

## CITY PLANNING COMMISSION



September 5, 2018 / Calendar No. 10

C 180267 ZSQ

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**IN THE MATTER OF** an application submitted by 69-02 Queens Boulevard Woodside LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-743 of the Zoning Resolution to modify the height and setback requirements of Sections 23-664 (Modified height and setback regulations for certain Inclusionary Housing buildings or affordable independent residence for seniors) to facilitate a proposed mixed-use development, within a large scale general development, on property generally bounded by Queens Boulevard, 70<sup>th</sup> Street, 47<sup>th</sup> Avenue, and 69<sup>th</sup> Street (Block 2432, Lots 9, 21, 41, 44, and 50), in R7X/C2-3 Districts, Borough of Queens, Community District 2.

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This application (C 180267 ZSQ) for a special permit was filed by 69-02 Queens Boulevard Woodside LLC on March 30, 2018. The proposed special permit, in conjunction with the related actions (C 180265 ZMQ and N 180266 ZRQ), would facilitate a new mixed-use, affordable housing development within a large scale general development, on property generally bounded by Queens Boulevard, 70<sup>th</sup> Street, 47<sup>th</sup> Avenue, and 69<sup>th</sup> Street (Block 2432, Lots 9, 21, 41, 44, and 50) in the Woodside neighborhood of Queens, Community District 2.

### RELATED ACTIONS

In addition to the proposed special permit (C 180267 ZSQ), which is the subject of this report, the proposed project also requires action by the City Planning Commission on the following applications which are being considered concurrently with this application:

|              |  |
|--------------|--|
| C 180265 ZMQ | Zoning Map amendment to change an M1-1 district to an R7X/C2-3 district        |
| N 180266 ZRQ | Zoning text amendment 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 zoning map amendment action (C 180265 ZMQ).

## **ENVIRONMENTAL REVIEW**

This application (C 180267 ZSQ), in conjunction with the related applications (C 180265 ZMQ and N 180266 ZRQ) 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 18DCP132Q. The lead agency is the City Planning Commission.

A summary of the environmental review appears in the report for the related zoning map amendment (C 180265 ZMQ).

## **UNIFORM LAND USE REVIEW**

This application (C 180267 ZSQ), in conjunction with the application for the related zoning map amendment (C 180265 ZMQ), was certified as complete by the Department of City Planning on April 9, 2018 and duly referred to Queens Community Board 2 and the Queens 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 180266 ZRQ), which was referred for information and review in accordance with the procedures for non-ULURP matters.

### **Community Board Public Hearing**

Queens Community Board 2 held a public hearing on this application (C 180267 ZSQ) on May 14, 2018, and on June 7, 2018, by a vote of 29 in favor, one opposed, and none abstaining, adopted a resolution recommending disapproval of the application.

### **Borough President Recommendation**

This application (C 180267 ZSQ) was considered by the Queens Borough President who issued a recommendation approving the application with conditions on July 12, 2018. A summary of the Borough President's recommendation and conditions appear in the report for the related zoning map amendment (C 180265 ZMQ).

## **City Planning Commission Public Hearing**

On July 25, 2018 (Calendar No. 9), the City Planning Commission scheduled August 8, 2018, for a public hearing on this application (C 180267 ZSQ), in conjunction with the related applications (C 180265 ZMQ and N 180266 ZRQ). The hearing was duly held on August 8, 2018 (Calendar No. 29). There were several appearances, as described in the report for the related zoning map amendment (C 180265 ZMQ), and the hearing was closed.

## **CONSIDERATION**

The Commission believes that this application for a special permit (C 180267 ZSQ), in conjunction with the related applications (C 180265 ZMQ and N 180266 ZRQ), is appropriate. A full consideration and analysis of the issues and the reasons for approving this application appear in the report for the related zoning map amendment (C 180265 ZMQ).

## **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 74-743(a)(2) of the Zoning Resolution:

- (1) the distribution of #floor area#, #open space#, #dwelling units#, #rooming units# and the location of #buildings#, primary business entrances and #show windows# will result in a better site plan and a better relationship among #buildings# and open areas to adjacent #streets#, surrounding development, adjacent open areas and shorelines than would be possible without such distribution and will thus benefit both the occupants of the #large-scale general development#, the neighborhood and the City as a whole;
- (2) the distribution of #floor area# and location of #buildings# will not unduly increase the #bulk# of #buildings# in any one #block# or unduly obstruct access of light and air to the detriment of the occupants or users of #buildings# in the #block# or nearby #blocks# or of people using the public #streets#;
- (3) Not applicable

- (4) considering the size of the proposed #large-scale general development#, the #streets# providing access to such #large-scale general development# will be adequate to handle traffic resulting therefrom;
- (5) when the Commission has determined that the #large-scale general development# requires significant addition to existing public facilities serving the area, the applicant has submitted to the Commission a plan and timetable to provide such required additional facilities. Proposed facilities that are incorporated into the City's capital budget may be included as part of such plan and timetable;
- (6) Not applicable
- (7) Not applicable
- (8) Not applicable
- (9) Not applicable
- (10) a declaration with regard to ownership requirements in paragraph (b) of the #large-scale general development# definition in Section 12-10 (DEFINITIONS) has been filed with the Commission; and
- (11) Not applicable

## **RESOLUTION**

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

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination and the consideration and findings described in this report, the application submitted by 69-02 Queens Boulevard Woodside

LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-743 of the Zoning Resolution to modify the height and setback requirements of Sections 23-664 (Modified height and setback regulations for certain Inclusionary Housing buildings or affordable independent residence for seniors) to facilitate a proposed mixed-use development, within a large scale general development, on property generally bounded by Queens Boulevard, 70<sup>th</sup> Street, 47<sup>th</sup> Avenue, and 69<sup>th</sup> Street (Block 2432, Lots 9, 21, 41, 44, and 50), in R7X/C2-3 Districts, Borough of Queens, Community District 2, is approved, subject to the following conditions:

1. The property that is the subject of this application (C 180267 ZSQ) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following approved plans, prepared by Perkins Eastman Architects, filed with this application and incorporated in this resolution:

| <b><u>Dwg. No.</u></b> | <b><u>Title</u></b>           | <b><u>Last Date Revised</u></b> |
|------------------------|-------------------------------|---------------------------------|
| G-01                   | Cover Sheet & Drawing List    | 08/27/2018                      |
| Z-20                   | Zoning Analysis               | 08/27/2018                      |
| Z-30                   | Zoning Lot Site Plan          | 08/27/2018                      |
| Z-31                   | Enlarged Zoning Lot Site Plan | 08/27/2018                      |
| Z-50                   | Waiver Plan - Roof Plan       | 08/27/2018                      |
| Z-51                   | Lot Coverage Plan             | 08/27/2018                      |
| Z-52                   | Required Yards Plan           | 08/27/2018                      |
| Z-60                   | Waiver Sections - West Tower  | 08/27/2018                      |
| Z-61                   | Waiver Sections - West Tower  | 08/27/2018                      |
| Z-62                   | Waiver Sections - West Tower  | 08/27/2018                      |
| Z-63                   | Waiver Sections - East Tower  | 08/27/2018                      |
| Z-64                   | Waiver Sections - East Tower  | 08/27/2018                      |
| Z-65                   | Waiver Sections - Overall     | 08/27/2018                      |
| Z-66                   | Waiver Sections - Overall     | 08/27/2018                      |
| Z-67                   | Waiver Sections - West Tower  | 08/27/2018                      |

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached hereto as Exhibit A, with such administrative changes as are acceptable to Counsel to the Department of City Planning, have been executed and recorded in the Office of the City Register, New York County. Such restrictive declaration shall be deemed incorporated herein as a condition to this resolution.
5. In the event that the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association or cooperative ownership, a copy of this report and resolution and any subsequent modifications shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.
6. 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.
7. 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.

8. 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 180267 ZSQ), duly adopted by the City Planning Commission on September 5, 2018 (Calendar No. 10), 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 Chairman**

**ALLEN P. CAPPELLI, Esq., ALFRED C. CERULLO, III, JOSEPH I. DOUEK,  
CHERYL COHEN EFFRON, HOPE KNIGHT, ANNA HAYES LEVIN,  
ORLANDO MARIN, LARISA ORTIZ, Commissioners**

**RICHARD W. EADDY, Commissioner, Recused**



Melinda Katz  
Queens Borough President

June 11, 2018

## Community Board No. 2

43-22 50th Street, 2nd Floor  
Woodside, New York 11377

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[www.nyc.gov/queenscb2](http://www.nyc.gov/queenscb2)

Denise Keehan-Smith  
Chairwoman  
Debra Markell Kleinert  
District Manager

Ms. Marisa Lago  
Director  
Department of City Planning  
City Planning Commission  
Calendar Information Office  
120 Broadway, 31<sup>st</sup> Floor  
New York, NY 10271

### RE: ULURP Application # C180267 ZSQ – 69-02 Queens Boulevard

Dear Ms. Lago:

On June 7, 2018, Community Board 2 (“CB2”) held a public hearing concerning the ULURP Application for 69-02 Queens Boulevard, Woodside, NY.

At that meeting with a quorum present, a motion was made and seconded to oppose this application. The motion passed resoundingly with 29 CB2 members voting in favor of the motion, only 1 voting in opposition, and none abstaining.

The underlying basis for the strong opposition reflected in CB2’s vote to oppose this application is set forth below.

The primary consideration is that this application proposes building height, bulk and density that far exceeds the Woodside-Maspeth rezoning of this area that was approved and effected in 2006 after a comprehensive study by DCP, and a great deal of careful thought, consideration, community input, and public review. It concluded that an R7X zone along this part of Queens Boulevard would be the best result for the area. There is nothing in this application that provides, or suggests, any meaningful community benefit in providing this applicant with the significant and extensive increases it seeks.

The current R7X district in which this site is located is a contextual district with a maximum FAR of 5.0 and a maximum building height of 125 feet, which would generally translate into new buildings of 10-12 stories. It would permit a maximum *floor area ratio (FAR)* of up to 5.0 for affordable housing developments pursuant to the Inclusionary Housing Program. Developments not participating in the program would be allowed a maximum FAR of 3.75 as of right.

This ULURP application proposes two towers of 181 and 151 ft. each., which are out of completely context with the existing zoning. Community Board 2 opposes this Application, and maintains that the as

of right density is the most, and only, appropriate one for this neighborhood and wholly sufficient for a viable development.

The proposed ULURP application would allow for 561 total apartments (a net difference of 322 apartments from 289 that would be permitted “as of right”), with 112 of them being affordable (an increase of 54 up from the original 58 that would be required “as of right”). The rezoned complex also plans for significantly decreased commercial space at 5,640 ft<sup>2</sup> compared to the as-of-right-now plan of 14,160 ft<sup>2</sup>, and no community facility space.

The “affordable housing” Madison Realty Capital promises to create will be targeted at households making much more than those who currently live in this area, while the market-rate apartments they create will be targeted at even wealthier households. As stipulated by the city’s Mandatory Inclusionary Housing policy, the developer would set aside 30% of new units for households earning an average of 80% AMI—or \$83,440 for a family of 4. Median incomes in this census tract (Queens 489), however, are just \$22,061 per capita, or \$62,500 per household.

In no meaningful sense would this project provide much-needed affordable housing, nor would it help dampen neighborhood rent levels. Moreover, it could raise neighborhood land values and increase speculative interest in this section of Queens.

In addition, it would add to an already overburdened school capacity for the children of its residents. This site is located in School District 24, which currently is one of the most overcrowded school district in NYC. Additional population, and without the simultaneous addition of new school seats, will exacerbate this situation and will result in undue overcrowding and hardship to neighborhood children.

Furthermore, there are significant traffic and parking concerns about the real and potential adverse effects on the community that this development would have. As to traffic, the sole ingress and egress from its parking garage is on 69<sup>th</sup> Street, which is a very heavily travelled, and often congested, north-south thoroughfare in the community. The addition of merging vehicles from the development onto 69<sup>th</sup> Street will create further congestion and safety problems. As for parking, it is a scarce commodity in this neighborhood and the proposed parking on site will not be free. The developer did not mention the cost to residents to park, or if they will offer an attractive rate to their tenants as an incentive to park on site. The inability to secure parking on site will also add to the already over crowded streets.

Lastly, although the board cannot mandate union jobs, the developer indicated that they would not use union labor.

On May 14, 2018, CB2 held a public meeting at St. Mary’s Parish Center to hear and listen to the concerns of the community residents with respect to this application. Approximately 200 people attended. Their testimony was contentious and nearly unanimous in expressing strong opposition to this application. Much of their testimony echoed the grounds on which CB2’s vote was based, as outlined above.

CB2 is particularly concerned about Madison Realty Capital’s history. In 2012, the company partnered with Slate Property Group—the notorious developers behind the Rivington House project, in which an AIDS hospice center was converted to luxury condominiums—to purchase 176 Woodward Avenue in Ridgewood for under \$770,000. They requested a rezoning to build a 125-unit residential building, featuring 50% affordable housing and spaces for local artists, and the City granted their request. Less than two years later, however, Madison Realty Capital and Slate flipped the lot for \$18.5 million dollars,

thus realizing an alarming 2,303% profit off the city's rezoning. Meanwhile, the new owners were not bound by the same affordability limits as those the city negotiated with Madison Realty Capital. Our community should not be subject to the potential machinations of a prospective developer with such a reputation, who may well secure another windfall if this application is granted and walk away with a great deal of profit without providing the community with any real corresponding benefit in return.

CB2 maintains that the as of right zoning density is sufficient for a developer to realize a reasonable return on their investment, and that there is no hardship or other compelling reason presented by the existing zoning that would require rezoning. This proposal is specifically designed to enrich the developer, without significant benefit to the community.

If you have any questions, please feel free to contact the Community Board 2 office.

Sincerely,

*Debra Markell Kleinert/mag*

Debra Markell Kleinert

District Manager

DMK/mag

cc: Honorable Joseph Crowley, US Congress  
Honorable Carolyn B. Maloney, US Congress  
Honorable Grace Meng, US Congress  
Honorable Nydia M. Velazquez, US Congress  
Honorable Michael Gianaris, NY State Senate  
Honorable Brian Barnwell, NYS Assembly  
Honorable Michael DenDekker, NYS Assembly  
Honorable Catherine T. Nolan, NYS Assembly  
Honorable Robert Holden, NYC Council Member  
Honorable Jimmy Van Bramer NYC Council Member  
Honorable Daniel Dromm, NYC Council Member  
Honorable Melinda Katz, Queens Borough President of the Borough of Queens  
Honorable Melva Miller, Deputy Borough President  
Irving Poy, Queens Borough President's Office  
John Perricone, Queens Borough President's Office  
Ross Moskowitz, Esq., Stroock & Stroock & Lavan, LLP  
Denise Keehan-Smith, Chairwoman, Community Board 2  
Lisa Deller, Chair, Land Use Committee CB 2



## Community/Borough Board Recommendation

Pursuant to the Uniform Land Use Review Procedure

Application #: **C 180267 ZSQ**

CEQR Number: 18DCP132Q

Project Name: **69-02 Queens Boulevard**

Borough(s): **Queens**

Community District Number(s): **02**

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

### **SUBMISSION INSTRUCTIONS**

1. Complete this form and return to the Department of City Planning by one of the following options:
  - **EMAIL (recommended):** Send email to [CalendarOffice@planning.nyc.gov](mailto:CalendarOffice@planning.nyc.gov) and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C100000ZSQ"
  - **MAIL:** Calendar Information Office, City Planning Commission, 120 Broadway, 31<sup>st</sup> Floor, New York, NY 10271
  - **FAX:** to (212) 720-3488 and note "Attention of the Calendar Office"
2. Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

#### Docket Description:

**IN THE MATTER OF** an application submitted by 69-02 Queens Blvd Woodside LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-743 of the Zoning Resolution to modify the height and setback requirements of Sections 23-664 (Modified height and setback regulations for certain Inclusionary Housing buildings or affordable independent residence for seniors) to facilitate a proposed mixed-use development, within a large scale general development, on property generally bounded by Queens Boulevard, 70<sup>th</sup> Street, 47<sup>th</sup> Avenue, and 69<sup>th</sup> Street (Block 2432, Lots 8, 9, 21 41, 44, and 50), in R7X/C2-3\* Districts, Borough of Queens, Community District 2.

\* Note: The site is proposed to be rezoned by changing from an M1-1 District to R7X and by establishing a C2-3 District within the proposed R7X under a concurrent related application for a Zoning Map change (C 180265 ZMQ).

Plans for this proposal are on file with the City Planning Commission and may be seen at 120 Broadway, 31<sup>st</sup> Floor, New York, N.Y. 10271-0001.

|   |  |
|---|--|
| Applicant(s):<br>69-02 Queens Blvd Woodside LLC<br>825 Third Avenue, 37th Floor<br>New York, NY 10022 | Applicant's Representative:<br>Ross F. Moskowitz, Esq.<br>Stroock & Stroock & Lavan LLP<br>180 Maiden Lane<br>New York, NY 10038 |
|---|--|

|   |  |
|---|--|
| Recommendation submitted by:<br>Queens      Community Board 2 |  |
|---|--|

|   |   |
|---|---|
| Date of public hearing: <i>June 7, 2018</i> | Location: <i>Sunnyside Community Services</i> |
|---|---|

|   |   |
|---|---|
| Was a quorum present? YES <input checked="" type="checkbox"/> NO <input type="checkbox"/> | A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members. |
|---|---|

|                                   |  |
|-----------------------------------|--|
| Date of Vote: <i>June 7, 2018</i> | Location: <i>43-31 39<sup>th</sup> Street, Sunnyside, NY 11104</i> |
|-----------------------------------|--|

|  |   |
|--|---|
| <b>RECOMMENDATION</b>                          |   |
| <input type="checkbox"/> Approve               | <input type="checkbox"/> Approve With Modifications/Conditions    |
| <input checked="" type="checkbox"/> Disapprove | <input type="checkbox"/> Disapprove With Modifications/Conditions |

*See attached letter*

|  |  |  |  |
|--|--|--|--|
| <b>Please attach any further explanation of the recommendation on additional sheets, as necessary.</b> |  |  |  |
|--|--|--|--|

|        |                       |                     |                        |   |
|--------|-----------------------|---------------------|------------------------|---|
| Voting | # In Favor: <i>29</i> | # Against: <i>1</i> | # Abstaining: <i>0</i> | Total members appointed to the board: <i>49</i> |
|--------|-----------------------|---------------------|------------------------|---|

|  |                               |                        |
|--|-------------------------------|------------------------|
| Name of CB/BB officer completing this form<br><i>Debra Marie Klemmer/May</i> | Title<br><i>District Mgr.</i> | Date<br><i>6/21/18</i> |
|--|-------------------------------|------------------------|

# Queens Borough President Recommendation

APPLICATION: ULURP #180267 ZSQ

COMMUNITY BOARD: Q02

## DOCKET DESCRIPTION

IN THE MATTER OF an application submitted by Stroock & Stroock & Lavan LLP on behalf of 69-02 Queens Blvd Woodside LLC, pursuant to Sections 197-c and 201 of the NYC Charter for the grant of a Special Permit pursuant to Section 74-743 of the NYC Zoning Resolution to modify the height and setback requirements of Section 23-664 to facilitate a proposed mixed-use development, within a Large Scale General Development located on property generally bounded by Queens Boulevard, 70<sup>th</sup> Street, 47<sup>th</sup> Avenue, and 69<sup>th</sup> Street, in a R7X/C2-3 District, (Block 2432, Lots 8, 9, 21, 41, 44 and 50), Zoning Map 9d, Woodside, Borough of Queens. (Related applications ULURP #180265 ZMQ, ULURP #180266 ZRQ)

## PUBLIC HEARING

A Public Hearing was held in the Borough President's Conference Room at 120-55 Queens Boulevard on Thursday, June 21, 2018, at 10:30 A.M. pursuant to Section 82(5) of the New York City Charter and was duly advertised in the manner specified in Section 197-c (i) of the New York City Charter. The applicant made a presentation. There were no other speakers. The hearing was closed.

## CONSIDERATION

Subsequent to a review of the application and consideration of testimony received at the public hearing, the following issues and impacts have been identified:

- The applicant is requesting the grant of a Special Permit for a Large Scale General Development that would allow the proposed project to exceed the building height and setback limits of the R7X District;
- The project site is an irregularly shaped 1.65 acre parcel located between the northwest corner of 69<sup>th</sup> Street and Queens Boulevard and the southeast corner of 70<sup>th</sup> Street and 47<sup>th</sup> Avenue. An elevated railroad bridge cuts diagonally across the corner of 69<sup>th</sup> Street and 47<sup>th</sup> Avenue (southwest corner of site) and is supported by a berm built on property owned by the Metropolitan Transportation Authority. The total lot area is 71,984 sf. Existing development on the site consists of a variety of low-scale residential, retail, commercial and industrial buildings. The split zoning of the site was mapped as part of the Maspeth-Woodside rezoning approved in 2006;
- The proposed project is two L-shaped towers at the northwest and southeast corners of the site. The proposed total square footage for the entire project is 431,904 sf with 426,264 sf residential space 5,640 sf of retail space. There would be 561 dwelling units of which 30% (169 dwelling units) would be affordable pursuant to Option 2 (30% of units with an average 80% AMI) of the Mandatory Inclusionary Housing (MIH) program. The northwest tower is proposed to be 17-stories (181.5 feet) and the southeast tower is proposed to be 14-stories (151.5 feet). Parking for 242 cars would be provided in a structure built between the two towers with access from 69<sup>th</sup> Street. A public landscaped walkway with seating areas would be provided along the southwest portion of the lot along side the berm and the elevated railroad bridge from 69<sup>th</sup> Street to 47<sup>th</sup> Avenue. The rooftop of the parking structure would be landscaped as a green space available to the residents of the project;
- In addition to the proposed Special Permit for a Large Scale General Development Special Permit, the applicant has also filed an application for a zoning change for a portion of the project site from M1-1 to R7X with a C2-3 overlay. A zoning text amendment to Appendix F is also required to establish the rezoned area as a Mandatory Inclusionary Housing Area;
- The areas north and southwest of the site are predominantly developed with low-scale housing. The areas south of the property are developed with a mix of low-scale commercial and industrial buildings with some housing mixed in. Queens Boulevard is developed with a mix of low-scale commercial and auto-related uses with some housing. There is some newer residential construction on Queens Boulevard east of the site that are 7-, 9- and 11-stories in height;
- Community Board 2 disapproved this application by a vote of twenty-nine (29) against with one (1) in favor with none (0) abstaining at a public hearing held on June 7, 2018. CB 2's concerns included: the site was rezoned in the 2006 Woodside-Maspeth rezoning that mapped the R7X/C2-3 District on Queens Boulevard with consideration that the zoning would yield appropriate building heights and density for that area with or without affordable Inclusionary Housing; the proposed 15- and 18-story towers are out of context with the immediate neighborhood; the cost of the affordable and market rate housing would be higher than the median income of the census tract for the area and might cause increases of neighborhood land values and rent levels; the added population would further burden school overcrowding with no new schools planned; the project would exacerbate existing traffic congestion and safety issues on 69<sup>th</sup> Street and the shortage of street parking in the area; the developer's lack of commitment to use union labor; and the proposed rezoning and development does not benefit the community.

## RECOMMENDATION

The 2006 Maspeth-Woodside rezoning was approved through the ULURP public review process. This portion of Queens Boulevard, which is surrounded by predominantly low-scale buildings, was identified as an appropriate area for taller buildings up to 14-story buildings while maintaining the scale of the neighborhoods around the boulevard.

Based on the above consideration, I hereby recommend approval of the Special Permit that would allow the proposed project to exceed the building and setback limits of the R7X district. The proposed project should be modified:

- Instead of the requested modification of the R7X 14-story height limit the project building heights should be lowered and bulk redistributed to stay within the 140 feet height restriction. This would make the scale of the project closer to the newer development near the applicant's site on Queens Boulevard;
- Overcrowding of the area schools is a major problem in this neighborhood. To help alleviate the shortage of school seats in this neighborhood the applicant should work with the School Construction Authority on siting a school on the site, and deliver the core and shell of a new school of appropriate size;
- Consideration of adjusting the depth of the proposed income bands for the affordable housing to provide more housing opportunities for area residents who are priced out at the proposed levels.



PRESIDENT, BOROUGH OF QUEENS

7/23/18  
DATE

**EXHIBIT A**

**DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT**

**QUEENS COUNTY**

Dated as of \_\_\_\_\_, 201[ ]

Block 2432, Lots 9, 21, 41, 44, and 50

**RECORD AND RETURN TO:**

Stroock & Stroock & Lavan LLP

180 Maiden Lane

New York, NY 10038

Attention: John Egnatios-Beene, Esq.

## **DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT**

THIS DECLARATION, made as of this [insert day] of [month], [year] (the “Declaration”), by 69-02 QUEENS BLVD WOODSIDE LLC, a New York limited liability company, having a principal office at 825 Third Avenue, 37th Floor, New York, New York 10022 (“Declarant”).

### **WITNESSETH:**

WHEREAS, the Declarant is the fee owner of certain real property located in the Borough of Queens, County of Queens, City and State of New York, designated for real property tax purposes as Block 2432, Lots 9, 21, 41, 44, and 50, which real property is more particularly described in Exhibit A annexed hereto and made a part hereof (the “Subject Property”):

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

WHEREAS, in connection with the Large-Scale Development Project, Declarant has filed an application with the New York City Department of City Planning (“City Planning”) for approval by New York City Planning Commission (the “Commission” or “CPC”) of: (1) a Map Amendment to Zoning Map 9d to change a portion of the Subject Property from an M1-1 zoning district to an R7X/C2-3 zoning district, under Application No. C 180265 ZMQ; (2) a Text Amendment to Appendix F of the Zoning Resolution to create a Mandatory Inclusionary Housing district at the Subject Property under Application No. N 180266 ZRQ; and (3) a

Special Permit, pursuant to Zoning Resolution Section 74-743, to waive certain height regulations applicable to the Subject Property under Application No. C 180267 ZSQ (the “Large-Scale Special Permit”) (collectively, the “Land Use Applications”);

WHEREAS, the site plan for the Large-Scale Development Project, attached hereto as Exhibit C, designates a pedestrian walkway that is to be constructed and maintained by Declarant and accessible to the public as set forth in this Declaration (referred to herein as the “Public Walkway”);

WHEREAS, in connection with the Land Use Applications, an Environmental Assessment Statement (the “EAS”) was completed as part of City Environmental Quality Review (“CEQR”) Application No. 18DCP132Q; that the EAS was performed pursuant to Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY §5-01 et seq. 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”); that the EAS determined the Land Use Applications would not have a significant adverse impact on the environment;

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 of the Zoning Resolution be filed with the Commission;

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 [Mortgagee(s)] are the sole

parties-in-interest (the “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 herein defined, the Subject Property, if developed pursuant to the Large-Scale Special Permit, 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 Permit, Declarant covenants that the Subject Property shall be developed in substantial conformity with the following plans prepared by Perkins Eastman, approved as part of the Large-Scale Special Permit and annexed hereto in **Exhibit “C”** and made a

part hereof (the “Plans”):

| <b>Drawing No.</b> | <b>Title</b>                  | <b>Date</b> |
|--------------------|-------------------------------|-------------|
| G-01               | Cover Sheet & Drawing List    | 08/27/2018  |
| Z-20               | Zoning Analysis               | 08/27/2018  |
| Z-30               | Zoning Lot Site Plan          | 08/27/2018  |
| Z-31               | Enlarged Zoning Lot Site Plan | 08/27/2018  |
| Z-50               | Waiver Plan - Roof Plan       | 08/27/2018  |
| Z-51               | Lot Coverage Plan             | 08/27/2018  |
| Z-52               | Required Yards Plan           | 08/27/2018  |
| Z-60               | Waiver Sections - West Tower  | 08/27/2018  |
| Z-61               | Waiver Sections - West Tower  | 08/27/2018  |
| Z-62               | Waiver Sections - West Tower  | 08/27/2018  |
| Z-63               | Waiver Sections - East Tower  | 08/27/2018  |
| Z-64               | Waiver Sections - East Tower  | 08/27/2018  |
| Z-65               | Waiver Sections - Overall     | 08/27/2018  |
| Z-66               | Waiver Sections - Overall     | 08/27/2018  |
| Z-67               | Waiver Sections - West Tower  | 08/27/2018  |
| Z-101              | Landscape Walkway Plan        | 08/27/2018  |

## **ARTICLE II**

### **PUBLIC WALKWAY**

#### **2.1 Construction of the Public Walkway.**

(a) Declarant shall construct the Public Walkway substantially in accordance with the specifications in Drawing No. [\_\_\_\_\_]

of the Plans, attached hereto in Exhibit C.

(b) Declarant, at its sole cost and expense, shall diligently apply for and prosecute the applications for all City, State, and Federal permits and approvals to fully construct the Public Walkway.

(c) Declarant shall not accept a Temporary or Permanent Certificate of Occupancy from the New York City Department of Buildings (“DOB”) for any of the residential units on the Subject Property until the Chairperson of the CPC (the “Chair”) certifies to Declarant and DOB that the Public Walkway is Substantially Complete (defined herein), in accordance with the following provisions:

(i) *Notification.* Declarant shall notify the Chair at such time as it believes that the Public Walkway is Substantially Complete and shall request that the Chair issue a certification to Declarant and DOB certifying the Substantial Completion of the Public Walkway.

(ii) *Initial Review.* No later than twenty (20) days after the receipt of the notification set forth in Section 2.1(c)(i) herein, the Chair shall either: (A) issue a Notice of Substantial Completion; or (B) deliver to Declarant written notice setting forth the reasons why the Public Walkway is not Substantially Complete

and the items that need to be completed in order to determine that the Public Walkway is Substantially Complete.

(iii) *Subsequent Review.* Upon completing the outstanding work specified by the Chair to achieve Substantial Completion, Declarant shall notify the Chair of such completion. No later than ten (10) calendar days of the receipt of such notice, the Chair shall either: (A) issue a Notice of Substantial Completion; or (B) notify Declarant in writing of items that have not been completed or satisfactorily performed. This process shall continue until the Chair has issued a Notice of Substantial Completion.

(iv) “Substantial Completion” or “Substantially Complete” shall mean that the Public Walkway has been constructed substantially in accordance with the Plans and has been completed to such an extent that all portions of the Public Walkway may be operated and made available for public use.

(d) Declarant shall not accept a Permanent Certificate of Occupancy from DOB for any of the residential units on the Subject Property until the Chair certifies to Declarant and DOB that the Public Walkway is Finally Complete (defined herein), in accordance with the following provisions:

(i) *Notification.* Declarant shall notify the Chair at such time as it believes that the Public Walkway is Finally Complete and shall request that the Chair issue a certification to Declarant and DOB certifying the Final Completion of the Public Walkway.

(ii) *Initial Review.* No later than twenty (20) days after the receipt of the notification set forth in Section 2.1(d)(i) herein, the Chair shall either: (A) issue a Notice of Final Completion; or (B) deliver to Declarant written notice setting forth the reasons why the Public Walkway is not Finally Complete and the items that need to be completed in order to determine that the Public Walkway is

Finally Complete.

(iii) *Subsequent Review.* Upon completing the outstanding work specified by the Chair to achieve Final Completion, Declarant shall notify the Chair of such completion. No later than ten (10) calendar days of receipt of such notice, the Chair shall either: (A) issue a Notice of Final Completion; or (B) notify Declarant in writing of items that have not been completed or satisfactorily performed. This process shall continue until the Chair has issued a Notice of Final Completion.

(iv) “Final Completion” or “Finally Complete” shall mean the constructed Public Walkway fully complies with all aspects of the Plans and that all items specified by the Chair, as incomplete, during the Substantial Completion review process were completed.

## 2.2 Public Access Easement.

(a) Immediately upon the certification of Substantial Completion, Declarant grants the City of New York and the general public a permanent, perpetual access easement over the entirety of the Public Walkway, unobstructed from the surface of the Public Walkway to the

sky, for the purposes of (i) passive recreational use by the general public and (ii) pedestrian access (the “Public Access Easement”).

(b) All liens, including but not limited to judgment liens, mortgage liens, mechanics’ liens and vendees’ liens, and all burdens, covenants, encumbrances, leases, licensees, easements, profits, security interests in personal property or fixtures, and all other interests subsequent thereto, excepting governmental tax liens and assessments, and public utilities and easements, shall be subject and subordinate to the rights, claims, entitlements, interests and priorities created by the Public Access Easement as herein defined in Article 2.2(a).

### 2.3 Hours of Access.

(a) The Public Walkway shall be open and accessible to the public each day during the hours of 6:00 a.m. to 10:00 p.m. all year.

(b) Declarant may only close the Public Walkway, in a manner that reduces the area closed to the utmost extent, in order to: (a) perform required maintenance, repairs, or replacements of the Public Walkway, or portions thereof, and shall notify the Chair of such closure no less than seven (7) days in advance and such notice shall set forth the area and duration of closure as well as confirm the posting of signs providing prior notice to the public at appropriate locations and entrances of the Public Walkway; or (b) perform required repair, restoration, rehabilitation, renovation, or replacement of pipes, utility lines or conduits or other equipment on or under a the Public Walkway and shall notify the Chair of such closure no less than ten (10) days in advance and such notice shall set forth the area and duration of closure as

well as confirm the posting of signs providing prior notice to the public at appropriate locations and entrances of the Public Walkway; or (c) to make emergency repairs to mitigate hazardous site conditions or address other emergency conditions as specified in Article 2.3(c).

(c) In the event that the closure of the Public Walkway is required due to an emergency condition specified herein, Declarant shall notify the Chair of such closing and its expected duration as soon as practicable but in no event more than two (2) business days after such closure. The notice to the Chair shall further specify which portion has been closed and describe the nature of the emergency or hazardous condition causing the closure. Emergency conditions for which the Public Walkway may be closed, pursuant to Article 2.3(b), shall be limited to actual or imminent emergency situations, including security alerts, riots, casualties, disasters, or other events endangering public safety or property, provided that no such emergency closure shall continue for more than forty-eight (48) consecutive hours without Declarant having consulted with DOB or other agency and such agency confirming the continued closure of the Public Walkway is required.

(d) In the event of a closure pursuant to Article 2.3(b), Declarant will close only those portions of such areas which must or should reasonably be closed to effect the repairs or remediation, will exercise due diligence in the performance of such repairs or remediation so that it is completed expeditiously and the temporarily closed areas are re-opened to the public promptly, and will, wherever reasonably possible, perform the needed work in such a manner that the public will continue to have access to the Public Walkway.

2.4     Maintenance and Repair. Declarant shall be responsible for the maintenance and repair of the Public Walkway in accordance with the standards set forth herein (the “Maintenance and Repair Obligations”). All such maintenance shall be performed in a good and worker-like manner.

(a)     Cleaning.

(i)     Dirt, litter and obstructions shall be removed as needed and leaves collected and removed as needed to maintain the Public Walkway in clean, neat, and good condition.

(ii)    All walkways, lighting and all other improvements and facilities installed in the Public Walkway shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat, and good condition.

(iii)   Graffiti shall be regularly painted over or removed, as appropriate to the nature of the surface, promptly, with reasonable dispatch.

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

(v)     Branches and trees damaged or felled by winds, ice, vandalism or by any other reason whatsoever, shall be promptly removed.

(vi) Snow and ice shall be promptly removed from all walkways so as not to interfere with safe passage and from all other paved surfaces no more than 24 hours after each snowfall or accumulation of ice.

(b) Landscape Maintenance. A maintenance program for the planted portions of the Public Walkway shall be established, consisting of a “Spring Start-up Period” program, a “Season Closing Period” program, and a continuing maintenance program through the “Growing Season.”

(i) Spring Start-Up Period: The Spring Start-up Period shall commence on March 1<sup>st</sup> and terminate not later than the end of the second week of April of each calendar year. The following work shall be undertaken and carried out annually during the Spring Start-up Period:

- (aa) Remove any winter protectives from trees, shrubs and other planting materials;
- (bb) Remove all landscaping debris including leaves and dead branches;
- (cc) Prune and trim trees that have overextended, dead or otherwise unsightly branches to maintain natural form;
- (dd) Remove or destroy any weeds growing between paving blocks, pavement, and concrete areas;

- (ee) Apply commercially available nitrogen rich fertilizer to trees, shrubs, planting materials and other lawn areas as appropriate;
  - (ff) Remove any sand deposited as a result of winter sandings;
  - (gg) Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with specimens of substantially equal type and reasonable size;
  - (hh) Reseed grassed areas as needed.
- (ii) Season Closing Period: The Season Closing Period shall begin on October 1<sup>st</sup> and shall terminate not later than November 1<sup>st</sup> of each calendar year. The following work shall be undertaken and carried out during the Season Closing Period:
- (aa) Rake and collect leaves;
  - (bb) Wrap trees, shrubs, and other plant materials as necessary to ensure adequate winter protection;
  - (cc) Apply commercially available nitrogen rich fertilizer to all lawn areas;
  - (dd) Reseed grassed areas as needed.
- (iii) Growing Season: The Growing Season shall commence at the end of the Spring Start-up period and shall terminate at the end of the Season Closing Period. The following work shall be undertaken and carried out during the Growing Season:

- (aa) Inspect trees on a regular basis and spray when necessary;
- (bb) Water all trees, shrubs, plantings and grass areas as necessary to maintain in a healthy condition. In extended periods of drought (i.e., little precipitation/high temperatures for more than one week) ground cover, trees, shrubs and other plantings shall be thoroughly watered, subject to City or State regulations governing water usage.
- (cc) Mow grassed areas on a bi-weekly basis. During periods of excessive growth, mowing shall occur on a weekly basis. Reseed grassed areas as needed.
- (dd) Weed as needed, no less than on a bi-weekly basis.

(c) Repairs and Replacements. Declarant shall perform repairs and replacements as needed to maintain the Public Walkway in state of good repair and in compliance with the specifications set forth in the Drawings. Declarant shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and completing the same within a reasonably expeditious time after commencement. All repairs and replacements shall be performed in substantial compliance with the specifications set forth in the Drawings and replacement materials shall match existing materials to the extent feasible. Repairs shall include, but not be limited to, the following:

- (i) Benches or Other Seating: Maintenance, including replacement of any broken or missing slats and painting, as necessary;
- (ii) Walls or Other Barriers: Any broken or materially cracked walls, or barriers shall be repaired or removed and replaced;
- (iii) Paving: All paved surfaces shall be maintained so as to be safe and attractive;
- (iv) Signage: All signs and graphics shall be maintained in good condition and all vandalized or damaged signage shall be promptly cleaned or replaced with new signage or graphics;
- (v) Painting: All items with painted surfaces shall be painted on an “as needed” basis. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the installed color;
- (vi) Plant Materials and Trees: Plant materials and trees that are dead, diseased and/or otherwise unhealthy shall be replaced with healthy specimens of substantially equal type and reasonable size; and
- (vii) Construction Defects and Hazardous Conditions: Declarant shall periodically inspect the Public Walkway for construction defects and hazardous conditions and shall promptly repair and remediate any construction defects or hazardous conditions, as well as implement any safety measures required on an interim basis to protect public safety.

2.5 Signage. Pursuant to Local Law 116 of 2018, the Public Walkway qualifies as a Privately Owned Public Space (“POPS”), and Declarant shall comply with any signage regulations therein promulgated by the New York City Department of City Planning regarding POPS.

## **ARTICLE III**

### **DEFAULTS AND REMEDIES**

3.1 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 3.3 herein. 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 Permit; 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.

3.2 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 the Land Use Applications.

3.3 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 set forth in a recorded mortgage agreement (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 Article IV herein, and the right to cure shall apply equally to all Declarants.

3.4 If, after due notice and opportunity to cure as set forth in this Declaration, Declarant, Mortgagee or a Party in Interest fail to cure the alleged violation, the City may exercise any and all of its rights, including without limitation those delineated in this Section 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.

## **ARTICLE IV**

### **MISCELLANEOUS**

4.1 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.

4.2 Binding Effect.

(a) 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.

(b) Notwithstanding anything to the contrary contained in this Declaration, in the event that any building or building segment in the Subject property is converted to a condominium form of ownership, any Affordable Housing Unit as defined herein shall not have any obligation for and shall not be subject to levy or execution for the Maintenance and Repair Obligations. An Affordable Housing Unit shall mean any residential unit of housing within any building on the Subject Property that is rented to "low income households" (as such term is defined in Section 23-911 of the Zoning Resolution) or "middle income households" (as such term is defined in Section 23-911 of the Zoning Resolution).

4.3 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 within five (5) business days of the New York City Council's approval of the Land Use Applications by an affirmative vote or by operation of law as set forth in New York City Charter Section 197-d (such date hereinafter referred to as the "Recording Date"). Declarant shall promptly provide to the Chairperson 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.

4.4     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 4.3 above.

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

4.6.     Property Owner's Association. In the event that the Subject Property becomes subject to condominium ownership, in order to perform Declarant's Maintenance and Repair Obligations with respect to the Public Walkway, Declarant shall cause to be organized, pursuant to Article V of this Declaration, a property owner's association (the "Association") upon the issuance of a Temporary Certificate of Occupancy for any building or building segment on the Subject Property that is either: 1) governed by a condominium regime; 2) conveyed to a housing corporation to be governed by a cooperative regime; or 3) governed by

such other legal regime which shall require the organization of a not-for-profit membership organization comprising homeowners (such date of required filing shall be referred to as the “Association Obligation Date”).

4.7 Notice.

(a) All notices, demands, requests, consents, approvals, and other communications (collectively referred to as “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

Attention: Director of Real Estate

with a copy to:

Stroock & Stroock & Lavan LLP

180 Maiden Lane

New York, New York 10038

Attention: Ross F. Moskowitz, Esq.

(ii) if to CPC:

New York City Planning Commission

120 Broadway, 31<sup>st</sup> Floor

New York, New York 10271

Attention: Chairperson

with a copy to:

the General Counsel of CPC at the same address

(iii) if to a Mortgagee:

[mortgagee]

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

Declaration

(b) Declarant, CPC, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section, 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 on the date that the Notice was received or was refused; or (C) delivered by hand, in which case the Notice will be deemed delivered for all purposes on the date that the Notice was 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.

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

4.8     Applications.

(a)     Declarant shall include a copy of this Declaration with any application made to 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 Permit. Nothing in this Declaration herein 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 4.8(b) shall be construed as superseding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

4.9     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.

4.10    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.

## ARTICLE V

### **HOMEOWNERS ASSOCIATION**

5.1     Filing Requirements. The Association shall be organized in accordance with the terms of this Declaration and in accordance with the New York State Not-for-Profit Corporation Law. Declarant shall certify in writing to the Chair, or any individual succeeding to their jurisdiction, that the certificate of incorporation of the Association has been filed with the New York Secretary of State and that the certificate of incorporation and all other governing documents of the Association are in full compliance with the requirements of this Declaration and shall provide the Chair with copies of such certificate of incorporation and the other governing documents of the Association. If Declarant fails to comply with the provisions of this Section 5.1, the City may proceed with any available enforcement measures.

5.2     Obligations. The Association shall be established for, among other things, the purposes of assuming the Declarant's Maintenance and Repair Obligations relating to the Public Walkway.

5.3     Members. The members of the Association (the "Association Members") shall consist of (a) the fee owners of any portion of the Subject Property other than any "Unit Interested Party," which shall be defined as owners, lessees, and occupants of any individual residential or commercial condominium unit, as well as all holders of a mortgage or other lien encumbering any such residential or commercial condominium unit, and (b) the Boards of Managers of any portion of the Subject Property which is subject to a declaration of condominium.

5.4     Powers. To the extent permitted by law, Declarant shall cause the Association to be established with all such powers and authority as may be provided by law, including the power and authority to:

- (a)     impose fees or assessments against the Association Members, for the purpose of collecting funds necessary to satisfy the obligations of the Association pursuant to this Declaration;
- (b)     collect, receive, administer, protect, invest and dispose of funds;
- (c)     bring and defend actions and negotiate and settle claims to recover fees or assessments owed to the Association pursuant to this Article III; and
- (d)     exercise any and all of such powers as may be necessary or appropriate for purposes of this Declaration and as may be granted to the Association in furtherance of the Association's purposes pursuant to the New York Not-for-Profit Corporation Law.

5.5     Successors. Every deed conveying title to, or a partial interest in, the Subject Property, other than a deed to an Affordable Housing Unit, every lease held or granted by a cooperative corporation owning the Subject Property or any portion thereof, every lease of all or substantially all of the subject Property, or the declaration of condominium imposed on any portion of the Subject Property shall contain a recital or other provision that (i) the Unit Interested Party (other than a Unit Interested Party that owns an Affordable Housing Unit) is liable for its pro rata share of the assessment by the Association to the condominium in which such Unit is located for the Association's obligations under this Declaration, and (ii) the

obligations of the Association under this Declaration are essential elements of the City actions permitting the development of the Subject Property in accordance with the provisions of this Declaration and in accordance with any other approvals granted by the City.

5.6     Assessments.

(a)     The Association shall assess all real property within the Subject Property, other than the Affordable Housing Units (the “Assessment Property”), in order to obtain funds for the Maintenance and Repair Obligations and for any other obligations of the Association pursuant to this Declaration. The Assessment Property shall be assessed on a reasonable prorated basis as determined by Declarant, in compliance with all applicable laws. For Association Members who are the Boards of Managers of a Condominium, a reasonable basis for such proration shall be conclusively established if the New York State Attorney General accepts for filing an offering plan for the sale of interests in such Condominium, as applicable, which plan describes such proration. The Boards of Managers of each Condominium shall collect such assessments from the owners of individual residential or commercial units (“Unit Owners,” or each, individually, a “Unit Owner”), other than the Affordable Housing Units, for delivery to the Association in accordance with the condominium declarations.

(b)     Each periodic assessment by the Association, together with such interest, costs and reasonable attorney’s fees as may be assessed in accordance with the provisions of this Declaration, shall be the obligation of the Association Members against whom the assessment is charged at the time such assessment falls due and may not be waived by such Association Member. The Association may bring an action to recover any delinquent assessment, including

interest, costs and reasonable attorney's fees of any such action, at law or at equity, against the Association Member obligated to pay the same. In the event an Association Member has not paid its assessment to the Association within ninety (90) days of the date such payment was due, the Association shall take all reasonable measures as may be required in order to collect such unpaid assessment.

(c) The periodic assessments shall be a charge on the land and a continuing lien upon the property owned by the Association Member against which each such assessment is made, except that if the Association Member is the Board of Managers of a Condominium, such lien shall be subordinate to the lien of any prior recorded mortgage in respect of such property given to a bank or other institutional lender (including but not limited to a governmental agency), the lien of any real property taxes, and the lien of the Board of Managers of such Condominium for unpaid common charges of the Condominium. The periodic assessments charged to an Association Member which is the Board of Managers of a Condominium shall be included within the common charges of the Condominium. The Association may bring an action to foreclose the Association's lien against the property owned by such Association Member, or a Unit Interested Party (other than the owner of an Affordable Housing Unit), as the case may be, to recover such delinquent assessment(s), including interest and costs and reasonable attorneys' fees of any such action. Any Unit Interested Party, other than the owner of an Affordable Housing Unit, by acceptance of a deed or a lease to a portion of the Subject Property, thereby agrees to the provisions of this Section 5.6. Any Unit Owner may eliminate the Association's lien described above on his or her unit by payment to the Association of such Unit Owner's prorated share of the periodic assessment by the Association

to the Condominium in which such Unit is located. No Association Member or Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Public Walkway or abandonment of the Association's property, or by renunciation of membership in the Association, provided, however, that a Unit Owner's liability with respect to future assessments shall end upon the valid sale or transfer of such Unit Owner's interest in the Subject Property. A Unit Owner may give to the Association nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

(d) It is expressly understood that Association Members, who may be assessed for the operation, maintenance, and repair of the Public Walkway shall not include the holder of a mortgage or other lien encumbering (i) the fee estate in the Subject Property or any portion thereof, (ii) the lessee's estate in a ground lease of all or substantially all of the Subject Property or portion thereof, or (iii) any single building to be built on the Subject Property, unless and until any such mortgagee succeeds to either (x) a fee interest in the Subject Property or any portion thereof or (y) the lessee's estate in a ground Lease of all or substantially all the Subject Property or portion thereof (the interests described in sub-clauses (x) or (y) immediately preceding being each referred to as a "Possessory Interest") by foreclosure of the lien of the mortgage or other lien or acceptance of a deed or other transfer in lieu of foreclosure or exercise of an option to convert an interest as mortgagee into a Possessory Interest in any such fee or ground leasehold estate in the Subject Property or by other means permitted under applicable law from time to time and no such mortgagee or lien holder shall be liable for any assessment imposed by the Association pursuant to this Article V until the mortgagee or lien holder succeeds to such Possessory Interest.

## **ARTICLE VI**

### **AMENDMENT, MODIFICATION, AND CANCELLATION**

6.1 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.

6.2 Notwithstanding anything to the contrary contained in Article 6.1 hereof, the Chair 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 the CPC.

6.3 From and after the date that no Declarant holds any fee interest in the Subject Property or any portion thereof (other than one or more individual residential or commercial condominium units), and provided the Association as defined herein shall have been organized as provided in this Declaration, the Association shall be deemed to be the sole Declarant and Party in Interest under this Declaration. In such event, the Association shall be the sole party with any right to amend, modify, cancel, revise or otherwise change the Declaration, or make any application therefor, and each and every Unit Interested Party, as defined herein, hereby (x) irrevocably consents to any amendment, modification, cancellation, revision or other change in this Declaration by the Association; (y) waives and subordinates any rights it may have to enter into an amended Declaration or other instrument

amending, modifying, canceling, revising or otherwise changing this Declaration, and (z) nominates, constitutes and appoints the Association its true and lawful attorney-in-fact, coupled with an interest to execute any documents or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

**IN WITNESS WHEREOF**, the undersigned has executed this Declaration as of the date written above.

**69-02 QUEENS BLVD WOODSIDE LLC**

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By:  
Name:  
Title:

## **ACKNOWLEDGEMENT**

STATE OF )

) SS.:

COUNTY OF )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, personally appeared\_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public