exhibit B-2

Waivers

Exhibit C

Architectural Plans

Exhibit D

Open Space Phasing Plans