



IN THE MATTER OF an application submitted by Lenox Terrace Development Associates 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 23-60 (Height and Setback Regulations) and 35-60 (Modification of Height and Setback Regulations), and the distance between buildings requirements of Section 23-711 (Standard minimum distance between buildings), in connection with a proposed mixed use development, within a large scale general development, on property generally bounded by West 135th Street, Fifth Avenue, West 132nd Street, and Lenox Avenue-Malcolm X. Boulevard (Block 1730, Lots 1, 7, 9, 25, 33, 36, 40, 45, 50, 52, 64, 68, and 75), in a C6-2 District, Borough of Manhattan, Community District 10.

This application for a special permit pursuant to Section 74-743 of the Zoning Resolution (ZR) was filed by Lenox Terrace Development Associates on August 14, 2019. The requested special permit, along with its related actions, would facilitate the proposed development of five mixed-use buildings containing residential, commercial, and community facility uses located within an existing development known as Lenox Terrace. The development site (Block 1730, Lots 1, 7, 9, 25, 33, 36, 40, 45, 50, 52, 64, 68, 75) is bounded by Lenox Avenue (also known as Malcolm X. Boulevard) to the west, Fifth Avenue to the east, West 132nd Street to the south, and West 135th Street to the north in the Harlem neighborhood of Manhattan, Community District 10. The development site contains the existing Lenox Terrace development. The project area (Block 1730, Lots 1, 7, 9, 25, 33, 36, 40, 45, 50, 52, 64, 68, 75, 65, 55, 16, 19) consists of all lots in the development site, as well as four additional lots, which are not under the ownership of the applicant. The four additional lots included in the project area contain the Metropolitan African Methodist Episcopal (AME) Church, the New York City Department of Parks and Recreation's (Parks Department) Hansborough Recreation Center, and the Joseph P. Kennedy Memorial Community Center.

RELATED ACTIONS

In addition to the special permit (C 200050 ZSM) that is the subject of this report, implementation of the proposed development also requires action by the City Planning

Commission (CPC) on the following applications, which are being considered concurrently with this application:

- N 200051 ZRM** Zoning text amendment to designate a Mandatory Inclusionary Housing (MIH) area for the project area.
- C 200052 ZMM** Zoning map amendment to change R7-2 / C1-4 zoning districts of the project area to a R8 /C1-5 zoning district
- C 200054 ZSM** Special permit pursuant to ZR Section 74-533 to reduce the number of required parking spaces at the development site.
- N 200053 ZAM** Authorization pursuant to ZR Section 25-631(f)(2) to modify curb cut requirements at the development site.

BACKGROUND

This application for a special permit (C 200050 ZSM), along with the related actions, would facilitate the construction of five new 28-story mixed-use buildings with 1,387,350 square feet of residential use, including 1,642 new dwelling units, 131,435 square feet of commercial uses, and 14,603 square feet of community facility uses. The proposed development is located entirely within the existing Lenox Terrace site, bounded by Lenox Avenue, Fifth Avenue, West 132nd Street and West 135th Street.

Lenox Terrace was developed pursuant to the Harlem Urban Renewal Plan (CP-8875), which was adopted by the CPC in 1952 and expired in 1995. The development included the demapping (CP-10053) of portions of West 133rd Street and West 134th Street to create a “superblock” equivalent to three typical city blocks. Lenox Terrace, completed in 1960, consists of six 16-story residential buildings containing 1,716 residential units, five one-story commercial buildings, and 387 at-grade parking spaces.

The New York City Department of Housing Preservation and Development (HPD) has sponsored several affordable housing projects in the surrounding area that received CPC approval. The most recent, the Robeson, included an area located one block south of the development site that, in 2017, was rezoned to R8A to facilitate the construction of a 10-story mixed-use building with affordable housing and ground floor retail (C 170050 ZMM, C 170051 HAM and N 170052 ZRM). In 1999, City-owned land north of the development site on West 135th Street was disposed of to facilitate the construction of a six-story affordable housing building (C 990479 HAM).

In 2017, the Special East Harlem Corridors District (C 170358 ZMM, N 170359 ZRM, and C 170360 HUM) was created between East 132nd Street and East 104th Street to facilitate the production of affordable housing, enable new commercial and manufacturing space to support job creation, and preserve the existing neighborhood character.

The area surrounding the project area is characterized by a mix of residential, commercial, and institutional uses. There are four- and five-story residential buildings with ground floor commercial uses and a 16-story residential building located across Lenox Avenue, to the west of the project area. The area further west is comprised primarily of three- or four-story brownstones and five- to seven-story residential buildings, with ground floor commercial uses along the avenues. Across West 135th Street from the project area are the Schomburg Center for Research in Black Culture; the 18-story, 284-foot-tall Harlem Hospital Center; the two-story P.S. 197 John B. Russwurm School; and the Howard Bennett Playground. Across Fifth Avenue to the east is the Abraham Lincoln Playground and the New York City Housing Authority's (NYCHA) Lincoln Houses, comprised of six- to 14-story multi-family residential buildings. Two other "tower-in-the-park" style superblocks are located further north and east, including Riverton Square, which contains seven 13-story residential buildings, and Savoy Park, which contains seven 16-story buildings. Across West 132nd Street to the south of the project area—are a collection of four-story brownstones, five- to-seven-story residential buildings, and the Bethel AME Church. The area further south contains a similar built character, consisting mostly of pre-war buildings of similar heights.

The surrounding area, including the project area, is almost exclusively zoned R7-2. The R7-2 district is a mid-density height-factor residential zoning district with a maximum residential floor area ratio (FAR) of 3.44 (or 4.0 through Quality Housing regulations), community facility FAR of 6.5, and commercial FAR of 2.0 within areas mapped with a C1-4 commercial overlay. C1-4 commercial overlays are located in the project area, mapped within 100 feet of Lenox Avenue, Fifth Avenue and West 135th Street, and within 300 feet of the intersection of Fifth Avenue and West 135th Street. In R7-2 districts with C1-4 commercial overlays, commercial uses are limited to the first floor, if residential use exists above. In addition, the north-south avenues in the surrounding area are also zoned with C1-4 or C2-4 commercial overlays. R8 and R8A zoning districts are also located nearby and allow higher residential FARs of 6.02 and 7.2 respectively. There are also R7B and R7A districts located southeast of the project area.

The surrounding area is served by transit via the 135th Street Station of the 2/3 train, the entrance for which is located on the northwest corner of the project area at the corner of West 135th Street and Lenox Avenue. The station was made compliant with the federal Americans with Disabilities Act in 2008. The M7 and M102 bus lines run along Lenox Avenue, the Bx33 runs along West 135th Street, and the M1 bus runs along Fifth Avenue. The project area is within a Transit Zone, which allows for owners to seek lower accessory parking requirements for affordable and income-restricted housing units.

Lenox Terrace is comprised of the 13 lots that would be developed as a single, 540,000 square-foot zoning lot. Lots 9, 25, 36, 45, 64, and 75 are currently improved with six 16-story multifamily residential buildings with 1,716 dwelling units. Approximately 80 percent of the existing dwelling units are subject to rent stabilization. Lots 1, 33, 40, 50, 52, and 68 are currently improved with five one-story commercial buildings totaling approximately 84,000 square feet and containing restaurant, retail, and supermarket tenants. The remainder of the development site is comprised of 387 at-grade parking spaces.

The project area also contains several lots that are not included within the development site,

described above. These include the Metropolitan AME Church (Block 1730, Lot 65), located on 135th Street between Lenox Avenue and Lenox Terrace Place, which is a three-story vacant building. The Archdiocese of New York's Kennedy Community Center and two smaller four-story buildings (Block 1730, Lots 16 and 19) are located on the southern side of West 134th Street. The Parks Department's Hansborough Recreation Center (Block 1730, Lot 55) is a four-story structure located on the north-east corner of Lenox Terrace Place and West 134th Street.

As initially certified, the special permit (C 200050 ZSM), in conjunction with the related actions (N 200051 ZRM, C 200052 ZMM, C 200054 ZSM and N 200053 ZAM), would have facilitated the development of six new buildings, including three buildings that would have frontage along Lenox Avenue: a northern tower at West 135th Street, a southern tower at West 132nd Street, and a six-story building located midblock along the western frontage of the development site. The two towers were proposed to connect to the central, midblock six-story building via two skybridges. The skybridges were proposed to be 15 feet above curb level, 33 feet long, and connect via the second story of each building.

In response to feedback received during the public review process, the applicant revised the proposed development to reconfigure the buildings located along Lenox Avenue and remove the six-story midblock building and skybridges to retain a more open, pedestrian-oriented space into the historic gateway entrance for the existing Lenox Terrace development. The proposed development has been revised to include five new, 28-story, 284-foot tall, mixed use towers: the northwest building at the corner of Lenox Avenue and 135th Street would have a maximum base height of 77 feet before a 10-foot setback, the southwest building at the corner of Lenox Avenue and 132nd Street would have a maximum base height of 68 feet before a 10-foot setback, the southeast building at the corner of Fifth Avenue and West 132nd Street would have a maximum base height of 32 feet before a 10-foot setback, the northeast building at the corner of Fifth Avenue and West 135th Street would have a maximum base height of 32 feet before a 10-foot setback, and the north building located at the corner of Lenox Terrace Place and West 135th Street would have a base height of 32 feet before a 10-foot setback. All five buildings would penetrate the sky exposure plane by a maximum width of 25.5 feet at the top of each building.

The first floor of all new buildings would contain retail space, commercial space, community facility space, and residential lobbies. Residential units and residential amenity space would be located on the floors above.

The proposed new buildings would include a total of approximately 1,533,389 square feet, including approximately 1,387,350 square feet of residential use, 131,435 square feet of commercial use, and 14,603 square feet of community facility use. The new buildings would provide approximately 1,642 new residential units. Between 411 and 493 of the new residential units would be permanently affordable pursuant to MIH program Option 1 or 2 respectively. The six existing residential buildings on the zoning lot, which include approximately 1,716 dwelling units, would remain. Including both the new and existing buildings, the proposed development would include a total of 3,358 dwelling units and a total of 3,028,663 square feet and have an overall FAR of 5.61.

Under the proposed actions, the applicant proposes to retain 31 of the 387 surface parking spaces, and relocate the other at-grade spaces to new below-grade parking facilities. These parking facilities would be constructed beneath each new residential tower and accommodate a total of 525 parking spaces. This would facilitate new green spaces and open spaces in the previous surface parking areas. Six existing curb cuts would remain, five existing curb cuts would be modified/relocated to facilitate new development and five new curb cuts would be added to provide access to the proposed below-grade parking facility and to loading areas, resulting in a total of 16 curb cuts on the development site.

To facilitate the proposed development, the applicant seeks two special permits, zoning map and text amendments and a zoning authorization.

Zoning Special Permit (C 200050 ZSM)

The applicant proposes a special permit pursuant to ZR Section 74-743(a)(2) to modify certain bulk regulations within a large-scale general development (LSGD). Waivers are sought for height and setback relief to allow the proposed five towers to penetrate the sky exposure plane by

approximately 25 feet at the top of each bulkhead envelope and to have a setback of 10 feet rather than the required 15 feet from the front wall height at the base of each building. The original filed application also requested a waiver of the requirements for distance between buildings, which would have allowed the previously proposed six-story building to be located 33 feet from the two proposed tower bases on Lenox Avenue, while 40 feet between buildings is required. The applicant filed a revised application on January 22, 2020 that does not require the waiver. All proposed buildings would meet the minimum distance between buildings requirement of 40 feet. The resulting development with the proposed special permit would have a total of 5.61 FAR with only 0.24 FAR of commercial use.

Zoning Text Amendment (N 200051 ZRM)

The applicant proposes a zoning text amendment to Appendix F to map an MIH area coterminous with the project area (Block 1730; Lots 1, 7, 9, 25, 33, 36, 40, 45, 50, 52, 64, 68, 75, 55, 16, 19, 65). The proposed text amendment would map MIH Options 1 and 2. Option 1 requires that at least 25 percent of the residential floor area be provided as housing units that are permanently affordable to households with incomes at an average of 60 percent of Area Median Income (AMI). Within that 25 percent, at least 10 percent of the square footage must be used for units affordable to residents with household incomes at an average of 40 percent of AMI. Option 2 requires that at least 30 percent of the residential floor area be provided as housing units that are permanently affordable to households with incomes at 80 percent of AMI. Under both Option 1 and Option 2, household incomes may not exceed 130 percent of AMI.

Zoning Map Amendment (C 200052 ZMM)

The original filed application proposed a new C6-2 district (R8 equivalent). The applicant revised the application on January 22, 2019 to request R8 and R8/C1-5 Districts. The revised zoning map amendment would change the project area zoning district from R7-2 and R7-2/C1-4 Districts to R8 and R8/C1-5 Districts. The revision from a C6-2 District to R8 and R8/C1-5 Districts does not substantially change the proposed bulk or the permitted FAR for residential use, which would remain at 6.02 (or 7.2 with Quality Housing regulations). However, the revised zoning district limits commercial uses to 2.0 FAR and promotes commercial uses that serve local

retail needs. This revision would allow for the proposed development to activate the street frontages and enhance the retail landscape of the surrounding area, while ensuring the majority of the development would be for residential use. The applicant determined that this would be more appropriate for the surrounding neighborhood context.

Zoning Special Permit to reduce required parking (C 200054 ZSM)

The applicant is seeking a special permit pursuant to Section 74-533 to reduce the amount of required parking spaces for the proposed development. The development site contains 387 surface parking spaces. Parking spaces are required at a rate of 40 percent of market-rate dwelling units and, depending on if MIH Option 1 or Option 2 is pursued, 460-493 additional parking spaces would be required. The applicant is proposing to provide 138 new parking spaces associated with the new development for a total of 525 spaces. The applicant is proposing to build new, below-grade parking facilities to accommodate 494 parking spaces in the cellar level of the proposed towers while 31 at-grade surface parking spaces would remain.

Zoning Authorization to modify curb cut requirements (N 200053 ZAM)

The applicant seeks an authorization to modify curb cut requirements in Section 36-532 and Section 25-631(f)(2) to allow for the creation of additional and wider curb cuts than would otherwise be allowed along West 135th Street, Lenox Terrace Place, and West 132nd Street. West 135th Street would have three new curb cuts: one 30 feet in width to access a loading dock for the commercial uses in the northwest building; one 25 feet in width to access a below-grade accessory residential parking facility in the northwest building; and one 35 feet in width to access a below-grade accessory residential parking facility in the northeast building, provide access to nine at-grade parking spaces, and provide emergency access. Lenox Terrace Place would have three new curb cuts: two 26 feet in width that would provide emergency access to one of the existing buildings and 14 at-grade parking spaces, and one 31 feet in width that would provide access for commercial uses in the north building. West 132nd Street would have four new curb cuts: one 30 feet in width to access a loading dock for commercial uses in the southwest building, one 29 feet in width to access a below-grade accessory residential parking facility in the southwest building, one 30 feet in width to access a below-grade accessory residential

parking facility in the southeast building, and one 30 feet in width to access a loading dock for commercial uses in the southeast building.

ENVIRONMENTAL REVIEW

The certified application (C 200050 ZSM) in conjunction with the applications for the related actions (N 200051 ZRM, C 200052 ZMM, C 200054 ZSM and N 200053 ZAM), were reviewed pursuant 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 (NYCRR), Section 617.00 et seq. and the New York City Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 18DCP084M. The lead is the City Planning Commission.

It was determined that the proposed actions may have a significant effect on the environment and that an Environmental Impact Statement (EIS) would be required. A Positive Declaration was issued on December 29, 2017 and distributed, published and filed. Together with the Positive Declaration, a Draft Scope of Work for the Draft Environmental Impact Statement (DEIS) was issued on December 29, 2017. A public scoping meeting was held on the DEIS on February 8, 2018 and the Final Scope of Work was issued on August 23, 2019.

The applicant prepared a DEIS and the Notice of Completion for the DEIS was issued on August 23, 2019. Pursuant to SEQRA regulations and the CEQR procedures a joint public hearing was held on the DEIS on December 18, 2019, in conjunction with the public hearing on the related Uniform Land Use Procedure (ULURP) items (C 200050 ZSM, N 200051 ZRM, C 200052 ZMM, C 200054 ZSM, N 200053 ZAM). A Final Environmental Impact Statement (FEIS) reflecting the comments made during the public hearing was completed and a Notice of Completion for the FEIS was issued on January 23, 2020.

Potential significant adverse impacts related to hazardous materials, air quality, and noise would be avoided through the placement of an (E) designation (E-547) on the proposed, projected, and

potential development sites as specified in Chapter 9, Chapter 14, and Chapter 16, respectively, of the FEIS.

The application as analyzed in the FEIS contained Project Components Related to the Environment (PCREs), which are set forth in Chapter 7, “Historic and Cultural Resources,” Chapter 10, “Water and Sewer Infrastructure,” Chapter 13, “Transportation,” Chapter 15, “Greenhouse Gas Emissions and Climate Change,” and Chapter 19, “Construction.” To ensure the implementation of the PCREs, the applicant will enter into the Restrictive Declaration, attached as Exhibit A, at the time of approval of all land use-related actions required to authorize the proposed project.

The application as analyzed in the FEIS identified significant adverse impacts with respect to open space, shadows, historic and cultural resources, transportation (traffic and pedestrians), and construction activities related to historic and cultural resources, noise, and transportation (traffic and pedestrians). The identified significant adverse impacts and proposed mitigation measures under the proposed actions are summarized in Chapter 21, “Mitigation”. To ensure the implementation of the mitigation measures identified in the FEIS, the mitigation measures are included in the Restrictive Declaration.

UNIFORM LAND USE REVIEW

The special permit application (C 200050 ZSM), in conjunction with the related map amendment and special permit actions (C 200052 ZMM and C 200054 ZSM) was certified as complete by the Department of City Planning on August 26, 2019, and was duly referred to Manhattan Community Board 10 and the Manhattan Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b), along with the related text amendment and authorization actions (N 200051 ZRM and N 200053 ZAM), which were referred for information and review in accordance with the procedures for non-ULURP matters.

Community Board Review

Community Board 10 held two public hearings on the special permit application (C 200050

ZSM) and the related applications on September 19, and October 17, 2019, and on November 6, 2019, by a vote of 20 in favor, 15 opposed, and one abstention, adopted a resolution recommending disapproval of the application with the following conditions:

“A Tenant's Benefit Agreement (TBA) and a Community Benefits Agreement (CBA) that addresses immediate and long-term concerns of existing and future tenants be in place before any zoning application be approved;

Building heights do not exceed 195 feet with appropriate set-backs, and the C1-4 commercial zoning remains;

The applicant agrees to present a plan approved jointly by the tenant's association and CB10 on how it intends to resolve the outstanding maintenance conditions within the complex including the review of any remediation and inspection reports;

Income bands must be set at 50/30/20 of the Area Median Income (open market, moderate income, low income) and they must be permanent;

The applicant agrees to partner with HPD to explore all affordability programs and options and that HPD will oversee the implementation of affordability programs and report back to CB 10;

CB 10 residents will have a 50 percent preference on all the moderate and low-income units;

All rent stabilized units will be maintained;

The applicant agrees that Minority and Women-Owned Business Enterprise targets will be established (30 percent or more) and approved by CB 10 and employment preferences will be given to community residents;

Construction jobs must be provided to union workers with a diverse workforce and that hire locally;

The applicant provides a well-conceived density plan approved by the CB 10 Public Safety committee and the Lenox Terrace Development Committee (LTDC) that examines traffic impacts, pedestrian and vehicular traffic issues, overall safety, and school zones;

The applicant provides a well-conceived plan that is approved by the CB 10 Health and Human Services committee and considers the high resident senior citizen population as well as the Harlem population afflicted with high rates of respiratory diseases including asthma and the effects of construction on the health and well-being of residents; implements monthly indoor and outdoor air quality testing before, during and after construction; requires a health proxy taken of all residents with existing respiratory illness pre-construction; and offers relocation allowance for residents who cannot physically endure and provides HEPA air purifiers/ breathing devices based upon medical claims;

The applicant provides a well-conceived plan that is approved by the CB 10 Historic Preservation and Arts and Culture committees, Save Harlem Now and other local organizations as well as support of an application submission to NYS and Federal Registry of Historic Sites and offers rent concessions to residents who are inconvenienced by shadows and whose views are compromised as a result and that open space is protected;

The applicant agrees that a detailed security plan will be outlined to ensure the safety of residents, business owners and staff;

The applicant agrees that a well-conceived parking plan detailing accessibility and outlining options and payments for both existing residents and new residents. This plan

will be approved by the LTDC and will address the allocation of spaces, transferability of spaces, reduced parking fees for rent stabilized tenants;

The applicant agrees that a detailed plan for the retail corridor will be developed that is approved by LTDC and the CB 10 Economic committee;

The applicant agrees to a detailed plan approved by the CB 10 Transportation Committee, MTA and LTDC that addresses mitigation of transportation impacts at the 135th Street Subway station and the Intersection at the 135th Street and 5th Avenue;

The applicant agrees to a true community engagement process that includes Lenox Terrace residents as well as the broader Harlem community, a process that includes (but not limited to) charrettes, visioning and focus groups;

Plans to include neighboring institutions surrounding Lenox Terrace in the planning of services and the planning of construction and inconveniences caused;

The applicant agrees to a construction impact assessment as this is an infill project that affects existing residences and open space. The assessment will evaluate the duration and severity of the disruption or inconvenience to all impacted including noise and vibration analyses; and

The applicant agrees to monthly/quarterly meetings with both the LTDC and CB 10 respectively on the evolution of construction plans, report findings, progress and timelines.

The applicant agrees that any rezoning and/or as-of-right development plan they undertake, will include (and Olnick to fund) a resident services office, one that serves tenants 24/7 pre, during and post construction with real time information. The role and its various functions of this office will be negotiated and approved by Community Board 10

and the tenants. The office will negotiate tenant abatements, concessions, and relocations. The office will administer the LTDC and organize routine meetings with the tenants and the developer concerning construction progress and updates.”

Borough President Recommendation

The special permit application (C 200050 ZSM), in conjunction with the related applications (N 200051 ZRM, C 200052 ZMM, C200053 ZSM, N 200054 ZAM), were considered by the Manhattan Borough President. The Borough President held a hearing on November 18, 2019, and on December 16, 2019 recommended denial of the application. The Borough President further explained her recommendation in her recommendation letter dated December 12, 2019, which is attached to this report.

City Planning Commission Public Hearing

On December 4, 2019 (Calendar No. 3), the City Planning Commission scheduled December 18, 2019, for a public hearing on the special permit application (C 200050 ZSM). The hearing was duly held on December 18, 2019 (Calendar No. 28), in conjunction with the public hearings on the applications for the related actions. Nine speakers appeared in favor of the application and 28 in opposition.

An applicant team consisting of five speakers testified in support of the application. The applicant’s primary representative, an urban planner, provided a general overview of the application, including the land use rationale for the proposed C6-2 zoning district. He stated that the C6-2 district is appropriate for the site due to the surrounding wide streets, the proximity of the subway, the desire to have retail flexibility in leasing spaces greater than the limit of 10,000 square feet, and the ability to have second floor retail. Furthermore, he added that, in response to concerns raised during the public review process, the applicant team was exploring the possibility of a residential district equivalent to the C6-2 with a commercial overlay. He also stated that they were working with HPD regarding affordability and the preservation of the existing housing stock, including exploring affordable units beyond MIH requirements. He

clarified that 80 percent of the existing units are rent stabilized.

An architect, as part of the applicant team, described the goals of the proposed site plan, which included establishing a traditional street wall along Lenox Avenue and extending pedestrian access into the site via 134th Street and 133rd Street. The six-story central building located midblock on Lenox Avenue was envisioned to be accessible to all residents of the proposed development, and the skybridges would allow for access from the proposed northwest and southwest towers to the central building.

Addressing concerns about the two skybridges, the planner, as part of the applicant team, proposed that the applicant team would put forth an alternative site plan for the Lenox Avenue frontage in order to retain historical entrance to 470 Lenox Avenue. This building effectively served as the “front door” to the development site and features a cul-de-sac driveway leading to the entrance of 470 Lenox Avenue. The planner suggested removing the central six-story building along with the two skybridges along Lenox Avenue to more closely match the footprint of the existing one-story buildings.

The planner also discussed ownership of the proposed green spaces. He confirmed that all proposed landscaped green space is privately owned and as such, the property owner has the right to limit access. The attorney representing the applicant spoke about the feedback received from existing tenants, which included that tenants would prefer that the space remain for tenant use only. The planner addressed the need for lessening the parking requirements, stating that it would be appropriate given that Lenox Terrace is within the Transit Zone.

In addition to the applicant team, there were four other people who spoke in favor of the application.

A representative of Harlem Grown, a local non-profit organization that focuses on urban gardening and nutrition education, stated that Harlem Grown has been in discussion with the owners of Lenox Terrace to establish a new urban garden on the development site, as well as

2,000 square feet of education and office space within one of the proposed buildings. The speaker stated that the proposed development would allow the organization to expand their operations.

A local resident also spoke in favor of the application, stating that the project represented progress in the Harlem community and that the additional affordable housing and the rehabilitation of the 60-year old buildings would be a benefit to the tenants and larger community.

A representative from the SEIU 32BJ service union spoke in favor of the application, noting the project's ability to create prevailing-wage jobs and opportunities for community benefits, such as affordable housing.

A retail tenant located on Lenox Terrace spoke in favor, but highlighted issues regarding the loss of existing retail and the new, proposed retail at the development site. This speaker noted that because all the existing retail tenants would have to leave during the construction period, there is uncertainty whether those businesses could survive.

Those who spoke in opposition to the application included the Manhattan Borough President, architects, professors, the president of non-profit architecture advocacy organization, representatives of the Lenox Terrace Association of Concerned Tenants (LT-ACT), representatives of Community Board 10, a representative of Save Harlem Now, as well as numerous tenants of Lenox Terrace and residents of the Harlem community.

The Manhattan Borough President spoke in opposition to the application, stating her belief that the proposed development would create negative impacts on community infrastructure, as well as neighborhood quality of life.

Several people in opposition spoke about the potential negative effects of the proposed height and density of the proposed development. They stated their belief that the increase in building

mass would have negative impacts on the view, light, ventilation, and ultimately health for existing tenants. Several speakers also cited the high asthma rate in Harlem, particularly among children and seniors, and the belief that the proposed construction and development would exacerbate this condition for residents.

Several speakers in opposition cited concerns regarding increased population that would be generated by the proposed development, further aggravating strained resources such as schools, parks, and subway stations. One speaker, a Harlem resident, stated that the applicant should be offering publicly-accessible community facilities as part of the proposed development.

One speaker stated that having one entirely affordable building, as suggested by the applicant's representative at the public hearing, would concentrate and separate residents of the affordable units from the residents of market-rate units.

The vice president of LT-ACT described the Tenant Benefits Agreement, a private agreement between the applicant and tenants that has been discussed independently of ULURP, as inadequate. This speaker stated the applicant is proposing improvements and upgrades that should be standard amenities already provided to residents and that it would be inappropriate to consider these improvements as additional benefits that could only be achieved through the proposed development.

Several speakers expressed concern about change in the demographic make-up of Harlem, as well as primary and secondary displacement, as a result of the introduction of a large amount of market-rate units. Representatives of Community Board 10 spoke in opposition, stating their belief that the proposed development would violate the Voting Rights Act and would threaten the African American voting plurality of Lenox Terrace and Harlem.

A representative of Save Harlem now, a preservation organization, described the history of Lenox Terrace and stated the belief that Lenox Terrace is worthy of historic designation due to its midcentury architecture and planning, and significant role in cultural history. A historian

speaking in opposition stated that landmarking Lenox Terrace would not prohibit infill, but it would give the tenants and surrounding community greater assurance of working with a developer to produce infill that would be supportive of the historic and cultural relevance of Lenox Terrace. One speaker in opposition raised concerns about the façades of the proposed towers, which lack the balconies and terraces that are important to the architectural character of the existing Lenox Terrace towers.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that this application for a special permit (C 200050 ZSM), in conjunction with the applications for the related actions, as revised, is appropriate.

Together, these actions will facilitate the development of five new buildings with approximately 1,533,389 square feet of floor area, including 1,387,350 square feet of residential use, 131,435 square feet of commercial uses and 14,603 square feet of community facility use. These actions will add approximately 1,642 new residential units, over 400 of which will be permanently affordable, to the existing six-building Lenox Terrace complex. Five existing one-story commercial buildings will be demolished to accommodate five new 28-story, 284-foot-tall mixed-use buildings. In total, Lenox Terrace will contain 3,028,663 square feet of floor area (5.61 FAR), including 3,358 residential units. Additionally, 525 parking spaces will be constructed, all but 31 of which will be located underneath the new residential towers, allowing the existing at-grade surface parking to be repurposed as green space.

The Commission notes that the development site is accessible by multiple modes of transit-- the MTA 135th Street subway stop is located at the northeast portion of the development site, and is serviced by multiple bus lines. As such, the development site is an opportune location for additional housing, including affordable housing, consistent with the goals and objectives of the City's *Housing New York* plan. MIH Option 1 would ensure that 411 residential units remain permanently affordable at 60 percent of AMI and Option 2 would ensure that 493 residential

units remain permanently affordable at 80 percent of AMI.

The Commission also notes the growing demand for mixed-use development in the Harlem neighborhood, and the desire to enhance the existing neighborhood-serving commercial uses located at Lenox Terrace today. The proposed development will ensure that future commercial spaces will continue to serve the community, while facilitating the development of much-needed affordable housing. The new residents will add to the customer base of these local business, helping to strengthen the existing commercial presence and the proposed commercial spaces in each new building.

Zoning Map Amendment (C 200052 ZMM)

The Commission believes that the proposed zoning map amendment (C 200052 ZMM) to change the existing R7-2 and R7-2/C1-4 zoning districts to the proposed R8 zoning district with a C1-5 overlay, as modified herein, is appropriate. The existing R7-2 with a C1-4 overlay district limits the site to a residential floor area ratio (FAR) of 3.44 (or 4.0 through Quality Housing regulations). Areas within the commercial overlay are permitted up to 2.0 FAR of commercial uses. As certified, the application proposed a C6-2 zoning district for the project area. During public review, the applicant received feedback from the community and local elected officials who are concerned that the amount and scale of commercial space permitted under a C6-2 district is not appropriate for the neighborhood. In response, the applicant revised the proposal to an R8 zoning district with a C1-5 overlay.

The Commission made a technical modification to the proposed zoning map amendment, modifying the location of the C1-5 overlay zoning district along West 132nd Street so that the proposed site plan may comply with exiting loading requirements. The C1-5 overlay along West 132nd Street will be extended an additional 25 feet from Lenox Avenue, so that it now extends for a total of 225 feet from Lenox Avenue at a depth of 100 feet from West 132rd Street. The C1-5 overlay along West 132nd Street will also be extended an additional 25 feet from Fifth Avenue, so that it now extends for a total of 150 feet from Fifth Avenue at a depth of 100 feet from West 132rd Street.

The R8 zoning district will allow a residential FAR (6.02, or 7.2 with Quality Housing regulations) equivalent to that of the C6-2 zoning district, but decrease the allowable commercial FAR from 6.0 (C6-2) to 2.0 (C1-5), which is equivalent to the commercial FAR permitted today. Like C6-2 districts, R8 districts have no explicit height limit. The Commission concurs that the modified R8 and R8/C1-5 zoning districts would better complement the surrounding area and will maintain the existing retail presence. The permitted commercial uses in a C1-5 zoning district are also more appropriate and consistent with the surrounding area. The Commission further notes that the applicant is proposing to not fully utilize the available FAR, but rather will be built to an FAR of 5.61 with only 0.24 FAR of commercial use. The Commission notes that the presence of existing buildings on the campus would make it difficult for the applicant to develop to a higher FAR or height than proposed. Nonetheless, because the proposed development does not fully mitigate significant adverse impacts related to density and height, and because the applicant did not engage in environmental review of a scenario that maximized FAR and increased heights on the site, the Commission believes that, absent further environmental review and Commission modification of the approved drawings, it is appropriate to limit development beyond the FAR and height of the proposed development even if the special permit is not utilized. These limits will be set forth in the restrictive declaration that outlines the PCREs and mitigations for the zoning actions.

While much of the surrounding area is mapped with a R7-2 zoning district, the existing built character is highly varied and includes many tower developments such as Harlem Hospital, Lincoln Houses and Riverton Square. The proposed R8 and R8/C1-5 zoning districts, with the modified bulk regulations through the special permit (C 200050 ZSM), will introduce new buildings at Lenox Terrace that are at a reasonable and appropriate scale relative to the surrounding context. The project area is located on a superblock and is bound by four wide streets. Along with the pedestrian circulation areas and landscaped open space proposed to be provided on site, Lenox Terrace is also near many parks and public open spaces, including the Howard Bennett Playground, the Abraham Lincoln Playground, and the Harlem River Park Bikeway. These factors, in addition to the proximity to mass transit, further supports increasing

the density and mix of uses at the project area.

Zoning Text Amendment (N 200051 ZRM)

The Commission believes that the zoning text amendment (N 200051 ZRM) to Appendix F to designate the project area as an MIH area is appropriate. The Commission understands the need to ensure that the affordable housing created by the proposed development remains permanently affordable. Under MIH Option 1, the proposed development will provide up to 411 permanently-affordable units at 60 percent of AMI. Under MIH Option 2, the proposed development will provide 493 permanently-affordable units at 80 percent of AMI. The Commission recognizes that mapping MIH will benefit the Harlem community, providing much-needed low and moderate-income housing and ensuring neighborhood economic diversity.

Zoning Special Permit (C 200050 ZSM)

The Commission believes that the special permit (C 200050 ZSM) to modify bulk regulations regarding height and setback is appropriate. The requested waivers will allow for a more flexible building envelope resulting in a superior site plan and improving the relationship among existing and new buildings and open areas. The proposed site plan and building massings appropriately relate to the existing residential towers and locate new buildings almost entirely within the footprints of the currently underutilized one-story commercial buildings.

The Commission notes that the requested waivers will allow the buildings to penetrate the sky exposure plane, allowing more efficient floorplates. Without the waivers, the new buildings would need to be located entirely within the sky exposure plane and, due to the presence of the existing residential towers on the superblock, would be thinner and subsequently taller. The Commission believes that the 284-foot maximum height, including mechanical space, of the proposed buildings is appropriate and notes the proximity to the 285-foot Harlem Hospital located directly north of the development site across 135th Street. Beyond just the neighboring Harlem Hospital, the surrounding context includes a wide range of tower-in-the-park typologies, NYCHA campuses, and many stand-alone tall buildings. While much of the Central Harlem neighborhood below West 132nd Street is a more consistent lower-scale context, Lenox Terrace

marks a transition to a more varied built context. Immediately across Fifth Avenue from the 180-foot towers of Lenox Terrace are the NYCHA Lincoln Houses towers, which reach a height of 156 feet. North of the Lincoln Houses are the privately-owned Riverton Square, Savoy Park and Riverbend Houses are tower-in-the-park superblocs that range in height from 156 feet to 200 feet. Immediately west of Lenox Terrace at the southwest corner of the West 135th Street and Lenox Avenue intersection is the 190-foot tall Clayton Apartment building. The bulk waivers provide an improved building configuration that balances keeping the building height in context with the upper Central Harlem neighborhood while allowing the applicant to provide a substantial amount of housing, including affordable housing, for the community.

Similarly, the waivers to reduce the setback from 15 feet to 10 feet at the top of the six-story base result in a more efficient residential floor plate that effectively reduces the overall height by permitting a bulkier tower. Maintaining the six-story base of each tower enhances the street wall of the four bounding streets and better relates the mass of the Lenox Terrace buildings to the many six-story buildings that surround the development site. Four of the five buildings are located at the four corners of the superblock, creating a strong urban presence at the prominent intersections. The fifth building sits at the corner of West 135th Street and Lenox Terrace Place, improving the street wall condition along West 135th Street. The street frontage across Lenox Avenue to the west is mixed, but is primarily comprised of five-story mixed-use buildings and the Clayton Apartment tower, which has a sheer wall rise to 190 feet. The south side of West 132nd Street is similarly varied, but is primarily four to six-story residential buildings and one-story community facility buildings. The proposed six-story commercial base at Lenox Terrace will create a scale at the frontages of Lenox Avenue and West 132nd Street that directly relate to the existing four to six-story base heights. The two other street frontages, West 135th Street and Fifth Avenue, have less of an existing street wall context due to the Harlem Hospital tower complex to the north and NYCHA Lincoln Houses to the East. The Harlem Hospital has a very similar tower on a six-story base form as the proposed Lenox Terrace building across the street. While the Lincoln Houses have a tower-in-the-park configuration, they are relatively lower towers, rising just to six-stories. The proposed Lenox Terrace buildings along Fifth Avenue will reflect the six-story height in the base and help enhance the pedestrian realm by creating a strong

street wall context with active commercial uses towards the intersections.

The Commission recognizes that the site plan was revised subsequent to certification in response to concerns raised through the public review process specifically regarding the Lenox Avenue frontage. The previous site plan included three buildings along the eastern side of Lenox Avenue: two mixed-use towers at either intersection and one six-story commercial podium building, largely blocking 470 Lenox Avenue from the street. There were two breaks in the street wall across from the existing West 134th and 143rd Street intersections, but the two pedestrian entrances were covered by skybridges 15 feet above curb level. The revised site plan filed by the applicant on January 22, 2020 has several notable improvements to the original site plan, including the removal of the sky bridges, a reduction of requested curb cuts, removing eight surface parking spaces to be relocated below grade, and the removal of the waiver regarding distance between buildings.

As amended, the site plan will retain the historic cul-de-sac entrance to 470 Lenox Avenue, as well as remove the previously-proposed six-story podium building along Lenox Avenue. The Commission recognizes the importance that the community places on 470 Lenox Avenue's frontage and visibility on Lenox Avenue, and the revised site plan retains that grand entrance and cul-de-sac. Preserving the cul-de-sac required the applicant to remove the six-story podium building and extend the base of the northwestern corner building to frame the cul-de-sac entrance. The revised site plan strengthens the relationship between existing and new buildings and aids in the appropriate distribution of floor area throughout the site, as the applicant no longer needs the waiver to reduce distance between buildings. The Commission is also pleased that the revised site plan balances the important historical context of the site while improving the corridors that bound the Lenox Terrace complex by locating new buildings with active commercial uses at the street line for much of the Lenox Avenue and other street frontages.

The Commission believes the special permit to modify the site plan is appropriate, as modified herein. The site plan at the time of certification did not explicitly require public access through the Lenox Terrace campus. As Lenox Terrace is a superblock bordered to the east and south by a

finer-grained, more regular street grid, the Commission believes it is critical to improve pedestrian circulation through Lenox Terrace, particularly in regard to east-west access. Therefore, the Commission is modifying the proposal to require a public pedestrian circulation pathway through the site, connecting Lenox Avenue to Fifth Avenue. This Public Walkway, as defined in the Restrictive Declaration and site plans, will begin at Lenox Avenue, encompassing the area generally between the southern frontage of the northwest building, the northern frontage of the southwest building, and the western frontage of 470 Lenox Ave (excluding the vehicular cul-de-sac).

From the Lenox Avenue entrance area, the Public Walkway will continue generally eastward as a path until it meets the western boundary of West 134th Street, a mapped street. From the eastern boundary of West 134th Street the pathway will continue eastward until intersecting with 5th Avenue below the southern frontage of the northeast building. The large majority of the Public Walkway will maintain a minimum width of 15 feet, except for a minor portion that narrows as it connects the two Lenox Avenue entrances just west of the western frontage of 470 Lenox Avenue. The provision of the required Public Walkway will improve circulation through Lenox Terrace for residents and the greater community by providing a more direct route to those travelling to the 135th Street subway station, the existing community and recreation centers fronting on West 134th Street, building entrances, and the new ground-floor commercial uses that will be located at the edges of the Lenox Terrace. At each access point to the Public Walkway, on Lenox Avenue, West 134th Street and 5th Avenue, signage will be provided indicating the Public Walkway is open to the public from 6:00 am to 10:00 pm. The Commission believes this required Public Walkway will contribute to a superior site plan in that it will greatly improve the relationship and pedestrian access between adjacent streets, buildings (including the existing community centers in the project area), and open spaces for both the residents of Lenox Terrace and surrounding community.

Zoning Special Permit (C 200054 ZSM)

The Commission believes that the special permit to modify the amount of required parking on site is appropriate. Depending on which MIH option is used, the existing zoning would require

from 847 to 888 parking spaces on site. The Commission emphasizes that Lenox Terrace is well served by public transit, including the MTA 3 train line and several bus routes. The Commission believes that the 525 proposed parking spaces is sufficient for the development site, which is near multiple modes of transit and notes the recent area trends of reduced car ownership. The proposed 525 spaces are still an increase from the existing 387 at-grade parking space. The applicant has indicated that it will allow existing tenants who use on-site parking to retain a parking space in the new sub-grade structure. The Commission is pleased that the relocation of most of the existing onsite parking to below grade enables the surface parking spaces to be repurposed as part of a larger landscaped area.

Zoning Authorization (N 200053 ZAM)

The Commission believes that the authorization to modify curb cut requirements is appropriate. The authorization will allow for the creation of additional and wider curb cuts on Malcolm X Boulevard, West 132nd Street, West 135th Street and Lenox Terrace Place. In total, the site will contain 16 curb cuts, five of which will provide access to the below-grade parking. The Commission is pleased that the applicant revised the application to request fewer curb cuts overall.

The Commission believes that the proposed site plan, as modified, improves the pedestrian experience both around the outer bounding streets and sidewalks of Lenox Terrace and through the superblock. Although the FEIS indicates that one crosswalk examined in the environmental review process would experience significant adverse impacts in regard to pedestrian traffic, the Commission nonetheless believes that the existing street network is adequate to handle the increase in density and circulation from the proposed development. Additionally, the increased density is balanced with the substantial pedestrian realm improvements of the modified site plan resulting from active commercial uses along all four bounding streets, a reduction in the total requested curb cuts, and the required Public Walkway.

The Commission notes the need for additional affordable housing. The Commission is pleased that the applicant is in discussions with HPD regarding Article 11 applicability (outside of this

application) to provide additional affordable housing for a variety of income levels.

The Commission is pleased that the applicant has committed to providing local retail, and urges the applicant to thoughtfully consider phasing that would allow existing tenants to use vacant storefronts during the construction period. The Commission emphasizes the importance of establishing an adequate retail presence to support the surrounding residences, as well as to provide an active ground-floor commercial and community facility presence. The Commission encourages the applicant to continue exploring potential tenants that will provide a variety of local retail options, including seeking out shorter term tenants during the construction process.

Although the site plan now includes a Public Walkway that provides east-to-west access through the development site, the Commission continues to be interested in public access and usage of the proposed open space within the Lenox Terrace campus. The applicant has indicated that, beyond the Public Walkway that will be required as part of the proposed development, the nature of the open space and public access is still being considered. The Commission encourages the applicant to continue efforts to make open space accessible to those who live outside of the Lenox Terrace development site.

At the public hearing and in their recommendation letter, Manhattan Community Board 10 testified that the proposed actions threaten the preservation of African American plurality in their community, which they allege is protected by the Voting Rights Act. Historically, the practices and procedures that have been determined to violate the Voting Rights Act have been those related to voting, specifically electoral laws and practices that involve voting procedure or redistricting. The Commission does not believe that a municipal zoning action that is unrelated to voting procedures violates Voting Rights Act. .

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 public and private streets providing access to such large-scale general development will be adequate to handle traffic resulting therefrom;
- 5) Not applicable
- 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 having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on January 23, 2020, with respect to this application (CEQR No. 18DCP084M), the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and regulations, have been met and that:

1. Consistent with social, economic and other essential considerations, from among the reasonable alternatives thereto, adopted herein is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable;
2. The adverse environmental impacts disclosed in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating, as conditions to the approval, pursuant to the restrictive declaration attached as Exhibit A to City Planning Commission report for C 200050 ZSM, those project components related to environment and mitigation measures that were identified as practicable;
3. No development pursuant to this resolution shall be permitted until the Restrictive Declaration attached as Exhibit A, as same may be modified with any necessary administrative or technical changes, all as acceptable to Counsel to the Department of City Planning, is executed by Lenox Terrace Development Associates or its successor, and such Restrictive Declaration shall have been recorded and filed in the Office of the Register of the City of New York, County of New York.

The report of the City Planning Commission, together with the FEIS, 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 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 Lenox Terrace Development Associates pursuant to Section 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 23-60 (Height and Setback Regulations) and 35-60 (Modification of Height and Setback Regulations), in connection with a proposed mixed use development, within a large scale general development, on property generally bounded by West 135th Street, Fifth Avenue, West 132nd Street, and Lenox Avenue-Malcolm X. Boulevard (Block 1730, Lots 1, 7, 9, 25, 33, 36, 40, 45, 50, 52, 64, 68, and 75), in R8 and R8/C1-5 Districts,

Borough of Manhattan, Community District 10, as revised, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 200050 ZSM) 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 Davis Brody Bond filed with this application and incorporated in this resolution:

<u>Dwg No.</u>	<u>Title</u>	<u>Last Date Revised</u>
U.001	Zoning Analysis	01/31/2020
U.002	Open Space Diagram	01/31/2020
U.004	Zoning Lot Site Plan (Proposed)	01/31/2020
U.008	Height and Setback Waiver Pan	01/31/2020
U.009	Sectional Height Diagram	01/31/2020
U.010	Sectional Height Diagram	01/31/2020
U.011	Sectional Height Diagram	01/31/2020
U.012	Sectional Height Diagram	01/31/2020

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. No development pursuant to this resolution shall be permitted until the Restrictive Declaration attached as Exhibit A, as same may be modified with any necessary administrative or technical changes, all as are acceptable to Counsel to the Department of City Planning, is executed and recorded by Lenox Terrace Development Associates or its successor, and such Restrictive Declaration shall have been recorded and filed in the Office of the Register of the City of New York, County of New York. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.
5. The development shall include those mitigation measures listed in the Final Impact Statement (CEQR No. 18DCP084M) issued on January 23, 2020 and identified as practicable.
6. In the event 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.
7. 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, sub-lessee or occupant.
8. Upon the 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.

9. 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 200050 ZSM), duly adopted by the City Planning Commission on February 3, 2020 (Calendar No. 1), 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*

DAVID BURNEY, ALLEN P. CAPPELLI, ESQ., ALFRED C. CERULLO III,

JOSEPH DOUEK, RICHARD W. EADDY, HOPE KNIGHT,

ORLANDO MARIN, LARISA ORTIZ, RAJ RAMPERSHAD, *Commissioners*

ANNA HAYES LEVIN, *Commissioner*, ABSTAINING

MICHELLE DE LA UZ, *Commissioner*, VOTING NO



CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD 10
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CICELY HARRIS
Chairperson

SHATIC MITCHELL
District Manager

Resolution
Manhattan Community Board 10
Disapproving Rezoning Application of Lenox Terrace with Conditions

WHEREAS, the owners of Lenox Terrace (hereafter known as Olnick) has made several land-use action applications to the New York City Department of City Planning seeking to rezone the Lenox Terrace block to accommodate five 28 story mixed use buildings— *in particular, a zoning map amendment from R7-2 and C1-4 zoning districts to a C6-2 zoning district; two special permits to waive bulk and parking requirements; and a zoning text amendment* - (hereafter known as the “project”); and

WHEREAS, the Lenox Terrace Rezoning proposal brought forth by the Olnick is massive, calling for the development of five *State Office Building* sized towers, covering most of a large rectangular zoning block that encompasses the equivalent of four streets (North and South) and two well distanced avenues (East and West) and will be situated on the block’s outer perimeters; and

WHEREAS, the project as now proposed by Olnick, would consist of approximately 1600 units, which 1200 of those would be market rate, and

WHEREAS, the public reviewing process known as ULURP to review Olnick’s application has begun and Community Board 10 is the first step of review in such process; and

WHEREAS, Community Board 10 has *approximately* 60 days to review the Olnick application and render an opinion on same, which such time began on August 26, 2019; and

WHEREAS, Community Board 10, through its Land Use Committee, held two public hearings on September 19, 2019 and October 17, 2019, respectively, affording Olnick the opportunity to present its rezoning plans to the board and the public, and affording the community at large the opportunity to review said applications and comment; and

WHEREAS, the Lenox Terrace Tenants Association known as LT-ACT, concerned residents and other community residents and organizations presented their positions and opinions in opposition to the Olnick applications; and

WHEREAS, other residents and union members, namely members of 32B-J, presented reasons in support of the Olnick application; and

WHEREAS, the Land Use Committee after hearing all of the views, including written submissions, for and against the project have deduced from such hearings the following concerns

Concerns

Threat of Losing an African American Plurality in CB 10

WHEREAS, Community Board 10 makes up a large part of City Council District 9 and its plurality is African American, giving Council District 9 also an African American Plurality; and¹

WHEREAS, Lenox Terrace is a huge housing development (approx. 1,700 units) within Community Board 10 with a tremendous cultural and political history, including home to several world renown people; and

WHEREAS, Community Board 10's citizen voting age plurality is also African American; and

WHEREAS, the African American population in the United States is a protected group under the Voting Rights Act of 1965; and

WHEREAS, Community Board 10 (Central Harlem) and Council District 9 have enjoyed an African American plurality for over one hundred years and political power for the last four score years; and

WHEREAS, the community at large, expert opinions and other evidence have alleged or demonstrated that the rezoning as proposed by the Olnick plans could affect the African American plurality in such a way that within 10 years, Harlem will not be an African American plurality; and, in that

WHEREAS, it is further attested that this scale of redevelopment threatens a community that has also enjoyed an African American plurality by potentially terminating such plurality and its history, as the overwhelming majority of units will be *market rate* and, in that

WHEREAS, the Metropolitan African Methodist Church, located at 58 W. 135th St. – the second oldest African Methodist Episcopal congregation in Manhattan – which is in the footprint of the rezoning proposal – has sold its property to Empire Development Fund 4, LLC, and there is a strong likelihood that another massive residential tower will be built in the former church space. Even further, the possibility that the privately owned Joseph P. Kennedy, Jr. Center could be sold to a private developer and *that* space too could see one or two 28 story towers—culminating in potentially *eight* towers! – thereby, development on this block in totality could set a dangerous precedent for multifamily buildings in Harlem built in this era and accelerate the termination of the African America Plurality in the neighborhood forever; and

WHEREAS, such concerns are realistic because historically market rate apartments in Harlem are occupied mostly by non-African Americans, as historically African Americans have a higher unemployment rate due to discriminatory systems that have long been in place and African Americans historically have faced and still do, unequal employment practices precluding them from securing market rate apartments; and, in that

WHEREAS, there is *no* guarantee that the legacy of Lenox Terrace will be protected under the plurality of a non-African American group in the event that African Americans are no longer the majority thereby threatening our legacy in said place; and

CB 10's and City Council District 9's Prior History Regarding a Threat to its African American Plurality and Outcome

WHEREAS, in 2007 Community Board 10 responded to New York City's 125th Street Rezoning plan in its Resolution Disapproving of the 125th Street Rezoning which included the ground that its plurality and political power would be threatened by such rezoning, thereby making such zoning in part a violation of the Voting Rights Act (*infra*); and

WHEREAS, the New York City Council paid close attention to Community Board 10's concern in that regard and within the 125th Street Special District's zoning's area for the highest residential density, such development is discouraged by certain mechanisms that have been put in place under local law; and

WHEREAS, City Council District 9 residents successfully fought to strengthen the African American plurality in District 9 (as well as Community Board 10) when the City brought forth its City Council Redistricting plan in 2012-2013, making such plurality (59%) greater by 8%; and

WHEREAS, Community Board 10 and District 9 residents relied on the Voting Rights Act of 1965, as amended in 2006 known as the ***Fannie Lou Hamer, Rosa Parks and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006***; and

WHEREAS, such Act's purpose in part is to guarantee the right of protected groups (i.e., African American) to be able to cast meaningful votes [Section 2]; and

WHEREAS, Congress has found that the reasons for such concerns by the African American group (*supra*) are justified; and

WHEREAS, Congress has declared in part through such Act that any practice or procedure that affects voting that has the purpose of or will have the effect of diminishing or diluting the ability of any citizens in a protected class (i.e., African American) to elect their preferred candidates of choice denies or abridges the right to vote [Section 5]; and

WHEREAS, the African American population in CB 10 and Council District 9 is sufficiently large and geographically compact to constitute a majority in a single – member district; such group is politically cohesive; and the majority votes sufficiently as a bloc; and

WHEREAS, because of the above, African Americans living in CB 10, Council District 9, Senate District 30, Assembly District 70, enjoy African American representation in government, which is by their choice and they have demonstrated that they want to continue voting for people in their group; and

WHEREAS, the United States Supreme Court in 2013 in a matter known as **Shelby County v Eric Holder** upheld Section 5, which means a district's plurality could sustain its political power and reject any rezoning or redistricting that threatens such political power; and

Tenants' Rights: Overall Maintenance, Repairs and Capital Improvements

WHEREAS, according to LT-ACT, Olnick has a poor record of stewardship to Lenox Terrace residents ranging from poor service, negligent maintenance and repair, and insufficient staffing on the premises which compromises resident's safety. Further evidence provided by the Committee is that the Olnick organization has failed to maintain the apartments and common areas of the complex. This negligence has created conditions which have resulted in significant health hazards. Tenants have identified mold, lead contamination in the water pipesⁱⁱ, and friable asbestos from cracked asbestos in the vinyl tile flooring. It is reported that many residents are living in "deplorable conditions" or as the testimony suggests, at the least conditions that are not bargained for. In this recent turn of events, no legal plan and/or agreement has been put in place to rectify the outstanding maintenance repairs or the desperately needed capital improvements required as a "Tenant Right." or one that outlines tenant's obligations for personal and collective upkeep. Tenants have reached out to CB10 to vote "No" to the proposed resolution without conditions to "*put an end to the "crippling" landlord-tenant relationship where residents feel like hostages*"; and

Pending Litigation, Affordable Housing, Impact of Market Rate Units

WHEREAS, according to LT ACT, there are claims currently pending or litigated against the applicant. Claims filed and damages sought and recovered need to be better understood. The Land Use committee heard testimony which was later supported by written submission, and Olnick has not disputed such testimony or written submission, that it receives J51 tax credits and has unlawfully (attempted to) deregulate apartments at the Lenox Terrace properties while still receiving such tax credits and that it is involved in a civil dispute regarding the matterⁱⁱⁱ; and, in that

WHEREAS, this pending lawsuit, the outstanding maintenance concerns and alleged displacement of 700 residents has resulted in high levels of mistrust of Olnick among residents and the community at large questioning Olnick's overall integrity for any project moving forward; and

WHEREAS, the Olnick organization has not presented an income targeted housing plan that is more attractive than 60% of the AMI (see MIH Attachment), *supra*; and

WHEREAS, to date, the Olnick Organization has not presented an income targeted housing plan that is satisfactory to CB 10 or the Community-at-large. Community Board 10 has submitted their Mandatory Inclusionary Housing resolution to the owner (Appendix A); the Olnick plan does not meet our Resolution standards and expectations; and

WHEREAS, it has been historically demonstrated that major developments that consist of mainly market rate units increase rents, property values and taxes in the catchment areas where such developments are located. The Lenox Terrace block is surrounded by many properties owned by senior African Americans with limited income, thereby putting such property owners at risk of higher property taxes and precluding African Americans the option of living in a neighborhood that we historically enjoy; and

Physical Context/Neighborhood Character

WHEREAS, Olnick has requested a Special Permit for large scale general development (ZR 74-743) that will provide height and set back relief. The five 28 story towers in the Olnick plan will almost reach as high as the Adam Clayton Powell Jr., Harlem State Office Building and be positioned on the street line rather than set back with open space in the forefront if approved. Such height proposed is generally allowed in areas that can provide considerable set back and open space in the forefront, near parks or on hills, etc., The Olnick plan is way out of the contextual landscape of the area; and, in that

WHEREAS, it has been testified by residents that this form of dense redevelopment threatens a neighborhood community that has enjoyed light and air and moderate density; and, in that

WHEREAS, even the [Victoria Theater Project] which is a towering 26 story building on W, 125th Street – a project under the control of the Empire State Development Corp - has honored the spirit of Section 5 of the Voting Rights Act of 1965 and, the 125th Street Special District, whereby it has a 100 feet set back and its housing model is targeted at 50/30/20, which housing income bands are Open, Moderate and Low, respectively. Further, the Victoria building is shorter than the buildings in the Olnick plan; and

Historic Preservation/Resources (Historic and Cultural) and Shadows/Over Shadowing

WHEREAS, according to the CEQR, the Landmark Preservation Council determined that the Lenox Terrace complex appears to be National Register eligible. To date, Olnick has inadequately addressed the historic, architectural and cultural significance of the Lenox Terrace complex. For example, in the existing site plans it is suggested that a six story podium be erected in front of the classic driveway in front of 470 Lenox Avenue. The driveways of Lenox Terrace were a unique feature of the complex during the postwar period; other Harlem buildings built during this period did not have them. The driveways gave the complex a cache; the driveways coupled with a *fully suited* doorman was a feature that attracted upwardly mobile African Americans to live at Lenox Terrace as both they and their guests arriving to the residence could be dropped off in front of the *full service* building; it was *this* element of service and convenience at that time that was only to be experienced in downtown Manhattan; and, in that

WHEREAS, the CB 10 community desires that any proposed development must protect and celebrate the Lenox Terrace architectural relics of the period; in the proposed site plan, the new buildings built at the proposed height would put *the* Lenox Terrace as originally built, at risk. The plans will overshadow the distinguished architectural gem *the* Lenox Terrace is known for; and

WHEREAS, our New York City society at large wants more than photographs, statues or written information on historic places, hence we have a NYC Landmarks Preservation Commission and New York State Registry of Historic Sites that support the physical brick and mortar that any proposed plan should adhere to; and

WHEREAS, the proposed rezoning and the development of five *State Office Building* sized towers will dwarf and overshadow the original Historic Lenox Terrace buildings character; and in that

WHEREAS, the Olnick plan will diminish the visibility of such buildings and potentially create an “*out of sight out of mind*” effect. To date, Olnick has not adequately addressed either the negative impacts and how they would mitigate such impacts; and, in that

WHEREAS, it is believed that the new buildings will cast major shadows on the old buildings and deprive tenants in the old buildings adequate sunlight; and

Public Health: Existing Conditions, Vulnerable Populations and Air Quality

WHEREAS, it is well documented in the Community District 10 profile that there is a high rate of asthma among young children and adults in Harlem, a condition that has plagued the Harlem community for decades. In addition, Harlem residents suffer from other conditions that impact health and quality of life such as cardiovascular disease, depression and stress. Even diseases like diabetes has been associated with higher rates of stress and pollution^{iv} and

WHEREAS, for the area covered by CB10, New York's own Environmental Health agency reports high levels of very fine (PM 2.5) airborne contaminants and ozone derived from vehicle emissions. Fine particulates (PM10) derived from construction and other types of activities are also elevated in Central Harlem. These particles are small enough to lodge in the lungs and cause short and long term lung damage^v (Appendix B)

WHEREAS, while there has been some discussion to date around air quality testing pre, during and post construction, there is no discussion concerning air quality post construction and the impact it will have on residents living in the older buildings which will be enclosed and surrounded by larger buildings. It is reasonably believed that 7-10 years of construction as anticipated in the Olnick plan, will have a serious negative impact *at a minimum* on people who suffer from asthma and other related respiratory diseases; and

Overall Socio Economic Conditions

WHEREAS, a project that will increase overall density of approximately 4000 persons (not including the church development) is going to have a socio economic effect on the complex and the public systems (MTA, local schools, recreation areas and existing businesses). While the changes have been acknowledged, the research and plans to date have not been adequate. This project is *more than* a private developer led rezoning. The level of transformational change anticipated as a result of this project requires a plethora of community stakeholders, urban planners, policy analysts, residents and business leaders to both understand the magnitude of the project, and the various components impacted in order to 1) develop effective solutions/recommendations to ensure balanced growth and scale, and 2) manage the change. Ultimately, what Olnick is proposing in this resolution is creating a "mini city". To date, there has not been enough collective dialogue with institutional and public partners *at the same table* who can mitigate risk and support the public systems that will be affected.

Summation

It is important to point out that while the Olnick organization is a private developer that in fact owns the land in question, it is fair to acknowledge that the landlord has also been the agitator for the existing state of affairs with tenants. It is the hope of the tenants and community at large, that the developer acknowledge the above referenced concerns shared and the implications for any rezoning. Further, according to LT ACT (from the accounts of the pending litigation whereby Lenox Terrace has been charged with illegally deregulating rent stabilized apartments), there is a strong implication that the owners of Lenox Terrace are the *key driver of displacement and destabilization in Harlem*. This unspoken reality leaves residents of Lenox Terrace vulnerable. In addition to the threat of CB 10's African American plurality, the basic tenant protections that residents seek from any landlord are being compromised through negligence and a lack of transparency. To date, Olnick has not addressed these concerns nor disputed any of the aforementioned claims nor demonstrated an organizational/project capacity to address *our* need for balanced growth. A major development such as the one proposed, will no doubt *tip the scale* from a demographic standpoint. In sum, one tenant referred to the proposed development as "dynamite" as it will have explosive effects. It is the hope of the residents and community at large that all these factors be seriously considered by the developer in this process.

The Olnick organization is currently in negotiation with Lenox Terrace residents regarding a "Tenants-Benefits Agreement." In the absence of a final draft of such agreement, Community Board 10 has drafted *conditions* to be included in such agreement and that such agreement must be finalized to the satisfaction of the current residents and, that the Manhattan Borough President's Office, Department of City Planning and City Council must consider any absence of such legal document as CB 10 has. To date there is no tenants-benefits agreement of any kind but one should include a series of *comprehensive* solutions with respect to process as well as benefits to tenants that compensate for all inconveniences caused as a result of such project. A solution and a benefit would include Olnick being a *responsible* affordable housing partner.

NOW THEREFORE, BE IT RESOLVED

Community Board 10 **DISAPPROVES** of the Olnick Rezoning Plan presented because of, but not limited to, the concerns set forth above and failing to dispute or refute well documented claims, and now sets forth in this Resolution, the following conditions:

- That Community Board 10 rejects the application which calls for a C-6 Rezoning as not consistent with the present and future needs of the community it affects; and
- That a permanently binding Tenant's Benefit Agreement (TBA) that addresses immediate and long term concerns of existing and future tenants be in place before any zoning application be approved; and
- That Olnick agrees to a process for completing a binding and *inclusive* Community Benefits Agreement (CBA) to be in place before any zoning application is approved.

Community Board 10 will only reconsider a rezoning plan if the current one is withdrawn and a new one is certified with the following conditions and CEQR boilerplate assessments in the areas below

Zoning Requirements

- The building heights cannot exceed 195 feet, with appropriate set-backs and the commercial zoning remain C1-4; and

Tenant Protection: Outstanding Repairs, Exposures, Capital Improvements

- That Olnick agrees to present an acceptable plan, approved jointly by the tenant's association of Lenox Terrace and CB 10, one that is legally binding on how it intends to resolve the outstanding maintenance conditions within the complex and the conditions of the apartments – all of which have now posed a health hazard that must be remedied (Appendix B); and
- CB 10 is requesting a review of any remediation and inspection reports as proof the work has been completed/addressed before *any* other approval or negotiations of any other aspect of the proposed rezoning can occur; and

CB 10 Mandatory Inclusionary Housing/Affordable Housing, Regulatory Agreements and Oversight

- That Olnick agrees that the income bands must be set at 50/30/20 of the AMI – open market, moderate income, low income, respectively; and
- That Olnick agrees that the income bands in this housing model must be permanent; and
- That Olnick agrees that poor credit history or having no credit at all cannot be used to disallow an applicant for housing in the new buildings if that is the only reason used to disallow such applicant. And under no circumstances will a person's landlord/tenant litigation history with a landlord be used as a reason to disapprove an applicant, unless such landlord prevailed on an action for non-payment of rent; and
- That Olnick agrees to partner with NYC HPD/HDC to explore *all* affordability programs and options and that NYC HPD will oversee the implementation of affordability programs and provides said oversight and report to CB 10 on how many units are transferred to CB 10 residents and well as the levels of affordability devised for the project; and
- That Olnick agrees that CB 10 residents will have a 50% preference on all the moderate and low income units; and
- That Olnick agrees to commit to a legally binding agreement to maintain all of the current units under the rent stabilized law; and

MWBEs and Workforce Development Commitment

- That Olnick agrees that MWBE targets will be established (30% and/or >) and approved by CB 10 and employment preferences will be given to community residents; and
- Construction jobs must be provided to union workers with a diverse workforce and that hire locally. Any exceptions must be negotiated in an ironclad agreement between CB 10 and Olnick. Such ironclad agreement shall be written into law; and

Density Plan, Movement, Navigation and Safety

- That Olnick agrees that a well-conceived density plan approved by CB10 Public Safety committee and the LTDC; one that examines cumulative traffic impact and considers both pedestrian and vehicular traffic issues as identified by community stakeholders (not an EIS report) and acknowledges overall safety, school zones and peak traffic area days and times (e.g., 135th and 5th Avenue intersection); and

Health and Population

- That Olnick agrees to a well-conceived plan that is approved by CB 10, through its Health and Human Services committee and considers the high resident senior citizen population (65%) as well as the Harlem population afflicted with high rates of respiratory diseases including asthma. A plan must consider the effects of construction on the health and well-being of residents and those populations at risk (Appendix C) ;
 - one that implements routine (e.g., monthly) indoor and outdoor air quality testing before, during and after construction
 - one that requires a health proxy taken of all residents with existing respiratory illness pre construction and
 - one that offers relocation allowance for residents who cannot physically endure and providing HEPA air purifiers/ breathing devices based upon medical claims, and

Historic Preservation, Arts and Culture and Shadows

- That Olnick agrees to a well conceived plan that is approved by CB 10's Historic Preservation and Arts and Culture committees, Save Harlem Now and other local preservation/arts organizations as well as support of an application submission to NYS and Federal Registry of Historic Sites and offers rent concessions to residents who are inconvenienced by shadows and whose views are compromised as a result and that open space is protected; and

Building Staffing Composition

- That Olnick agrees that building staffing ratios will be addressed and employees dispersed based upon the residents needs and the overall needs of "the Facility"; and

Security Plan

- That Olnick agrees that a detailed security plan will be outlined to ensure the safety of residents, business owners and staff. This plan will be approved by CB 10 Public Safety committee, tenants, affected and surrounding institutional partners and leaders of the 32 Precinct; and

Parking

- That Olnick agrees that a well-conceived parking plan detailing accessibility and outlining options and payments for both existing residents and new residents. This plan will be approved by the LTDC and will address the allocation of spaces, transferability of spaces, reduced parking fees for rent stabilized tenants; and

Retail

- That Olnick agrees that a detailed plan for the retail corridor will be developed; one that is approved by LTDC and CB 10 Economic committee; a plan that includes: uses, type (local vs. destination), rent concessions for small business, incorporates existing street vendors, a coop share for local small businesses; and

Environmental Impact, Transportation & Community Impact/Engagement

- That Olnick agrees to a detailed plan approved by the CB 10 Transportation Committee, MTA and LTDC that addresses the following:
 - Plans to mitigate transportation impacts at the 135th Street Subway station and the Intersection at the 135th Street and 5th Avenue; and
- That Olnick agrees to a true community engagement process that includes Lenox Terrace residents as well as the broader Harlem community, a process that includes (but not limited to) charettes, visioning and focus groups; and
 - Plans to include neighboring institutions surrounding Lenox Terrace in the planning of services and the planning of construction and inconveniences caused; and

Construction

- That Olnick agrees to a construction impact assessment as this is an infil project that affects existing residences and open space. The assessment will evaluate the duration and severity of the disruption or inconvenience to all impacted including noise and vibration analyses; and
- That Olnick agrees to monthly/quarterly meetings with both the LTDC and CB 10 respectively on the evolution of construction plans, report findings, progress and timelines.

Resident Services Office/Center

That Olnick agrees that any rezoning and/or as of right development plan they undertake, will include (and Olnick to fund) a resident services office, one that serves tenants 24/7 pre, during and post construction with real time information. The role and its various functions of this office will be negotiated and approved by Community Board 10 and the tenants. The office will negotiate tenant abatements, concessions, and relocations. The office will administer the Lenox Terrace Development Committee (herein as referenced above as the "LTDC") and organize routine meetings with the tenants and the developer concerning construction progress and updates. The office will also manage the newly established resident's council, governing body comprised of various sub committees (Appendix D)

NOW THEREFORE, IT IS FURTHER RESOLVED that the aforementioned/conditions run with the land and must be part of any law enacted declaring any consideration of rezoning.

THEREFORE BE IT RESOLVED that Manhattan Community Board 10 voted to disapprove the rezoning application of Lenox Terrace with conditions with a vote of 20 in favor, 15 opposed and 1 abstention at the November 6, 2019 General Board Meeting.

Appendices

- A. Community Board 10 Mandatory Inclusionary Housing (MIH) Zoning Resolution No. MIH2016
- B. 10 West 135th Street: Important Notice Regarding Possible Lead Contamination
- C. CB10 Health and Human Services Committee: Lenox Terrace Association of Concerned Tenants Opposes Plan to Bring OVERSCALE Development to Central Harlem
- D. Lenox Terrace Resident's Council: Suggested Sub- Committees

ⁱ Manhattan Community Board 10 2014 District Needs Statement, "African Americans make up approximately 63% of Community Board 10's population, followed by Hispanic at 22%, White at 10% and Asian at 2%."

ⁱⁱ DEP Notice of Lead addressed to a Lenox Terrace tenant regarding the DEP's finding that there is lead in the Lenox Terrace property's plumbing system. October 2, 2019

ⁱⁱⁱ In **Downing v. First Lenox Associates, LLC**, Index No. 100725/2010 (the "Lenox Terrace Class Action"), Lenox Terrace tenants filed a class action lawsuit against the owners of Lenox Terrace in 2010. The Lenox Terrace tenants are alleging that the owners of Lenox Terrace improperly treated apartments as being unregulated under applicable rent stabilized laws even though it was receiving "J-51" tax benefits. The Board takes Notice of such alleged impropriety pursuant to *Roberts v Tishman Speyer Props., L.P.*, 2009 NY Slip Op 480 [13 NY3d 270] October 22, 2009 [Court of Appeals] holding that 100% of units in a development under the J51 program must be Rent Stabilized.

According to publicly available documents that were filed July 31, 2019, the owners of Lenox Terrace recently agreed to pay \$2,989,000 in a preliminary (i.e., not final) settlement agreement in the Lenox Terrace Class Action.

^{iv} LT-ACT (2019) The Lenox Terrace Association of Concerned Tenants OPPOSES Plan to Bring OVERSCALE Development to Central Harlem

^v LT-ACT (2019) The Lenox Terrace Association of Concerned Tenants OPPOSES Plan to Bring OVERSCALE Development to Central Harlem



CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD 10
215 West 125th Street, 4th Floor—New York, NY 10027
T: 212-749-3105 F: 212-662-4215

HENRIETTA LYLE
Chairperson

ANDREW LASSALLE
District Manager

Mandatory Inclusionary Housing (MIH) Zoning Resolution
No. MIH 2016

WHEREAS, the City Council on Tuesday, March 22, 2016 voted overwhelmingly to approve Mayor Bill de Blasio's mandatory inclusionary housing program (MIH) which will apply to any new buildings in Up-zoned neighborhoods and any new spot rezoning; and

WHEREAS, pursuant to MIH, the City Planning Commission and ultimately the City Council would apply one or both of the following two requirements to each Mandatory Inclusionary Housing area: 1) 25% of residential floor area must be for affordable housing units for residents with incomes averaging 60% AMI (\$46,620 per year for a family of three) and 10% of housing to be affordable at 40% AMI (\$31,080 per year for a family of three); or 2) 30% of residential floor area must be for affordable housing units for residents with incomes averaging 80% AMI (\$62,150 per year for a family of three); and

WHEREAS, in addition to one or both of the options, the City Council and the City Planning Commission could decide to apply one or both of the Deep Affordability Option and/or the Workforce Option; and

WHEREAS, the Deep Affordability Option provides that 1) 20% of the total residential floor area must be for housing units for residents with incomes averaging 40% AMI (\$31,080 per year for a household of three); and 2) No direct subsidies could be used for these units except where needed to support more affordable housing; and

WHEREAS, the Workforce Option provides that 1) 30% of the total residential floor area must be for housing units for residents with incomes averaging 115% AMI (\$89,355 per year for a household of three); 2) No units could go to residents with incomes above 135% AMI (\$104,895/year for a household of 3); 3) No direct subsidies could be used for these affordable housing units; and 4) The Workforce Option would not apply to Manhattan Community Districts 1-8, which cover south of 96th Street on the east side and south of 110th Street on the west side; and

WHEREAS, MIH allows for: a) Permanent affordability; b) that MIH requirements would kick in above 10 units; c) that a "Fee in Lieu" option is available for buildings between 11-25 units; d) that a BSA waiver is available for projects that can show financial hardship; and e) that Off-site options available for the affordable housing; and

WHEREAS, Manhattan Community Board 10 has repeatedly heard from residents of the District of their concerns and fears that the high and escalating cost of housing is forcing long standing Residents to move from the District or into over-crowded or rent-burdened living conditions and that the supply of rental housing has been shrinking, especially for extremely low and very low income families due to a variety of factors, including but not limited to a robust housing market in Community Board 10, rising costs of construction, rising land prices, land-use restrictions and conversions of units to market rate condominium and cooperative housing; and

WHEREAS, according to a 2015 NYU Furman Center study on housing affordability based on Community Board districts, Central Harlem's severely rent-burdened households represent 38.8% of CB 10 households, has an unemployment rate of 13%; median household income of \$40,615, poverty rate of 29.2%, with a household income distribution (2015 dollars) as follows: 30% less than \$20,000; 21% less than \$40,000; 16% less than \$60,000; 17% less than \$100,000; and 4% less than \$250,000 for CB 10's 132,027 residents (2014 estimate).

WHEREAS, estimates are that for every 100 low-income households (which earn less than 50 percent of the area median income (AMI) Nationwide and in Community Board 10, there are only 30 homes that are affordable and available to those households.

NOW THEREFORE, BE IT RESOLVED:

- 1) That Manhattan Community Board 10's Land Use Committee will welcome any ULURP Applicant seeking Community Board 10 approval of its application if that project provides 50% of residential floor area to be for affordable housing units for residents with incomes averaging 80% AMI for Harlem (\$62,150 per year for a household of three); and
- 2) That Manhattan Community Board 10's Land Use Committee will welcome any ULURP Applicant seeking Community Board 10 approval of its application under any of the four MIH options if that project provides 10% to 20% of residential floor area to be for affordable housing units for residents with incomes averaging between 40% to 60% AMI; and
- 3) That Manhattan Community Board 10's Land Use Committee will highly recommend any ULURP Applicant seeking Community Board 10 approval of its application that seeks to utilize the "Fee in Lieu Option" if the Applicant demonstrates that the fee proposed be dedicated to physical, social and/or historic preservation efforts within Community Board 10; and
- 4) That Manhattan Community Board 10's Land Use Committee will welcome any ULURP Applicant seeking Community Board 10 approval of its application that seeks to utilize the "Offsite Development Option" if the Applicant demonstrates that the offsite development proposed is to be located within Community Board 10 and constructed contemporaneously with the primary development project; and
- 5) That Manhattan Community Board 10's Land Use Committee will welcome any ULURP Applicant seeking Community Board 10 approval of its application for homeownership

housing if that application provides 20% to 25% of its units for moderate and middle income Residents within Community Board 10; and

- 6) That the Mayor of the City of New York, the City Council and all Administrative Agencies having oversight of the application of MIH require an Impact Study be prepared prior to approval of the Application that reviews the impacts on schools, traffic, and parking with respect to any development project proposed within Community Board 10 and that a public presentation is made prior to ULURP certification by the Department of City Planning; and
- 7) That the Mayor of the City of New York, the City Council and all Administrative Agencies having oversight of the application of MIH work with the US Department of Housing and Urban Development to make appropriate adjustments in the AMI for Central Harlem to more accurately reflect real household incomes within Community Board 10; and
- 8) That the New York City Department of Housing, Preservation and Development monitor and enforce compliance with Section 3 of the US Housing Act of 1936 requiring employment and training opportunities particularly construction jobs, property management jobs and all jobs tied to the development being approved for Residents and Businesses within Community Board 10; and
- 9) That Manhattan Community Board 10's Land Use Committee will welcome any ULURP Applicant seeking Community Board 10 approval of its application that seeks to set aside 5 to 10% of its units for homeless or those individuals receiving homeless assistance within CB10; and
- 10) That Manhattan Community Board 10's Land Use Committee will welcome any ULURP Applicant seeking Community Board 10 approval of its application that seeks to require that there are homeownership opportunities for the working class in Harlem for first-time homebuyers with units reflecting 2 bedrooms based on salaries started at incomes ranging from \$65,000 (80% AMI for a household of three) to \$110,000 (130% AMI for a household of three); and
- 11) That Manhattan Community Board 10's Land Use Committee will welcome any ULURP Applicant seeking Community Board 10 approval of its application that mitigates displacement and provides a mechanism that quantitatively monitors the real access of Central Harlem lower-income and long-term Residents, particularly Seniors, to the new affordable housing proposed within Manhattan CB10

BE IT FURTHER RESOLVED that Manhattan Community Board 10 partner and collaboratively work with the Real Estate Development Industry, Community Stakeholders and our Elected Officials to advance the goals articulated in this Resolution.

Important Notice Regarding Possible Lead Contamination

Kaloma Cardwell
Chair, Ten West Tenants Association; Tenant
10 West 135th Street
New York, NY 10037

October 8, 2019

Dear Lenox Terrace Resident:

Yesterday, on October 7, 2019, a tenant in our building notified me of **potential lead contamination** involving their unit's running water. The tenant lives in a "D" unit and has sent additional water samples to the City for additional testing.

Unfortunately, I don't have much information beyond the official notice that the tenant received from the City. I have decided to share the attached letter, which is the official notice that the tenant received from the City. Please read both sides of the attached letter.

If you have questions or concerns, please contact management at 212-862-6380 or email Victoria Hair at vhair@lenoxapts.com.

Please also note that on October 7, 2019, I provided notice (via email) to Ms. Hair of the potential lead contamination in our building's plumbing system. In addition to sharing the attached letter with Ms. Hair, I also asked Ms. Hair the following questions:

1. How and when will management inform other tenants at 10 West that the building's plumbing is a potential lead source?
2. How and when will management conduct its own lead tests to assess and test the building's plumbing system?
3. How and when will management use independent agencies or companies to conduct lead tests to assess and test the building's plumbing system?
4. How and when will management follow the steps in questions 1-3 (i.e., inform tenants and run tests) with the other Lenox Terrace buildings?

If and when I hear back from Ms. Hair or management, I will share whatever new information I receive. Please reach out to me or your floor captain if you think we can be helpful, and we'll do our best to answer your questions with the limited information we have.

Sincerely,

Kaloma Cardwell (TWTAPresident@gmail.com)

PLEASE NOTE: The information in (and attached to) this letter is for informational purposes only and not for the purpose of providing legal advice. If you feel it is necessary, you should contact your attorney to obtain advice with respect to any particular issue or problem.



Environmental
Protection

Vincent Sapienza, P.E.
Commissioner

Paul V. Rush, P.E.
Deputy Commissioner
Bureau of Water Supply
prush@dep.nyc.gov

59-17 Junction Boulevard
Flushing, NY 11373

Lead Unit
Tel: (718) 595-5364
Fax: (718) 595-5355
DEPLedUnit@dep.nyc.gov

October 02, 2019

[REDACTED]
10 WEST 135 STREET, [REDACTED]
NEW YORK, NY 10037

Site ID: [REDACTED]
Kit ID: [REDACTED]

Dear [REDACTED]

Thank you for taking part in NYC's Department of Environmental Protection (DEP) Free Residential Lead Testing Program. DEP's laboratory tested your samples to find out how much lead was in the water.

What Are My Results?

Lead Results in parts per billion (ppb)
(1st Bottle) First draw sample measured **22** ppb
(2nd Bottle) 1-2 minute flush sample measured **0** ppb

What Does This Mean?

The level of lead in your drinking water sample(s) indicates a lead source in your property's plumbing system.

What Is My Next Step?

DEP is sending you another test kit with three bottles because the level of lead was 15 ppb or above. Retest your water using the 3-bottle kit to verify your first results and to determine if running your water longer reduces the amount of lead.

What Should I Do?

DEP recommends you take the following steps when using tap water for drinking or cooking to reduce lead exposure:

- **Before use run your water for 30 seconds or more**, especially when water has been sitting in the pipes overnight or for several hours. Run the water until it becomes as cold as it will get, and then for another 15 seconds.
- **Always use cold water** for cooking, drinking, or preparing infant formula. Hot tap water is more likely to contain lead and other metals.
- **Every month remove and clean the faucet screen (also called an aerator)**, where small particles can get trapped.
- **Hire a licensed plumber to identify and replace plumbing fixtures and/or service line that contain lead.**
- **Consider using a home water filter device certified to remove lead.** Particularly if you are pregnant or there are children living in your home, and/or if your water's lead values do not decrease after running the water. Check out www.nsf.org/info/leadfiltrationguide for a list of certified treatment devices.

Sincerely,

Carla Glaser
Section Chief, Distribution Science and Planning
Bureau of Water Supply/Water Quality

More Information on Next Page

More Information

Where Does Lead Come From?

Lead can get into the water when it is in contact with lead service lines/pipes, lead solder, faucets, fittings, and valves. The most common cause for the presence of lead is corrosion, a reaction between the water and the lead pipes or solder. This is a greater concern when the water has not been used for several hours. To reduce corrosion, DEP applies treatment to the water. DEP is confident that the treatment reduces lead levels at the tap, but we cannot be sure that treatment alone will always lower the lead levels in all buildings throughout NYC if lead pipes or solder are present.

Who May Be At Risk?

Lead in drinking water can be harmful, especially to young children and pregnant women. NYC's water is healthy and safe to drink. It has no lead when it is delivered from our upstate reservoir system but the possible presence of lead in your interior plumbing may pose a risk. Not every home will have the same risk because each building's plumbing may be different in material and age.

Who Can I Contact?

For health-related questions:

- Call NYC Health Department -- Healthy Homes at (646) 632-6023
- Visit www.nyc.gov/health - Healthy Homes, Lead Poisoning Prevention
- Contact your health care provider, if you need a blood test for you or your child

For questions about lead in drinking water:

- Call DEP Lead Unit at (718) 595-5364 or
- Email DEPLoadUnit@dep.nyc.gov
- Visit www.nyc.gov/dep/leadindrinkingwater

**Lenox Terrace Association of Concerned Tenants OPPOSES
Plan to Bring OVERSCALE Development to Central Harlem**

The Lenox Terrace Association of Concerned Tenants (LT-ACT) which represents the residents of the Lenox Terrace apartment complex in Central Harlem, strongly opposes Olnick’s proposed development plan as it currently stands. The plan is being put forth by the Olnick Organization, the landlords of Lenox Terrace. The LT-ACT is asking the Community Board 10 to vote “NO” to Olnick’s request to the city to rezone the property from residential to a Commercial Zoning District C6-2 designation. This Commercial designation for the Lenox Terrace lot is larger than the Bronx Terminal Market!

CB10’s Health & Human Services Committee has the vital task of working to preserve and enhance the health and well-being of Harlemites. We detail below the reasons we strongly believe that Olnick’s proposed Commercial Rezoning would, if implemented, irreparably and negatively impact the very areas this committee is charged to protect.

The City’s own compiled data, of which this committee is well aware, paints a picture of a community already unduly burdened with factors that negatively impact health and quality of life. This is true for Central Harlem and adjacent communities of color. The rates of childhood asthma and other respiratory diseases in general, cardiovascular disease, depression, and stress are significantly higher in our neighborhood. Even a disease like diabetes has been associated with higher levels of stress and pollution.

For the area covered by CB10, New York’s own Environmental Health agency reports high levels of ‘very fine’ (PM2.5) airborne contaminants and ozone derived from vehicle emissions. ‘Fine’ particulates (PM10) derived from construction and other types of activities are also elevated in Central Harlem. These particles are small enough to lodge in the lungs and cause short and long term lung damage. According to the agency’s report:

East and Central Harlem show the highest concentration of PM2.5 in all of Manhattan at 1.75 – 2.6 µg/m³. While most of the PM2.5 pollution derives from traffic (Harlem River Drive and local streets), the effects on an already highly impacted area from construction dust cannot be underestimated.

- *Childhood (children 5-17) asthma emergency room visits from 2016 data: 565.4/10,000 vs. 261 for Manhattan overall. This is 2 times worse!*
- *Adult asthma emergency room visits from 2016 data: 269.4/10,000 vs 95.6. This is 3 times worse!*

Air pollution contributes to:

- 1 in 20 deaths
- 1 in 17 asthma-related emergency room visits
- 1 in 31 hospitalizations for the treatment of respiratory and cardiac illnesses

The consequences of the mega-project being proposed by Olnick:

1. Will last for a minimum of 7 years but may take longer if there are any construction delays.
2. Will increase particulates that have been associated with increased rates of respiratory diseases. Olnick's response of 'close the windows' will not be sufficient. During the summer months, who will pay for air conditioning with closed windows?
 - a. There are large numbers of elderly, retired and disabled residents, for whom the additional air pollution would be a health threat.
 - b. The proposed mitigation strategies described by Olnick in the DEIS will not suffice to bring the extra contaminants down to a safe level as they are already NOT safe.
3. Will increase congestion and air pollution
 - a. Not only during construction but even beyond that, the increased population will mean additional traffic, whether private vehicles, car hail services, etc.
 - b. The large retail stores will increase congestion not only during daily operations but also during restocking activities. There will be additional trucks idling their diesel engines adding more particulates and soot to our already taxed environment.
4. Will increased noise pollution during and after construction. There are large numbers of elderly, retired and disabled residents, for which a decade of loud construction noise would be a health threat. Current noise pollution is already intolerable for most Lenox Terrace residents, as well as for residents in neighboring buildings and schools in the surrounding area. These sources of noise pollution include:
 - a. Traffic heading to and from the 135th Street (Madison Avenue) bridge.
 - b. Ambulances (siren noise) to and from Harlem Hospital throughout a 24-hour period.
 - c. Fire truck siren noise from fire station on 133rd Street throughout a 24-hour period.
5. Will increase the density of the population in a three block square area. Doubling the population in such a small area will lead to overtaxing of the infrastructure, such as Harlem Hospital and the subway platform on 135th street.
 - a. Increase density will lead to increased stress. Increased stress is associated with increased mental illness (depression, anger, etc.) and metabolic diseases such as cardiovascular disease and diabetes.
 - b. This will overtax healthcare facilities in the area.

For these and other reasons we respectfully ask the CB10 members and in particular those assigned to the HHS committee to vote a resounding "NO" on this disproportionately large and hugely negative impactful rezoning proposal.

Respectfully yours,

LT-ACT

LENOX TERRACE RESIDENT'S COUNCIL

Suggested Sub- Committees

- Senior Services (On Site and Surrounding Community)
- Youth Services
- Family Services
- Historic Preservation (legacy and race)
- Arts and Culture (new development marketing, interior design, historic preservation)
- Safety (On-site and Public)
- Quality of Life (Common Space, Recreation and Community Building)
- Construction (MWBE, Employment, Interns, Process/Progress)
- Technology (in the built environment and technology centers for residents on site)
- Traffic and Transportation (135th Street Corridor, Density at 135th train platform, New entrance to accommodate growing demographic)
- Housing Affordability (new buildings, old buildings, rent concessions during construction, MIH)
- Health (administer health proxies before construction) , Air quality during construction
- Economic Development/Retail (new/old retail tenants, displacement of street vendors on Lenox, cooperative share among street vendors in new space)
- Lenox Terrace Farmers Market/Harlem Grown
- Physical Development and Contextual Zoning
- Legal
- Parking
- Building, Grounds and Security
- Inter-generationality – succession plans for children, priority given former Harlemites and former LT residents and local community residents

Borough President Recommendation

City Planning Commission
120 Broadway, New York, NY 10007
Fax # (212) 720-3356

INSTRUCTIONS

1. Return this completed form with any attachments to the Calendar Information Office, City Planning Commission at the above address.
2. Send one copy with any attachments to the applicant's representative as indicated on the Notice of Certification.

Application No.: **C 200052 ZMM, C200050 ZSM, N 200051 ZRM, 200054 ZSM, N 200053 ZAM**

Docket Description:

IN THE MATTER OF a private application by Lenox Terrace Development Associates, an affiliate of the Olnick Organization, Inc. ("Applicant") pursuant to §§ 197-c and 200 of the New York City Charter, seeking approval of five land use actions to facilitate the development of 5 new 28-story mixed-use buildings and one 6-story building containing a total of approximately 1,533,389 zoning square feet located at the Lenox Terrace superblock (Block 1730, Lots 33, 36, 40, 45, 50, 52, 64, 68, and 75), Borough of Manhattan, Community District 10.

IN THE MATTER OF a private application by Lenox Terrace Development Associates, an affiliate of the Olnick Organization, Inc. ("Applicant") seeking approval of:

1. An amendment to Zoning Map 6a to rezone the Project Area from R7-2/C1-4, to a C6-2 zoning district
2. A Zoning Text Amendment to Appendix F of the Zoning Resolution of the City of New York to designate the Project Area as a Mandatory Inclusionary Housing Area
3. A Special Permit for a large scale general development pursuant to Zoning Resolution § 74-743(a)(2);
4. Special Permit to waive parking requirements pursuant to ZR § 74-533;
5. An authorization pursuant to Zoning Resolution § 25-631(f)(2) to modify curb cut requirements

To facilitate to facilitate the development of 5 new 28-story mixed-use buildings and one 6-story building containing a total of approximately 1,642 new dwelling units ("DU"), Borough of Manhattan, Community District 10.

COMMUNITY BOARD NO: 10

BOROUGH: Manhattan

RECOMMENDATION

- APPROVE
- APPROVE WITH MODIFICATIONS/CONDITIONS (List below)
- DISAPPROVE
- DISAPPROVE WITH MODIFICATIONS/CONDITONS (Listed below)

EXPLANATION OF RECOMMENDATION – MODIFICATION/CONDITIONS (Attach additional sheets if necessary)

John A. Brewer

December 16, 2019

BOROUGH PRESIDENT

DATE



OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN
THE CITY OF NEW YORK

1 Centre Street, 19th floor, New York, NY 10007
(212) 669-8300 p (212) 669-4306 f
431 West 125th Street, New York, NY 10027
(212) 531-1609 p (212) 531-4615 f
www.manhattanbp.nyc.gov

Gale A. Brewer, Borough President

December 12, 2019

**Recommendation on ULURP Applications C 200052 ZMM, C200050 ZSM, N 200051 ZRM,
200054 ZSM, N 200053 ZAM**

PROPOSED ACTION

This is a private application by Lenox Terrace Development Associates, an affiliate of the Olnick Organization, Inc. (“Applicant”) pursuant to §§ 197-c and 200 of the New York City Charter, seeking approval of five land use actions to facilitate the development of 5 new 28-story mixed-use buildings and one 6-story building containing a total of approximately 1,533,389 zoning square feet located at the Lenox Terrace superblock (Block 1730, Lots 33, 36, 40, 45, 50, 52, 64, 68, and 75) bounded by West 132nd and 135th streets and Lenox and Fifth avenues in the Borough of Manhattan, Community District 10 (“CD10”). When completed, the project is expected to comprise 1,387,350 zoning square feet of residential use, 131,435 zoning square feet of commercial use, and 14,603 zoning square feet of community facility use.

The land use actions are:

An amendment to Zoning Map 6a to rezone the Project Area from R7-2/C1-4, to a C6-2 zoning district

A Zoning Text Amendment to Appendix F of the Zoning Resolution of the City of New York to designate the Project Area as a Mandatory Inclusionary Housing Area

A Special Permit for a large scale general development at Block 1730, Lots 1, 7, 9, 25, 33, 36, 40, 45, 50, 52, 64, 68, 75 (“The Development Site”) pursuant to Zoning Resolution § 74-743(a)(2) to modify height and setback, and minimum distance between buildings requirements;

Special Permit to waive parking requirements pursuant to ZR § 74-533;

An authorization pursuant to Zoning Resolution § 25-631(f)(2) to modify curb cut requirements

The proposed actions would also include the recording of a Restrictive Declaration and (E) Designation¹ to commit future development of the site in accordance with approvals and any necessary mitigations.

¹ A document a property owner records against title that binds current and future site owners to undertake any required testing and remediation as part of the proposed development of a building.

Pursuant to ZR § 74-743(a)(2), the City Planning Commission may permit modifications to the location of buildings without regard for the applicable yard, court, distance between buildings or height and setback regulations.

Where a proposed Project involves a phased construction program of a multi-building complex, the Commission may, at the time of granting a special permit, require additional information, including but not limited to a proposed time schedule for carrying out the proposed large-scale general development; a phasing plan showing the distribution of bulk and open space; and, in the case of a site plan providing for common open space, common open areas or common parking areas; a maintenance plan for such space or areas; and guaranteed continued availability of such space or areas to the people they are intended to serve.

The Commission may also prescribe additional conditions and safeguards to improve the quality of a large-scale general development, and to minimize adverse effects on the character of the surrounding area.

Pursuant to ZR § 74-533, the City Planning Commission (“CPC”) may permit waiver of, or a reduction in, the number of required accessory off-street parking spaces for dwelling units in a development or enlargement that includes at least 20 percent of all dwelling units as income-restricted housing units as defined in ZR § 12-10, provided that the CPC finds that such waiver or reduction:

- Will facilitate such development or enlargement. Such finding shall be made upon consultation with the Department of Housing Preservation and Development;
- Will not cause traffic congestion; and
- Will not have undue adverse effects on residents, businesses or community facilities in the surrounding area, as applicable, including the availability of parking spaces for such uses.

Additionally, the CPC may impose appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

In evaluating these land use actions, the Office of the Manhattan Borough President must consider if the proposed language meets the underlying premise of the Zoning Resolution of promoting the general health, safety, and welfare of the neighborhood in which the project is being proposed, and whether the development would be appropriate to the neighborhood. Any changes to the Zoning Map should be evaluated for consistency and accuracy, and given the land use implications, appropriateness for the growth, improvement and development of the neighborhood and borough. In evaluating the text amendment, the Borough President’s Office must consider whether the amendment is appropriate and beneficial to the community and consistent with the goals of the MIH program.

BACKGROUND

The Project Area is located in Harlem, the neighborhood globally known as the major cultural, residential, and economic center for the Black community. The Harlem Renaissance, recognized as the “golden age” of African American culture in the 20th Century, was concentrated in Central and West Harlem. It was a period of cultural, intellectual, social, and artistic innovation that produced a legacy inseparable from the area’s identity.

The Project Area is the location of the Lenox Terrace development, a superblock development comprising six 16-story residential towers, and five one-story commercial buildings. Parcels within the superblock are owned by varying parties, including one city-owned parcel (Lot 55), one parcel owned by Catholic Charities of the Archdiocese of New York (Lot 16), and one owned privately (Lot 65). The parcels comprising the Development Site are all owned by the Olnick Organization, Inc.

The Lenox Terrace superblock development was built in the late 1950s pursuant to the Harlem Urban Renewal Plan which was originally adopted by the City Planning Commission (“CPC”) and Board of Estimate on February 20, 1952. The Harlem Urban Renewal Plan expired in 1992. The Lenox Terrace development was one of the first developments built pursuant to Title I of the Housing Act of 1949. The development has been recognized for its cultural association with prominent African Americans in the Harlem community. Residents have included author Alex Haley, former Manhattan Borough President Percy E. Sutton, former New York State Secretary of State Basil A. Paterson, and musician Charles Mingus Jr.

Site Description

The Project Area covers all of Block 1730, a superblock bounded by West 132nd Street to the south, Fifth Avenue to the east, West 135th Street to the north, and Lenox Avenue to the west. The proposed Development Site encompasses lots 1, 33, 40, 50, 52 and 68.

The Project Area is located within an R7-2 zoning district and C1-4 commercial overlays. R7-2 districts permit medium density residential buildings and community facility uses with a maximum residential FAR of 3.4 up to 4.0 for Quality Housing buildings, and a max FAR of 6.5 for community facility uses. The C1-4 commercial overlay is mapped at a depth of 100 feet west from Lenox Avenue, 100 feet south from West 135th Street, and 100 feet west from Fifth Avenue. It permits retail and office space with a maximum FAR of 2.0.

The Project Area is also within a Transit Zone and a FRESH Zone. Transit Zones require fewer accessory parking for various types of affordable housing. According to the DEIS the Lenox Terrace development is currently required to provide 387 parking spaces pursuant to a restrictive declaration. FRESH zones provide discretionary tax and zoning incentives through the New York City Industrial Development Agency. The incentives are intended to encourage the development and retention of affordable and locally owned stores that provide fresh foods.

According to the applicant, the Development Site contains a total lot area of 102,054 square feet. The lots currently contain low-rise commercial buildings. There is currently no plan to redevelop the remaining lots in the Project Area.

Area Context

Land Use and Building Typology

The area immediately surrounding the Project Area is characterized by a mix of residential-building types. The area west of the Lenox Terrace development is characterized predominantly by 5-story residential buildings. To the east there are several high-rise residential buildings. The Riverton, a residential complex constructed in the 1940s, is comprised of 7 13-story buildings bounded by Fifth Avenue to the west, West 135th Street to the south, West 138th Street to the north, and the Harlem River to the east. The Abraham Lincoln Houses, a New York City Housing Authority residential complex, sits directly across 5th Avenue, east of the Project Area. It consists of 14 residential buildings ranging from

6 to 14-stories, spanning the area between Fifth Avenue and Park Avenue, and West 132nd Street to West 135th Street.

The block to the south of the Project Area consists primarily of 3 ½-story row houses, and 5-story residential buildings.

Retail uses are concentrated along Fifth and Lenox Avenues, and along West 135th Street. These uses include: 12 retail businesses, 4 food service businesses, a Goodwill Store and Donation Center, a deli, a Chase bank, a dry cleaner, and an optometrist office.

The block to the north of the Project Area contains two community facility uses: the Harlem Hospital Center and the P.S. 197 John B. Russwurm School. The Schomburg Center for Research in Black Culture is located at the northwest corner of Lenox Avenue and West 135th Street.

Open Space Assets

According to the DEIS, the study area² has an overall open space ratio of 0.678 acres per 1,000 residents. This is lower than the City Environmental Quality Review (“CEQR”) guideline of 2.5 acres of combined active and passive open space per 1,000 residents. The closest open space resources are the Abraham Lincoln Playground (0.99 acres) located on Fifth Avenue and West 135th Street, Howard Bennett Playground (1.23 acres) located on West 135th Street between Fifth Avenue and Lenox Avenue, and the Hansborough Recreation Center (0.29 acres) located within the Project Area on Lenox Terrace Place. Amenities at these locations are both active and passive in nature.

Zoning

As previously noted, the Project Area is located on a block that contains a mix of zoning districts. The surrounding area is predominantly zoned R7-2, a medium density residential zoning district with a FAR of 4.0 and maximum building height of 80 feet if built to Quality Housing standards.

C1-4 commercial overlays are mapped to a depth of 100 feet along the Lenox Avenue, Fifth Avenue, and West 135th Street frontages of the Project Area. C1-4 overlays are mapped within residential districts along streets that serve local needs. These districts allow ground- and first-floor retail uses in mixed-use residential buildings. In a C1-4 commercial overlay, commercial uses are permitted on the ground-floor or first-floor only, and they must always be located below residential uses. Typical retail uses within a C1-4 zoning district include neighborhood grocery stores, restaurants, and beauty parlors. The Maximum Floor Area Ratio (FAR) of a C1-4 commercial overlay mapped in a R7-2 zoning district is 2.0.

Transportation Resources

The Project Area is in close proximity to many transportation resources. It sits between two subway stations located on West 135th Street, four bus routes, several highways and inter-borough crossings. The West 135 Street Station on the 2 and 3 subway is located at the corner of Lenox Avenue and West 135 Street. The West 135th Street Station on the B and D lines is two blocks west from the Project Area

² The study area for the purposes of analyzing potential impacts on open space is based on the distances that the respective users, workers and residents, are likely to walk to an open space. According to the CEQR Technical Manual, workers are assumed to walk approximately 10 minutes, or ¼-mile from their place of work to an open space, while residents are assumed to walk approximately 20 minutes, or ½-mile to an open space.

at West 135th Street and Saint Nicholas Avenue. The East 138th Street Station on the 4 and 5 lines in the Bronx is approximately the same distance, via the Madison Avenue Bridge, from the eastern portion of the Project Area as the aforementioned B and D lines West 135th Station.

There are also several bus lines nearby. The BX33, which provides bus service between Port Morris in the Bronx and Harlem in Manhattan, makes stops along West 135th Street between Park Avenue and St. Nicholas Avenue. The M1 provides service from Harlem to SoHo, traveling south down Fifth Avenue. The M102 and M7 both run north and south along Lenox Avenue on the west side of the Project Area, providing service between Harlem and downtown Manhattan.

The Project Area is in close proximity to the Harlem River Drive (“HRD”). The HRD runs along the west bank of the Harlem River from the Robert F. Kennedy Bridge to 10th Avenue in the Inwood neighborhood of Manhattan. Entrances to the HRD are located three blocks northeast of the Project Area at West 138th and 139th Streets.

The Madison Avenue Bridge, one block east of the Project Area at Madison Avenue, carries vehicular and pedestrian traffic between Harlem and the Mott Haven section of the Bronx.

PROJECT DESCRIPTION

The Proposed Project would result in the development of five mixed-use buildings and a mid-rise podium on the perimeter of the existing Lenox Terrace complex. The new buildings would be constructed on portions of the property that are currently vacant or contain one-story retail buildings. Five single-story retail buildings located on the perimeter of the Lenox Terrace superblock would be demolished to facilitate the development. The new buildings would contain approximately 1,430,258 gross square feet of new residential use, approximately 135,500 gross square feet of commercial space, and 15,055 gross square feet of community facility space.

According to the Applicant and the analysis contained within the Draft Environmental Impact Statement (“DEIS”), the Proposed Project will result in an increased FAR of 2.61³. The residential portion of the Proposed Development is expected to contain a total of approximately 1,642 new dwelling units (“DU”). A minimum of 25 percent of the residential floor area will contain permanently affordable housing pursuant to Mandatory Inclusionary Housing. The result would be between 411 and 493 DUs designated permanently affordable.

The Proposed Project is intended to be completed in phases. Phase 1 is expected to be completed by 2023. It would consist of the construction of the northwest and southwest buildings, their connecting podium, and the northeast building located midblock fronting West 135th Street. Phase 2, expected to be completed by 2026, would consist of construction of the north and southeast buildings. Below is a table illustrating the expected uses of each building in the Proposed Project:

³ As per the DEIS, the current Lenox Terrace superblock development comprises a total 3.0 FAR. The Applicant intends to enter into a Restrictive Declaration that would cap development at 5.61 FAR.

Table 1. Program for Proposed Project

	Dwelling Units (Affordable)	Retail gsf	Community Facility gsf
Building NW	326 (82-98)	24,593	0
Building SW	77 (19-23)	25,211	0
Mid-rise Podium	410 (103 - 123)	25,728	0
Building NE	280 (70 - 84)	19,779	4,966
Total, Phase 1	1,094 (274 - 328)	95,311	4,966
Building N	245 (61 - 74)	16,877	4,236
Building SE	303 (76 - 91)	23,312	5,853
Total, Phase 2	548 (137 - 164)	40,189	10,089

COMMUNITY BOARD RECOMMENDATION

On September 19 and October 17, 2019, Community Board 10’s (“CB10”) Land Use Committee held public hearings on this application. During the hearings, the Applicant was given the opportunity to present the Proposed Project, and address any outstanding concerns. The Lenox Terrace Tenants Association, known as LT-ACT, was also given an opportunity to present their position in opposition to the current application.

At its November 6, 2019 CB10 General Board Meeting, CB10 passed a resolution declining to support the current land use application. The vote tally was 20 in favor, 15 opposed, and 1 abstention.

On November 8, 2019, CB10 issued its official recommendation on the current application. The recommendation contains several concerns serving as the basis for their decision to disapprove the application. One concern was the fear that the restrictive declaration would do nothing to prevent out-of-scale development at the sites not owned by the Olnick organization. Another concern was the overall effect the development would have on the community district’s demographic character. CB10 takes the position that the creation of 1,700 dwelling units, 80-percent of them market-rate, would introduce a significant increase in residents from racial and income groups that would diminish the area’s Black American political base. The third concern expressed in CB10’s recommendation is the record of stewardship of Lenox Terrace by the Applicant. Residents and members of the Harlem community have developed mistrust of the Applicant, and therefore remain skeptical of their ability to fulfill any commitments connected to this application. CB10 also expressed dissatisfaction with the proposed affordable housing component.

The recommendation by CB10 to reject this application incorporates the Board's recommendation on the City's 2016 Mandatory Inclusionary Housing program. In the 2016 recommendation, CB10 also expressed a desire to see income-restricted housing programs that specifically match the median incomes of existing Harlem residents. This application recommends an income-restricted housing program that dedicates 50-percent of the residential floor area to market-rate housing, 30-percent to moderate income, and 20-percent to low-income households. Another concern expressed by CB10 is the detrimental effect the size and bulk of the new buildings would have on the existing Lenox Terrace buildings.

BOROUGH PRESIDENT'S HEARING

On Monday, November 18, 2019, the Manhattan Borough President conducted a public hearing on this application at the Lt. Joseph P. Kennedy Community Center, a site within the Project Area. Approximately 200 people attended and approximately 70 people presented testimony. Prior to the public hearing, the Borough President's Office mailed a postcard to every resident and to every commercial postal address in the area immediately surrounding the Project Area with information regarding date and time of the hearing. Members of the public were also given the opportunity to submit written testimony if they chose not to deliver testimony at the public hearing.

The overwhelming majority of those who testified spoke in opposition to the rezoning plan. Most speakers called for a wholesale rejection of the proposed development. Much of what was said mirrored the concerns expressed in the Community Board 10 recommendation. Many speakers expressed great distrust in the Applicant. Other speakers stressed a fear that the plan would hasten gentrification and displacement of current Harlem residents. Many addressed the proposed income levels for residents of the affordable housing to be built under the MIH program and they expressed concern that the income levels would be too high to provide housing for the average Harlem family. The NYC Public Advocate, Jumaane Williams, delivered testimony. He requested a moratorium on all neighborhood rezonings, and sought support for a pending City Council bill that would require a "racial impact analysis" whenever an environmental impact statement ("EIS") is prepared by an applicant whose project is subject to City Planning Commission review.⁴

BOROUGH PRESIDENT'S COMMENTS

There are few instances where a development the scale of the one proposed in this application can be viewed as responsible. The Proposed Project lacks the public and private investments necessary to make it a prudent exercise of planning for future growth. At its proposed scale, it promises to change the physical and socioeconomic character of Central Harlem. According to the construction timeline, the population of the Project Area, which is equivalent to three square city blocks, is expected to double within seven years. 42 other development projects within 1/2 mile of the Project Area are expected to be built during the same time period. As a result, the Proposed Project has generated enormous concern among area residents.

⁴ See Int 1572-2019 at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3963886&GUID=D2C9A25B-0036-416E-87CD-C3AED208AE1B&Options=ID%7cText%7c&Search=racial+impact>

The community's concerns are not unreasonable or unfounded. 1,200 of the proposed 1,700 dwelling units will be market-rate. This would result in a significant shift in the area's demographic composition; new residents will have much higher income levels. For a century, Harlem has been the epicenter of Black culture in America, but recent real estate trends have resulted in gentrification and led to a decrease in the area's Black population.

While no plan can insulate a community from market pressures leading to displacement, a project as large as the proposed project should include a plan that is equitable. An equitable plan would: 1) create significantly more affordable housing; 2) further preserve the current affordable housing stock; 3) provide support to local entrepreneurs and small businesses; 4) improve public transportation resources; and 5) create and improve open space.

The current proposal fails to meet these criteria. For the reasons stated below, I am recommending disapproval of Land Use Application Nos. C 200050 ZSM, N 200051 ZRM, 200054 ZSM, N 200053 ZAM.

Size and Scale of the Proposed Project

In order to achieve an equitable result, a project the size and scale of the one proposed here requires extensive efforts from the private and public sector. The Proposed Project is expected to take place on a single development site. It is expected to create 1,700 DUs, a population increase of approximately 4,000. That is nearly half the amount of the East Harlem Rezoning (3,500 DUs) to the south of the Project Area, and 40% of the size of the Inwood Rezoning (4,908 DUs) to the north. However, the East Harlem rezoning covered 69 square blocks; Inwood covered 62. By comparison, the increase in housing units and population expected at this site will occupy just 3 square blocks, and cause a disproportionate impact on local residents, infrastructure, economy, and educational resources.

For a plan like the one proposed in this application to provide equitable solutions it must also contain commitments proportional to the ones in the rezonings cited above. Both the East Harlem and Inwood rezonings led to commitments from the City in the amount of approximately \$300 to \$500 million for investments in infrastructure, housing preservation, open space, schools, and other elements essential to a neighborhood's high quality of life.

One area in need of attention is public transit. Substantial improvements to the area's public transit resources must be made to ensure an equitable result. According to the DEIS's line-haul analysis, the 2 and 3 lines are currently operating beyond capacity. With 85% of the public transit usage generated by the Proposed Development forecasted to utilize the West 135th Street Station on the 2 and 3 lines, serious overcrowding is foreseeable.

Open Space

The DEIS study area has an overall open space ratio of 0.678 acres per 1,000 residents. This is significantly lower than the CEQR guideline of 2.5 acres of combined active and passive open space per 1,000 residents. The DEIS concludes that the open space expected to be created in connection with the Proposed Project would offset an anticipated loss of existing open space.

However, the open space created will be exclusive to residents of the Lenox Terrace complex. This proposal creates a disparity in access and in the amount of open space available to area residents and those of the new development.

Trust

One of the recurring themes in the testimony delivered at the CB10 and Borough President hearings is skepticism about the Applicant's ability to follow through on the commitments they have made in connection with this proposal. Many people have cited the long-term vacancy of the single-story commercial building at Fifth Avenue and West 132nd Street as an example. The planning process which led to the decision to keep over 17,000 square feet of commercial space vacant indicates indifference toward the local economy, and a lack of investment in the neighborhood's commercial vitality.

According to the Applicant and residents, there are upgrades and improvements that are needed at all six buildings in the Lenox Terrace complex. The Applicant insists that the proposed development is required to generate revenue necessary to perform these improvements. Many of the complaints by residents appear to involve conditions that the property owner is required by law to address, including brown water in their bathroom and kitchen faucets, lead contaminated water, inadequate electricity, rodents and other vermin, broken floor tiles, and similar conditions that have persisted for years. According to the New York City Department of Housing Preservation and Development (HPD)⁵, in the last 12 months the residents of the existing residential buildings have logged 149 complaints, which include the lack of heat and hot water throughout the buildings, bed bugs, roaches, and failed electrical outlets. The Applicant has recently held town hall meetings with residents, and they have taken steps to improve communication between the building management and residents.

Based on past performance, the current proposal will not resolve the challenges faced at Lenox Terrace. The following steps will be required to win the confidence of Lenox Terrace residents, as well as the Harlem community, and to win approval of a project of this magnitude.


1. A long-term commitment to housing affordability, and in concert with public agencies, greater investments in infrastructure, open space, and schools
 - a. 80% of current units are rent stabilized, but that does not ensure future affordability. I recommend that the Applicant work with city and state agencies to create a preservation package for the existing units, and increase the number of affordable units that will better balance the mix of affordable and market-rate units in the new buildings
 - b. The City Council should require the Deep Affordability Option pursuant to MIH
 - c. NYCT should work with the Applicant to develop a plan to alleviate the overcrowding at the West 135th Street Station on the 2 and 3 line by increasing and improving alternative transportation options
 - d. In anticipation of a major increase in population, the Applicant should provide funds to improve the Howard Bennett and Lincoln Playgrounds, the Hansborough Recreation Center, and the Lt. Joseph Kennedy Center
 - e. Prior to demolition, the single-story vacant commercial building on Fifth Avenue and West 132nd Street should be renovated and marketed to local businesses, arts and cultural organizations, church groups, and local community-based organizations at an affordable cost
2. Pursuant to the Large Scale General Development (LSGD):
 - a. CPC should limit commercial spaces to 10,000 sq. feet unless it is a space occupied by a qualifying FRESH food store
 - b. The height of the proposed buildings should be renegotiated
 - c. The improvements committed to by the Applicant should be tied to the Temporary Certificates of Occupancy obtained for the new buildings

⁵ https://hpdonline.hpdnyc.org/Hpdonline/select_application.aspx

3. Building elements should be contextual in substance. This means that the exteriors should consist of materials similar to those found in the existing Lenox Terrace buildings.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends Disapproval of ULURP Application No. C 200052 ZMM, C 200050 ZSM, N 200051 ZRM, 200054 ZSM, N200053 ZAM - Lenox Terrace.



Gale A. Brewer
Manhattan Borough President

DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT

THIS DECLARATION, made as of this _____ day of _____ 20__ by Lenox Terrace Development Associates, a New York general partnership (“LT Declarant”), 73-77 West 132nd Street Holdings, LLC, a Delaware limited liability company (“73-77 Declarant”), Sixth Lenox Terrace Associates LLC, a Delaware limited liability company (“Sixth Declarant”), Third Lenox Terrace Associates LLC, a Delaware limited liability company (“Third Declarant”), Second Lenox Terrace Associates LLC, a Delaware limited liability company (“Second Declarant”), First Lenox Terrace Associates LLC, a Delaware limited liability company (“First Declarant”), Fourth Lenox Terrace Associates LLC, a Delaware limited liability company (“Fourth Declarant”), and Fifth Lenox Terrace Associates LLC, a Delaware limited liability company (“Fifth Declarant”), all having an address at c/o The Olnick Organization, 135 East 57th Street, 22nd Floor, New York, NY 10022 (the LT Declarant, 73-77 Declarant, Sixth Declarant, Third Declarant, Second Declarant, First Declarant, Fourth Declarant, and Fifth Declarant collectively referred to as the “Declarants” and individually referred to as a “Declarant”).

WITNESSETH:

WHEREAS, the LT Declarant is the fee owner of certain real property located in the Borough of the Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1730, Tax Lots 1, 33, 40, 50, 52, 68, the sole member of 73-77 Declarant, the fee owner of the property located at Block 1730, Tax Lot 7, and the lessee of the properties located at Block 1730, Tax Lots 9, 25, 36, 45, 64, and 75, all as described in **Exhibit A** annexed hereto (collectively, the “Subject Property”) pursuant to 99-year ground leases with Sixth Declarant, Third Declarant, Second Declarant, First Declarant, Fourth Declarant, and Fifth Declarant, respectively, which terminate on September 30, 2115; and

WHEREAS, 73-77 Declarant is the fee owner of certain real property located in the Borough of the Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1730, Tax Lot 7, as described in **Exhibit A**; and

WHEREAS, Sixth Declarant is the fee owner of certain real property located in the Borough of the Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1730, Tax Lot 9, as described in **Exhibit A**; and,

WHEREAS, Third Declarant is the fee owner of certain real property located in the Borough of the Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1730, Tax Lot 25, as described in **Exhibit A**; and,

WHEREAS, Second Declarant is the fee owner of certain real property located in the Borough of the Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1730, Tax Lot 36, as described in **Exhibit A**; and

WHEREAS, First Declarant is the fee owner of certain real property located in the Borough of the Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1730, Tax Lot 45, as described in **Exhibit A**; and

WHEREAS, Fourth Declarant is the fee owner of certain real property located in the Borough of the Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1730, Tax Lot 64, as described in **Exhibit A**; and

WHEREAS, Fifth Declarant is the fee owner of certain real property located in the Borough of the Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1730, Tax Lot 75, as described in **Exhibit A**; and

WHEREAS, Declarants desire to improve the Subject Property as a “large-scale general development” meeting the requirements of Section 12-10 of the Zoning Resolution of the City of

New York (“Zoning Resolution” or “ZR”) definition of “large-scale general development” (such proposed improvement of the Subject Property, the “Large Scale Development Project”); and

WHEREAS, LT Declarant filed the following applications (collectively, the “Applications”) with the New York City (“City”) Department of City Planning (hereinafter “City Planning” or “DCP”) for (i) a zoning map amendment to rezone Block 1730 from an R7-2 and R7-2 with a C1-4 overlay to an R8 and R8 with a C1-5 overlay (ULURP No. 200052 ZMM) (the “Zoning Map Amendment”); (ii) an amendment to the text of Appendix F of the Zoning Resolution to designate the Project Area as a Mandatory Inclusionary Housing Area (“MIH Area”) (ULURP No. 200051 ZRM); (iii) a special permit for a large scale general development at the Subject Property pursuant to Zoning Resolution § 74-743(a)(2) to modify height and setback (ZR §§ 35-61, 35-63, 23-952, and 23-641) requirements (ULURP No. 200050 ZSM) (the “Large Scale Special Permit”); (iv) a special permit pursuant to Zoning Resolution § 74-533 to reduce the parking spaces required under ZR §§ 36-33 and 25-23 to facilitate the development of affordable housing at the Subject Property (ULURP No. 200054 ZSM)(the “Parking Reduction Special Permit”); and (v) an authorization pursuant to Zoning Resolution § 25-631(f)(2) to modify curb cut requirements under ZR §§ 36-532 and 25-631 at the Subject Property (ULURP No. 200053 ZAM) (the “Curb Cut Authorization”); and

WHEREAS the City Planning Commission (“CPC”) adopted resolutions approving the Applications on [____], under Calendar Numbers [____], and the City Council adopted resolutions approving the decision of the CPC on [____], under Resolution Numbers [____] (such resolutions the “Land Use Approvals”); and

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 CPC; and

WHEREAS to ensure that (i) the development of the Subject Property (the “Proposed Development”) is consistent with the analyses in both the December 2017 Environmental Assessment Statement (“EAS”) and January 2020 Final Environmental Impact Statement (“FEIS”) issued for City Environmental Quality Review Application No. 18DCP084M 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 adverse environmental impacts related to shadows, open space, historic and cultural resources, transportation, and noise during the construction period (collectively, “Mitigation Measures”), and (ii) the development of the Subject Property includes certain project components related to the environment (“PCREs”) with respect to construction, hazardous materials, transportation, construction-period noise, construction-period air quality, infrastructure, and affordable housing, which were material to the analysis of environmental impacts in the EAS and FEIS, Declarants have agreed to restrict the development, operation, use, and maintenance of the Subject Property in certain respects, including restricting development to the Maximum Bulk Parameters (as hereinafter defined), which restrictions are set forth in this Declaration; and

WHEREAS, _____ (the “Title Company”) has certified in the certification (the “Certification”) attached hereto as **Exhibit B** and made a part hereof, that as of

_____, 2020, Declarants, respectively, are the sole fee owners of the Subject Property as described therein and in **Exhibit A**;

WHEREAS, all parties-in-interest, as such term is defined in subdivision (c) of the definition of “zoning lot” in Section 12-10 of the Zoning Resolution, 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-1** and made a part hereof, which instrument is intended to be recorded simultaneously with this Declaration; and

WHEREAS, Declarants desire to restrict the manner in which the Subject Property is developed in the future, and intends these restrictions to benefit the Subject Property.

NOW, THEREFORE, Declarants do hereby declare that the Subject Property shall be held, sold, conveyed, developed, used, occupied, operated and maintained, subject to the following restrictions, covenants, obligations and agreements, which shall run with such real property binding Declarants, as the case may be, and their respective successors and assigns as herein set forth:

Article I.

Development and Use of the Subject Property

1.1. Designation of Large Scale General Development. Declarants hereby declare and agree that, following the Effective Date (as defined in Section 7.5 hereof), 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 the Subject Property.

(a) If the Subject Property is developed in whole or part in accordance with the Large Scale Special Permit, Parking Reduction Special Permit, and/or Curb Cut Authorization, Declarants covenant that the Subject Property shall be developed in substantial conformity with the following plans prepared by Davis Brody Bond, LLP, approved as part of the Land Use Approvals and annexed hereto in **Exhibit C** and made a part hereof (collectively, the “Plans”):

Drawing No.	Title	Last Revised Date
U.001	Zoning Analysis	01/31/2020
U.002	Open Space Diagram	01/31/2020
U.004	Zoning Lot Site Plan (Proposed)	01/31/2020
U.008	Height and Setback Waiver Plan	01/31/2020
U.009	Sectional Height Diagram	01/31/2020
U.010	Sectional Height Diagram	01/31/2020
U.011	Sectional Height Diagram	01/31/2020
U.012	Sectional Height Diagram	01/31/2020

(b) If the Declarants seek to develop the Subject Property other than pursuant to the Large Scale Special Permit, Parking Reduction Special Permit, and/or Curb Cut Authorization, such Special Permits and/or Authorization, respectively, shall be deemed surrendered and Declarants may not develop the Subject Property except as permitted by the zoning district regulations and any other applicable restrictions, subject to the following: (i) to ensure that the development is consistent with and in consideration of the findings of the FEIS, such development (an “Underlying Zoning Development”) shall be limited to the maximum “floor area ratio” (“FAR”) and maximum building height set forth in the Plans (collectively, the “Maximum Bulk Parameters”); or (ii) to the extent such development is not permitted under (i) above, no development of the Subject Property shall be permitted unless the Plans have been modified in accordance with Section 6.1 hereof (the “Alternative Development”).

Article II.

Public Access Area

2.1 Construction of the Public Walkway.

(a) Declarants shall construct the Public Walkway substantially in accordance with the specifications in Drawing No. U.002 of the Plans, attached hereto in **Exhibit C**.

(b) The portion of the Public Walkway extending from Lenox Avenue to Lenox Terrace Place shall be deemed the “Western Portion” and the the portion of the Public Walkway extending from Lenox Terrace Place to Fifth Avenue shall be deemed the “Eastern Portion”.

(c) 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.

(d) Declarants may accept a Temporary or Permanent Certificate of Occupancy, (a “TCO” or “PCO”, respectively) from the City Department of Buildings (“DOB”) for residential units within either Building A (Northwest) or Building B (Southwest) as identified on the Plans, but shall not accept a TCO or PCO from DOB for residential units in both Building A (Northwest) and Building B (Southwest) until the Chairperson of the CPC (the “Chair”) certifies to Declarants and DOB that the Western Portion of the Public Walkway is Substantially Complete (defined herein), in accordance with the provisions of subsections (i) through (iv), below. For the avoidance of doubt, acceptance of a TCO or PCO from DOB for just Building A (Northwest) shall not be conditioned upon Substantial Completion of the Western Portion of the Public Walkway, nor shall acceptance of a TCO or PCO from DOB for just Building B (Southwest); but Declarants shall not accept a TCO or PCO from DOB for Building A and Building B in combination until Substantial Completion as certified by the Chair.

(i) *Notification.* Declarants shall notify the Chair at such time as it believes that the applicable portion of the Public Walkway is Substantially Complete and shall request that the Chair issue a certification to Declarants and DOB certifying the Substantial Completion of the applicable portion 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 Substantial Completion; or (B) deliver to Declarants written Notice setting forth the reasons why the applicable portion of the Public Walkway is not Substantially Complete and the items that need to be completed in order to determine that the applicable portion of the Public Walkway is Substantially Complete. If, within twenty (20) days, the Chair does not issue a Notice of Substantial Completion

pursuant to subsection (A), above, or deliver to Declarants a written Notice pursuant to subsection (B), above, the applicable portion of the Public Walkway shall be deemed to be Substantially Complete.

(iii) *Subsequent Review*. Upon completing the outstanding work specified by the Chair to achieve Substantial Completion, Declarants 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 Declarants in writing of items from the initial review that have not been completed or satisfactorily performed. This process shall continue until the Chair has issued a Notice of Substantial Completion. If, within ten (10) days, the Chair does not issue a Notice of Substantial Completion pursuant to subsection (A), above, or deliver to Declarants a written Notice pursuant to subsection (B), above, the applicable portion of the Public Walkway shall be deemed to be Substantially Complete.

(iv) “Substantial Completion” or “Substantially Complete” shall mean that the applicable portion of the Public Walkway has been constructed substantially in accordance with the metes and bounds as identified on Drawing No. U.002 of the Plans and has been completed to such an extent that the applicable portion of the Public Walkway may be operated and made available for public use.

(e) Declarants shall not accept a TCO or PCO from the DOB for residential units within Building D (Northeast) as identified on the Plans, until the Chair certifies to Declarants and DOB that the Eastern Portion of the Public Walkway is Substantially Complete (defined herein), in accordance with the provisions of Section 2.1(d)(i-iv), above.

2.2 Public Access Easement.

(a) Immediately upon the certification of Substantial Completion of the Western Portion or the Eastern Portion, Declarants grant the City and the general public a permanent, perpetual, non-exclusive access easement over such portion of the Public Walkway, unobstructed from the surface of the Public Walkway to the sky, for the purposes of pedestrian access and circulation (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 between the hours of six (6) a.m. and ten (10) p.m. each day of the year.

(b) Subject to Section 2.3(a), Declarants 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, or of a building adjacent to the Public Walkway, 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 Section 2.3(c).

(c) In the event that the closure of the Public Walkway is required due to an emergency condition specified herein, Declarants 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 Declarants 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), Declarants 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. Declarants 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 twenty-four (24) hours after each snowfall or accumulation of ice.

(b) Repairs and Replacements. Declarants 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 Plans. Declarants 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 Plans and replacement materials shall match existing materials to the extent feasible. Repairs shall include, but not be limited to, the following:

- (i) Paving: All paved surfaces shall be maintained so as to be safe and attractive;
- (ii) 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;
- (iii) 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;
- (iv) Construction Defects and Hazardous Conditions: Declarants 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 Declarants shall comply with any signage regulations therein promulgated by the City Planning regarding POPS and the sign regulations set forth in Zoning Resolution § 37-75.

Article III

Environmental Protection Measures

3.1 Environmental Protection Measures. If the Subject Property is developed in whole or part in accordance with the Land Use Approvals, Declarants shall implement the following PCREs and Mitigation Measures in accordance with the FEIS and as further set forth in this Section 3.1 for any development of the Subject Property pursuant to this Declaration.

(a) PCRE Measures Related to Construction. Declarants shall implement and incorporate as part of its construction of the Proposed Development as appropriate the following PCREs related to construction prior to the extent feasible and practicable. Any implementation plans referenced in this Section 3.1 below must be reviewed and approved by the Monitor, as defined hereinafter, which approval shall not be unreasonably withheld or delayed, prior to Declarants accepting

Building Permits for Phase 1 or Phase 2, as defined hereinafter and provided for below.

- a. To avoid or minimize congestion and maintain pedestrian and vehicle safety in relation to construction of the Proposed Development, the Declarants shall prepare a plan of the proposed staging areas, temporary lane and sidewalk alterations on public streets, the duration of implementation of such alterations, the width and length of affected street segments, sidewalk protection measures for pedestrians on public streets, the location of flaggers to control trucks entering the Subject Property, and temporary fencing consistent with the FEIS (the “Maintenance and Protection of Traffic Plan” or “MPT”). Declarant shall submit a MPT to DOT for review and approval, which shall not be unreasonably withheld or delayed, provided, however, that completion and submission of the MPT shall not be necessary for preliminary site work, unless DOT advises Declarant that a MPT is required.
- b. Regular construction updates shall be provided to the community and local leaders. A dedicated hotline shall be established for community members to register concerns or problems that may arise during the construction period.
- c. A pest management program shall be implemented to reduce the presence of rodents at and near the Subject Property. Prior to Construction Commencement, Declarants shall cause its contractor to bait appropriate areas of the Subject Property, using only United States Environmental Protection Agency (“EPA”) and New York State Department of Environmental Conservation (“DEC”)-registered rodenticide. Declarants

shall include enforceable contractual requirements in the contracts of all relevant contractors and subcontractors to implement the provisions of this with respect to applicable work at the Subject Property.

- d. To avoid inadvertent demolition and/or construction-related damage from ground-borne construction period vibrations, falling debris, collapse, etc. on historic resources within ninety (90) feet of the Subject Property, the existing residential buildings at the Subject Property and the Bethel AME Church (located in the Borough of the Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1730, Tax Lot 65) shall be included in a Construction Protection Plan (“CPP”) for historic structures. The CPP shall be prepared in coordination with the City Landmarks Preservation Commission and implemented in consultation with a licensed professional engineer. Declarant shall not seek or accept demolition, excavation, or building Permits until LPC certifies to DOB that the Declarants have submitted an approved CPP.
- e. To the extent practicable, the Proposed Development shall use recycled steel for seventy (70) percent of its steel needs and divert seventy-five (75) percent of its construction waste to be recycled. Cement replacements such as fly ash and/or slag may also be used, and concrete content shall be optimized to the extent feasible.

(b) PCRE Measures Related to Construction-Period Air Quality. To reduce air pollutant emissions during construction, Declarants agree to implement the following PCRE measures to the extent feasible and practicable.

- a. Dust Control. All measures required by the *New York City Department of Environmental Protection* (“DEP”) *Construction Dust Rules* regulating construction-related dust emissions shall be implemented. The rules require implementation of a dust control plan including a robust watering program. All trucks hauling loose material shall be equipped with tight-fitting tailgates and their loads securely covered prior to leaving the Subject Property; and water sprays shall be used for all demolition, excavation, and transfer of soils to ensure that materials are dampened as necessary to avoid the suspension of dust into the air. Loose materials shall be watered, stabilized with a chemical suppressing agent, or covered.
- b. Idling Restriction. In accordance with Title 24, Chapter 1, Subchapter 7, Section 24-163 of the New York City Administrative Code, the local law restricting unnecessary idling on roadways, vehicle idle time shall be restricted to three (3) minutes, except for vehicles using their engines to operate a loading, unloading, or processing device (e.g., concrete mixing trucks) or otherwise required for the proper operation of the engine.
- c. Clean Fuel. In accordance with diesel fuel standards established by the EPA, (40 Code of Federal Regulations 80, Subpart I), ultra-low sulfur diesel shall be used exclusively for all diesel on-road and non-road engines.
- d. Diesel Equipment Reduction. In accordance with the *New York City Noise Control Code* (the “Noise Code”), electrically powered equipment shall be preferred over diesel-powered and gasoline-powered versions of that equipment to the extent practicable. Equipment that uses the grid power in

lieu of diesel engines includes, but may not be limited to, hoists, and small equipment such as welders.

- e. Utilization of Newer Equipment. EPA's Tier 1 through 4 standards for non-road diesel engines regulate the emission of criteria pollutants from new engines, including particulate matter, carbon monoxide, nitrogen oxides, and hydrocarbons. To the extent practicable, all diesel-powered non-road construction equipment with a power rating of 50 hp or greater shall meet at least the Tier 3 emissions standard. All diesel-powered engines in the project rated less than 50 hp shall meet at least the Tier 2 emissions standard.
- f. Best Available Tailpipe Reduction Technologies. Non-road diesel engines with a power rating of 50 horsepower (“hp”) or greater and controlled truck fleets (i.e., truck fleets under long-term contract with the project) including but not limited to concrete mixing and pumping trucks shall utilize Best Available Tailpipe technology for reducing diesel particulate matter emissions. Diesel particulate filters (“DPFs”) have been identified as being the tailpipe technology currently proven to have the highest reduction capability. Construction contracts shall specify that all diesel non-road engines rated at 50 hp or greater shall utilize DPFs to the extent practicable, either installed by the original equipment manufacturer or retrofitted. Retrofitted DPFs must be verified by the EPA or the California Air Resources Board. Active DPFs or other technologies proven to achieve an equivalent reduction may also be used. This measure does not apply to non-road diesel engines that meet EPA's Tier 4 emission standard since those

engines are already equipped with best available tailpipe reduction technologies.

(c) PCRE Measures Related to Construction-Period Noise. To minimize noise control emissions during construction, Declarants agree to implement the following PCRE measures to the extent feasible and practicable.

- a. Noise barriers constructed from plywood or other materials surrounding the construction sites at a height of at least 12 feet, including a 3-foot cantilever towards the construction work area, shall be utilized to provide shielding.
- b. A structure enclosed on three sides and with a roof shall be constructed to house the concrete pump and two concrete mixer trucks as they access the pump.
- c. A structure enclosed on three sides and with a roof shall be constructed to house concrete mixer trucks as they are washed out before leaving the Subject Property.
- d. Equipment that meets the sound level standards specified in Subchapter 5 of the Noise Code shall be utilized from the start of construction. FEIS Table 19-31 shows the noise levels for typical construction equipment and the mandated noise levels for the equipment that would be used for construction of the Proposed Development, including those equipment that would be restricted to noise emission levels lower than mandated by the Noise Code in order to mitigate project construction noise.
- e. Construction sites shall be configured to minimize back-up alarm noise. In addition, all trucks shall not be allowed to idle more than three minutes per

Title 24, Chapter 1, Subchapter 7, Section 24-163 of the NYC Administrative Code.

f. Contractors and subcontractors shall be required to properly maintain their equipment and mufflers.

(d) PCRE Related to Transportation. Declarants agree to implement the following PCRE measure related to traffic. To the extent required by DOT, Declarants shall comply with DOT requirements necessary to implement the restriping measures specified in the FEIS or measures having comparable benefits as specified by DOT, and will either implement such measures as directed by DOT, or, if directed by DOT, pay DOT for the ordinary and customary costs of implementing such improvements (including but not limited to the costs of the design and construction of such improvements). Declarant shall not seek or accept a TCO or PCO with respect to Building A (Northwest), Building B (Southwest), or Building D (Northeast), as identified on the Plans (collectively, "Phase 1") of the Proposed Development, until DOT certifies to DOB that the Applicant has implemented the restriping measure required by DOT pursuant to this Section 3.1 (d), which certification shall not be unreasonably withheld or delayed.

(e) PCRE Related to Infrastructure. Declarants agree to implement the following PCRE measures to the extent feasible and practicable.

a. No flows from the Proposed Development site shall be directed to the existing combined sewer in Lenox Avenue. The Declarants shall direct all sanitary and storm flow to the combined sewers in the other surrounding streets (Fifth Avenue, 132nd Street, and 135th Street).

(f) Mitigation Measures Relating to Shadows and Open Space. Except as otherwise provided in this Section 3.1 (f), Declarants shall not accept and DOB shall not issue a TCO or PCO with respect to Building C (Southeast) or Building E (North) as identified on the Plans (collectively, “Phase 2”), until the City Department of Parks and Recreation (“DPR”) has certified to DOB that the Mitigation Measures related to shadows and open space detailed in Sections 3.1(f)(a) and (b) below (hereinafter, the “Shadows and Open Space Mitigation Measures”) have been substantially completed (hereinafter, a “Certificate of Substantial Completion”) or finally completed (hereinafter, a “Certificate of Final Completion) in the case of a TCO or PCO, respectively in accordance with DPR standards and specifications. Declarants shall coordinate with the DPR as necessary regarding the Shadows and Open Space Mitigation Measures. DPR shall (i) cooperate with Declarants to diligently review and approve all drawings and specifications submitted by Declarants that are required to obtain all necessary approvals to implement the Shadows and Open Space Mitigation Measures; and (ii) on behalf of the City, manage and coordinate the review of the Shadows and Open Space Mitigation Measures design submissions to the City Public Design Commission. Notwithstanding anything provided in this Section 3.1(f), if the Chair reasonably determines that, due to any Uncontrollable Circumstance, Declarants are unable to implement the Shadows and Open Space Mitigation Measures, the Chair shall grant Declarants appropriate relief, including notifying DOB that a TCO or PCO may be issued for any buildings, or portions thereof, as reasonably determined by the Chair, and Declarants shall thereby be entitled to obtain such TCO or PCO notwithstanding

that the Shadows and Open Space Mitigation Measures have not obtained a Certificate of Substantial Completion or Certificate of Final Completion, as the case may be. In the event an Uncontrollable Circumstance has occurred and Declarants proceed under the preceding sentence, the Chair may require that Declarants post a reasonable bond, letter of credit, or other reasonable security in a form reasonably acceptable to the City in order to ensure that (i) the Shadows and Open Space Mitigation Measures will be completed in accordance with the provisions of this Declaration, and (ii) upon cessation of the Uncontrollable Circumstance(s), Declarants shall recommence work on the Shadows and Open Space Mitigation Measures in accordance with the provisions of this Declaration.

a. Mitigation Measures at the Howard Bennett Playground, as follows:

- i. Replacement of the asphalt surface in the entire existing asphalt surface playground area;
- ii. Installation of painted games on the asphalt surface, to replace the current painted map;
- iii. Replacement of play equipment in the northwest corner of the facility (i.e., the Tot Lot area and the play area for older children);
- iv. Replacement of the spray shower; and
- v. Upgrades to make the playground's comfort station Americans with Disabilities Act accessible and to repair the non-working drinking fountain.

b. Mitigation Measures at the Hansborough Recreation Center as follows:

- i. Replacement of exercise equipment within the Hansborough Recreation Center, in the maximum amount of One-Hundred Fifty Thousand Dollars (\$150,000.00) and in accordance with the line items in the attached **Exhibit D**, or equivalent equipment as approved by DPR.

(g) Mitigation Measures Relating to Historic and Cultural Resources. Declarants shall implement the following Mitigation Measures related to historic and cultural resources. Declarants shall coordinate with LPC on the Mitigation Measures relating to historic and cultural resources.

- a. Declarants shall implement Historic American Building Survey (“HABS”) Level II recordation of the Subject Property. The HABS recordation shall be prepared in consultation with a qualified consultant that meets the Secretary of the Interior’s Professional Qualifications Standards. Declarants shall not seek or accept demolition, excavation, or building Permits until LPC certifies to DOB that the Declarants have satisfied the HABS recordation Mitigation Measure.
- b. Declarants shall implement an interpretive program. The interpretive program shall be developed for the purpose of communicating Lenox Terrace’s historic and/or cultural significance to the general public. The interpretive program shall be installed at publicly-accessible locations within the Subject Property, including lobbies and other publicly-accessible locations within the new development. Examples of interpretive materials include publicly-accessible building signage, multimedia displays, and

interactive websites. The interpretive program shall be prepared in consultation with a qualified consultant that meets the Secretary of the Interior's Professional Qualifications Standards. Declarants shall not seek or accept a TCO or PCO for any building to be developed in Phase 2 until LPC certifies to DOB that the Declarants have satisfied the interpretive program mitigation requirement.

- (h) Mitigation Measures Relating to Transportation. Declarants shall implement the Mitigation Measures related to operational and construction-period traffic specified in the FEIS (e.g., signal timing changes and lane restriping). To the extent required by DOT, Declarants shall comply with DOT requirements necessary to implement the Mitigation Measures specified in the FEIS or measures having comparable benefits as specified by DOT, prior to accepting and DOB issuing a TCO or PCO with respect to Phase 1 or Phase 2 of the Proposed Development, as applicable and provided in the FEIS. As detailed in the FEIS, subject to the approval of DOT, the Mitigation Measures could be implemented at or prior to the completion of Phase 1 of the Proposed Development or at or prior to the completion of Phase 2 of the Proposed Development. Similarly, for Phase 1 and Phase 2 construction, the identified Mitigation Measures could be implemented at or prior to the peak period of construction traffic subject to the approval of DOT. Declarants shall either implement such measures as directed by DOT, or, if directed by DOT, pay DOT for the ordinary and customary costs of implementing such improvements (including but not limited to the costs of the design and construction of such improvements).

(i) Mitigation Measures Relating to Construction-Period Noise. Declarants shall implement the Mitigation Measures related to noise during the construction period, as provided below in this Section 3.1(i) (the “Construction Noise Mitigation Measures”). Monitor shall monitor and report compliance with the Construction Noise Mitigation Measures to DCP in accordance with Section 3.2 hereinafter, provided, however, that Declarants shall determine what measures logistics allow and the extent such measures are feasible and practical, subject to approval of DCP, which approval shall not be unreasonably withheld or conditioned. Upon DCP approval of such Declarants’ determination, the failure to implement such a measure shall not constitute a CMM Default as defined in and pursuant to Section 3.2(f).

a. Through-window air conditioning units shall be offered to units that do not have alternate means of ventilation (i.e. air conditioning) in the following buildings:

i. Existing residential buildings at the Subject Property including:

1. 470 Lenox Avenue;
2. 40 West 135th Street;
3. 10 West 135th Street;
4. 2186 Fifth Avenue;
5. 25 West 132nd Street; and
6. 45 West 132nd Street;

ii. 2235 Fifth Avenue;

iii. 2120 and 2140 Madison Avenue;

- iv. 485 Lenox Avenue (aka 485 Malcolm X Boulevard); and
 - v. 6, 8, 12, 24, 50, 66, 68, 70, 72, 74, 76, 78, and 80 West 132nd Street.
- b. If proposed Building A (Northwest) as shown on the Plans is completed and occupied during the most noise-intensive construction activities at the adjacent projected development site at Block 1730, Tax Lot 65, (the Metropolitan AME Church site), acoustical storm windows shall be offered to residential units with line of sight to the construction area on the projected development site as mitigation for the predicted levels of construction noise.
 - c. Where logistics allow, noisy equipment, such as cranes, concrete pumps, concrete trucks, and delivery trucks, shall be located away from and shielded from sensitive receptor locations.
 - d. Where logistics allow, truck deliveries shall take place behind the noise barriers once building foundations are completed.
 - e. Path noise control measures (i.e., portable noise barriers, panels, enclosures, and acoustical tents) shall be utilized for certain dominant noise equipment, to the extent feasible and practical, based on the results of the construction noise calculations.
 - f. As early in the construction period as logistics allow, and to the extent feasible and practicable, diesel- or gas-powered equipment shall be replaced with electrical-powered equipment such as welders, water pumps, bench saws, and table saws (i.e., early electrification). Where electrical equipment cannot be used, diesel- or gas-powered generators and pumps shall be located within buildings to the extent feasible and practicable.

- g. As early in the construction period as logistics allow, and to the extent feasible and practicable, materials and concrete deliveries shall be staged within the first floor of the proposed structures.

3.2 Appointment and Role of independent Monitor.

(a) Declarants shall, with the consent of DCP, retain an independent third party (the “Monitor”) reasonably acceptable to DCP to oversee, on behalf of DCP, the implementation and performance by Declarants of the construction period PCREs and the Construction Noise Mitigation Measures required under Section 3.1 of this Declaration (the “Construction Monitoring Measures” or “CMMs”). The Monitor shall be a licensed engineer, architect, general contractor or environmental consultant with significant experience in environmental management and construction management (or multiple persons or a firm employing such persons), including familiarity with the means and methods for implementation of the CMMs. DCP shall advise Declarants of its approval, which approval shall not be unreasonably withheld or conditioned, or rejection of the Monitor, as proposed, within fifteen (15) days after Declarants provide DCP with satisfactory (as reasonably determined by DCP) documentation concerning the name and relevant experience of the Monitor.

(b) The “Scope of Services” described in any agreement between Declarants and the Monitor pursuant to which the Monitor is retained (the “Monitor Agreement”) shall be subject to prior review by and approval of DCP, such approval not to be unreasonably withheld, conditioned or delayed. Such Monitor Agreement shall include provisions in a form acceptable to DCP that, among others, shall: (i) ensure that the Monitor is independent of Declarants in all respects relating to the Monitor’s responsibilities under this Declaration (provided that the Monitor

shall be responsible to Declarants with regard to practices generally applicable to or expected of consultants and independent contractors of Declarants); (ii) provide for appropriate DCP management and control of the performance of services by the Monitor; (iii) authorize DCP to direct the termination of services by the Monitor for unsatisfactory performance of its responsibilities under the Monitor Agreement, following a fifteen (15)-day Notice period by DCP to Declarants and the failure of Monitor to correct or remedy the unsatisfactory activity; (iv) allow for the retention by the Monitor of sub-consultants with expertise appropriate to assisting the Monitor in its performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Monitor Agreement; and (v) allow for termination by Declarants for cause, but only with the express written concurrence of DCP, which concurrence shall not be unreasonably withheld or delayed. If DCP shall fail to act upon a proposed Monitor Agreement within fifteen (15) days after submission of a draft form of Monitor Agreement, the form of Monitor Agreement so submitted shall be deemed acceptable by DCP and may be executed by Declarants and the Monitor. The Monitor Agreement shall provide for the commencement of services by the Monitor at a point prior to Construction Commencement (the timing of such earlier point to be at the sole discretion of Declarants) and shall continue in effect at all times that construction activities are occurring on the Subject Property until issuance of the first TCO for any portion of the Proposed Development, unless the Declarants, with the prior consent of DCP or at the direction of DCP, shall have terminated the Monitor Agreement and substituted therefor another Monitor under a new Monitor Agreement, in accordance with all requirements of this Section 3.2. If the stage of development of the Subject Property identified in the Scope of Services under the Monitor Agreement is completed, Declarants shall not have any obligation to retain the Monitor for subsequent stage(s) of development of the Subject Property, provided that Declarants

shall not recommence any construction until it shall have retained a new Monitor in compliance with the provisions of this Section.

(c) The Monitor shall: (i) assist and advise DCP with regard to review of plans and measures proposed by Declarants for purposes of satisfying CMMs in connection with determinations required under this Declaration as a prerequisite to Construction Commencement; (ii) provide reports of Declarants' compliance with the CMMs during any period of construction on a schedule reasonably acceptable to DCP, but not more frequently than once per month; and (iii) review records or perform field inspections of the portion of the Subject Property then being developed as reasonably necessary to confirm that Declarants are complying with the CMMs. The Monitor may at any time also provide Declarants and DCP with Notice of a determination that a CMM has not been implemented, accompanied by supporting documentation establishing the basis for such determination, provided that any such Notice shall be delivered to both parties. If the Monitor has provided DCP with such Notice of a determination and supporting documentation that a CMM has not been implemented, the Monitor shall have the following additional oversight rights (collectively, "Additional Oversight Rights"): (x) Monitor shall have full access to the portion of the Subject Property then being developed (as referenced in the Monitor Agreement), subject to compliance with all generally applicable site safety requirements imposed by law or the construction manager's safety requirements pursuant to construction contracts or imposed as part of the site safety protocol in effect for the Subject Property; (y) on reasonable Notice and during normal business hours, Monitor shall be provided with access to all books and records of Declarants pertaining to both the CMM alleged not to have been implemented and the applicable portion of the Subject Property which it reasonably deems necessary to carry out its duties, including the preparation of periodic reports; and (z) Monitor shall be entitled to conduct any tests

on the Subject Property that the Monitor reasonably deems necessary to verify Declarant's implementation and performance of the CMMs, subject to compliance with all generally applicable site safety requirements imposed by law, site operations, or pursuant to construction contracts in effect for the Subject Property and provided further that any such additional testing shall be (q) coordinated with Declarants' construction activities and use of the Subject Property by the occupants of and visitors; and (r) conducted in a manner that will minimize any interference with the Proposed Development. The Monitor Agreement shall provide that Declarants shall have the right to require the Monitor to secure insurance customary for such activity and may hold the Monitor liable for any damage or harm resulting from such testing activities. Nothing in this Declaration, including without limitation the provisions of this Section 3.2, shall be construed to make the Monitor a third-party beneficiary of this Declaration.

(d) Subject to compliance with all generally applicable site safety requirements or the construction manager's safety requirements pursuant to construction contracts or imposed as part of the site safety protocol in effect for the Subject Property, DCP, or any other applicable City agency, may, upon prior written or telephonic notice to Declarant, enter upon the Subject Property during business hours on business days for the purpose of conducting inspections to verify Declarant's implementation and performance of the CMMs; provided, however, that any such inspections shall be (i) coordinated with Declarant's construction activities and use of the Subject Property by the occupants of and visitors to the Subject Property, and (ii) conducted in a manner that will minimize any interference with or delay of construction of, or create any safety hazard at, the Proposed Development. Declarants shall cooperate with DCP (or such other applicable City agency) and its representatives, and shall not unreasonably delay or withhold any information or access to the Subject Property reasonably requested by DCP (or such other

applicable City agency). Notwithstanding the foregoing, Declarants shall not be obligated to provide DCP or any other City agency with access to tenant occupied spaces or those portions of the Subject Property not owned and controlled by Declarants (such as individual condominium units).

(e) Declarants shall be responsible for payment of all commercially reasonable fees and expenses due to the Monitor (including fees and expenses paid to sub-consultants engaged pursuant to Section 3.2(b)) in accordance with the terms of the Monitoring Agreement.

(f) If DCP determines, based on information provided by the Monitor and others, or through its own inspection of the Subject Property during construction, as applicable, that there is a basis for concluding that Declarants have failed to implement or to cause its contractors to implement a CMM (hereinafter a "CMM Default"), DCP may thereupon give Declarants written Notice of such alleged violation (each, a "CMM Default Notice"), transmitted by hand or via overnight courier service to the address for Notices for Declarants set forth in Section 7.6. Notwithstanding any provisions to the contrary contained in Section 4.1 of this Declaration, following receipt of a CMM Default Notice, Declarants shall: (i) effect a cure of the alleged violation within thirty (30) days; (ii) seek to demonstrate to DCP in writing within fifteen (15) days of receipt of the CMM Default Notice why the alleged violation did not occur and does not then exist; or (iii) seek to demonstrate to DCP in writing within fifteen (15) days of receipt of the CMM Default Notice that a cure period greater than thirty (30) days would not be harmful to the environment or that the required cure cannot be accomplished within thirty (30) days (such longer cure period, a "Proposed Cure Period"). If DCP accepts within two (2) business days of receipt of a writing from Declarants that the alleged violation did not occur and does not then exist, DCP shall provide written Notice of their withdrawal the CMM Default Notice pursuant to the

Notice requirements set forth in Section 7.6 hereof and Declarants shall have no obligation to cure. If DCP accepts a Proposed Cure Period in writing within two (2) business day of receipt of a writing from Declarants, then this shall become the applicable cure period for the alleged violation (the “New Cure Period”), provided that if DCP does not act with respect to a Proposed Cure Period within two (2) business days or after receipt of a writing from Declarants with respect thereto, the running of the thirty (30) day cure period for the alleged violation shall be tolled until such time as DCP so acts. If Declarants fail to: (i) effect a cure of the alleged violation; (ii) cure the alleged violation within a New Cure Period, if one has been established; or (iii) demonstrate to DCP’s satisfaction that a violation has not occurred, then representatives of Declarants shall, promptly at DCP’s request, and upon a time and date, and a location acceptable to DCP, convene a meeting (and, at the election of the parties, additional meetings) with the Monitor and DCP representatives. If, subsequent to such meetings, Declarants are unable to reasonably satisfy the DCP representatives that no violation exists or is continuing or the Declarants, the Monitor, and DCP are unable to agree upon a method for curing the violation within a time period reasonably acceptable to DCP, DCP shall have the right to exercise any remedy available at law or in equity or by way of administrative enforcement, to obtain or compel Declarants’ performance under this Declaration, including seeking an injunction to stop work on the Subject Property, as necessary, to ensure that the violation does not continue, until the Declarants demonstrate either that the violation does not exist or that it has cured the violation, subject to the cure provisions of Section 4.1 hereof (as modified for the cure periods set forth in this Section 3.2(f)) and the limitations of Sections 4.1(b), 4.1(f), 7.2, and 7.3 hereof. Nothing herein shall be construed as a waiver of any legal or equitable defense that Declarants may have in any enforcement action or proceeding initiated by DCP in accordance with this provision.

Article IV

Defaults and Remedies

4.1. Defaults and Remedies.

(a) Declarants acknowledge 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 Declarants fail to perform any of Declarants' material obligations under this Declaration, the City shall have the right to enforce this Declaration against Declarants and exercise any administrative legal or equitable remedy available to the City, and Declarants hereby consent to same; provided that this Declaration shall not be deemed to diminish Declarants' 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 4.1(c) and 4.1(d) hereof. Declarants also acknowledge 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 Declarants to comply with the terms of this Declaration and a revocation by the City of any TCO or PCO 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.

(b) Notwithstanding any provision of this Declaration, only Declarants, and Declarants' 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 Applications. In any proceedings brought by the City against Declarants seeking to deny or revoke building permits or certificates of occupancy with respect to the Large Scale Development Project, or to revoke any of the Land Use Approvals, impose a lien, fine, or other penalty, or to pursue any other remedy available to the City, if the event or occurrence which is the basis of an allegation of a failure to comply by Declarants is associated with a particular site or portion(s) of the Subject Property, then the City shall only deny or seek the revocation of building permits or certificates of occupancy for such site(s) or portion(s) of the Subject Property, and only seek to impose a fine, lien, or other penalty on such site(s) or portion(s) of the Subject Property, and any such event or occurrence shall not provide the basis for denial or revocation of the Special Permits or Authorization approved by the Land Use Approvals or building permits or certificates of occupancy, or the imposition of any fine, lien, or other penalty, with respect to the other site(s) or portion(s) of the Subject Property comprising a portion of the Large Scale Development Project for which no such failure to comply has occurred.

(c) Prior to the City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, the City shall give Declarants thirty (30) days written Notice of such alleged violation, except in the event Declarants have prohibited public access to the Public Walkway other than as permitted under Article II hereof (in which case the cure period for providing such access shall be reduced to forty-eight (48) hours), during which period Declarants shall have the opportunity to effect a cure of such alleged violation or to demonstrate to the City why the alleged violation has not occurred. If Declarants commence 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, Declarants commence to effect such cure when such commencement is reasonably possible), and thereafter proceed 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 Declarants continue 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 the City has received Notice in accordance with Section 7.6 hereof, and the right to cure shall apply equally to all Declarants.

(d) If Declarants fail to observe any of the terms or conditions of this Declaration, and, after due Notice and opportunity to cure as set forth in this Declaration, Declarants fail to cure such violation within the applicable grace period provided in Section 4.1(c) above, then, upon the expiration of such cure period, prior to institution by the City of any action or proceeding against Declarants, every non-Declarant Party in Interest to this Declaration or future Party in Interest which has given written Notice of its name and interest in accordance with Section 7.6 hereof, shall be given thirty (30) days written Notice of such alleged violation by the City, during which period each Party in Interest shall have the opportunity to effect such cure. If any such Party in Interest commences to effect a cure during such thirty (30) day period and thereafter proceeds diligently to complete the effectuation of such cure, such cure period shall be extended for so long as any such Party in Interest continues to proceed diligently toward such cure. If a Party in Interest performs any obligation or effects any cure Declarants are required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of

Declarants and shall be accepted by any person or entity benefited thereunder, including CPC and the City, as if performed by Declarants.

(e) If, after due Notice and opportunity to cure as set forth in this Declaration, Declarants 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 4.1 and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Declarants are in default of a material obligation under this Declaration. The time period for curing any violation by Declarants or a Party in Interest shall be subject to extension for Uncontrollable Circumstances pursuant to Section 4.1(f) hereof.

(f) (i) In the event that, as the result of Uncontrollable Circumstances, Declarants are unable to perform or complete any obligation (A) at the time or times required by this Declaration; (B) at the date set forth in this Declaration for such action, if a specific date for such requirement is set forth herein; or (C) prior to submitting an application for a building permit or other permit or certificate of occupancy which is conditioned on the completion of such requirements, where applicable, Declarants shall, within seventy-two (72) hours after the occurrence of such Uncontrollable Circumstances becomes apparent so notify the Chair in writing. Such Notice (the “Delay Notice”) shall include a description of the Uncontrollable Circumstances, and, if known to Declarants, their cause and probable duration. In the exercise of his or her reasonable judgment, the Chair shall, within thirty (30) days of its receipt of the Delay Notice, (x) certify in writing that the Uncontrollable Circumstances have occurred, or (y) notify Declarants that it does not reasonably believe that the Uncontrollable Circumstances have occurred. Failure to respond within such thirty (30) day period shall be deemed to be a determination by the Chair that Uncontrollable Circumstances have not occurred. Upon a certification that Uncontrollable

Circumstances have occurred, the Chair may grant Declarants the requested relief, either in whole or in part, and, as a condition of the granting of such relief, the Chair may also require that Declarants post a bond, letter of credit, or other security in a form reasonably acceptable to the Chair in order to ensure that the obligation will be completed in accordance with the provisions of this Declaration.

(ii) “Uncontrollable Circumstances” shall mean: delays from any and all causes beyond Declarants’ reasonable control, including, without limitation, delays resulting from (A) orders of any court of competent jurisdiction, (B) labor disputes (including strikes, lockouts not caused by Declarants, slowdowns and similar labor problems), (C) accident, mechanical breakdown, shortages or inability to obtain labor, fuel, steam, water, electricity, equipment, supplies, or materials (for which no substitute is readily available at a comparable price), (D) acts of God (including inordinately severe weather conditions), (E) war, sabotage, hostilities, invasion, insurrection, riot, acts of terrorism, mob violence, malicious mischief, embargo, quarantines, national, regional, or local disasters, calamities or catastrophes, national emergencies, enemy or hostile governmental action, civil disturbance or commotion, earthquake, flood, fire, (F) acts of the City, State of New York, or United States government or any agency or instrumentality of any of the foregoing in processing or approval of any application or agreements required in order to permit Declarants to carry out its obligations under this Declaration, or (G) other casualty or conditions not reasonably avoidable by Declarants which are beyond the reasonable control of Declarants.

Article V

Applications

5.1 Applications.

(a) Declarants shall include a copy of this Declaration with any application made to the DOB for a foundation, new building, alteration, or other permit (a “Permit”) for any portion of the Large Scale Development Project subject to the Land Use Approvals. 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 Declarants 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 Declarants see fit in Declarants’ sole discretion.

(b) Nothing in this Declaration shall be construed to prevent Declarants or any of Declarants’ 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 Declarants shall include a copy of this Declaration in connection with any application for any such discretionary approval, and provided that nothing in this Section 5.1(b) shall be construed as superseding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

Article VI

Amendment, Modification, and Cancellation

6.1 Amendment, Modification and Cancellation.

(a) This Declaration may be amended, cancelled, or modified only upon application by Declarants 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 6.1 (a) and subject to the provisions of Section 6.1 (d) 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 CPC or from any other public body, private person, or legal entity of any kind.

(c) This Declaration and its obligations and agreements are in contemplation of Declarants receiving approvals or modified approvals of the Applications. In the event that the Declarants withdraw the Applications before a final determination or the Applications are not approved, the obligations and agreements pursuant to this Declaration shall have no force and effect and this Declaration shall be canceled.

(d) No development other than the development permitted by the Land Use Approvals as set forth in Section 1.2(a) hereof, or if the Land Use Approvals are not exercised, the Underlying Zoning Development set forth in Section 1.2(b)(i) hereof, shall be permitted on the Subject Property; provided, however, that the Alternative Development set forth in Section 1.2(b)(ii) shall also be permitted if (i) Declarants have submitted supplemental environmental review as may be required by SEQRA and CEQR and (ii) Plans reflecting the proposed Alternative Development have been submitted in a form acceptable to DCP and have been incorporated into this Declaration pursuant to Section 6.1(a) above. Declarants shall not apply for or accept building permits for any Alternative Development until the Chair certifies to DOB

that the plans for the proposed Alternative Development have been approved and supplemental environmental review as may be required by SEQRA and CEQR has been submitted to DCP.

(e) Notwithstanding anything to the contrary contained in this Declaration, if all the Land Use Approvals, as approved or modified by the City Council, given in connection with the Land Use Applications are declared invalid or otherwise voided by a final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such appeal, this Declaration shall be cancelled and shall be of no further force or effect and an instrument discharging it may be recorded. Prior to the recordation of such instrument, Declarants shall notify the Chair of Declarants' intent to discharge this Declaration and request the Chair's approval, which approval shall be limited to insuring that such discharge and termination is in proper form and provides the proper provisions which are not discharged survive such termination. Upon recordation of such instrument, Declarants shall provide a copy thereof to CPC so certified by the Register's Office. If some of the Land Use Approvals given in connection with the Land Use Applications are declared invalid, then Declarants may apply for modification, amendment, or cancellation of this Declaration in accordance with this Section 6.1. In the event the Large Scale Special Permit is invalidated, but the Zoning Map Amendment is upheld, the restrictions of Section 1.2(b)(i) and 1.2(b)(ii) remain in effect, and an amended Declaration shall be recorded for such purpose.

Article VII

Miscellaneous

7.1 Representation. Declarants hereby represent and warrant 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.

7.2 Binding Effect. The restrictions, covenants, rights and agreements set forth in this Declaration shall be binding upon Declarants and any successor or assign of Declarants; 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.

7.3 Limitation of Liability. Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the estate and interest of the Declarants, and any or all of their respective successors and assigns or the subsequent holders of any interest in the Subject Property, on an in rem basis only, for the collection of any judgment or the enforcement of any remedy based upon any breach by any such party of any of the terms, covenants, or conditions of this Declaration. No other property of any such party or its principals, disclosed or undisclosed, or its partners, shareholders, directors, officers, or employees, or said successors, assigns, and holders, shall be subject to levy, execution, or other enforcement procedure for the satisfaction of the remedies of the City or any other party or person under or with respect to this Declaration, and no such party shall have any personal liability under this Declaration.

7.4 Recordation. Prior to accepting any new building permit for the construction of a new building on the Subject Property, Declarants shall file and record this Declaration in the Office of the City Register of the City (the “Register’s Office”), indexing it against the Subject Property within thirty (30) days after the issuance of the Land Use Approvals (such date, the “Recording Date”). Declarants shall promptly provide to the Chair a copy of the Declaration as recorded, so certified by the Register’s Office. If Declarants fail 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 Declarants or by CPC, shall be borne by the Declarants.

7.5 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 7.4 above (the “Effective Date”).

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

(i) if to Declarants:

Lenox Terrace Development Associates
c/o The Olnick Organization
135 East 57th Street, 22nd Floor
New York, New York 10022
Attn: [General Counsel]

with a copy to:

Fox Rothschild LLP
101 Park Ave – 17th Floor
New York, New York 10178
Attn: Jesse Masyr, Esq.

(ii) if to CPC:
New York City Planning Commission
120 Broadway, 31st Floor
New York, New York 10271
Attn: Chairperson

with a copy to:

the general counsel of CPC at the same address

(iii) if to a Party in Interest other than Declarants:

at the address provided in writing to CPC in accordance
with this Section 7.6

(iv) if to a Mortgagee:

at the address provided in writing to CPC in accordance with this Section 7.6.

Declarants, CPC, any Party in Interest, and any Mortgagee may, by Notice provided in accordance with this Section 7.6, 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 (5) 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 Declarants shall also be sent to every Mortgagee of whom CPC has Notice, and no Notice shall be deemed properly given to Declarants 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.

7.7 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.

7.8 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.

7.9 Counterparts. This Declaration may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall be construed as and shall constitute but one and the same instrument.

[CONTINUED ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the date first written above.

**LENOX TERRACE DEVELOPMENT
ASSOCIATES,**

a NY General Partnership

By: ROC-Century Associates, L.L.C., a NY limited liability company, its Managing General Partner

By: _____

Name: Seth Schochet

Title: Manager

FIRST LENOX TERRACE ASSOCIATES, LLC,
a DE limited liability company

By: First Lenox Terrace Associates, a NY General Partnership, its sole member

By: ROC-Century Associates, L.L.C., a NY limited liability company, its Managing General Partner

By: _____

Name: Seth Schochet

Title: Manager

SECOND LENOX TERRACE ASSOCIATES, LLC,
a DE limited liability company

By: Second Lenox Terrace Associates, a NY General Partnership, its sole member

By: ROC-Century Associates, L.L.C., a NY limited liability company, its Managing General Partner

By: _____

Name: Seth Schochet

Title: Manager

THIRD LENOX TERRACE ASSOCIATES, LLC,
a DE limited liability company

By: Third Lenox Terrace Associates, a NY General Partnership, its sole member

By: ROC-Century Associates, L.L.C., a NY limited liability company, its Managing General Partner

By: _____

Name: Seth Schochet

Title: Manager

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the date first written above.

FOURTH LENOX TERRACE ASSOCIATES, LLC,
a DE limited liability company

By: Fourth Lenox Terrace Associates, a NY General Partnership, its sole member

By: ROC-Century Associates L.L.C., a NY limited liability company, its Managing General Partner

By: _____

Name: Seth Schochet

Title: Manager

FIFTH LENOX TERRACE ASSOCIATES, LLC,
a DE limited liability company

By: Fifth Lenox Terrace Associates, a NY General Partnership, its sole member

By: ROC-Century Associates, L.L.C., a NY limited liability company, its Managing General Partner

By: _____

Name: Seth Schochet

Title: Manager

SIXTH LENOX TERRACE ASSOCIATES, LLC,
a DE limited liability company

By: Sixth Lenox Terrace Associates, a NY General Partnership, its sole member

By: ROC-Century Associates, L.L.C., a NY limited liability company, its Managing General Partner

By: _____

Name: Seth Schochet

Title: Manager

73-77 WEST 132ND STREET HOLDINGS, LLC,
a DE limited liability company

By: Lenox Terrace Development Associates, a NY General Partnership, its sole member

By: ROC-Century Associates, L.L.C., a NY limited liability company, its Managing General Partner

By: _____

Name: Seth Schochet

Title: Manager

STATE OF NEW YORK)
).ss.:
COUNTY OF _____)

On the ____ day of _____ in the year ____ before me, the undersigned, a Notary Public in and for said State, personally appeared Seth Schochet, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT A

METES AND BOUNDS DESCRIPTIONS OF SUBJECT PROPERTY

EXHIBIT B
CERTIFICATION OF PARTIES IN INTEREST

EXHIBIT B-1

**WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION
AND SUBORDINATION OF MORTGAGE**

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND
SUBORDINATION OF
MORTGAGE, made this [_____] day of _____, 2020 by _____, a
_____ (the "Mortgagee"), having its principal place of business at
.

WITNESSETH:

WHEREAS, the Mortgagee is the lawful holder of that certain mortgage,
dated _____ (the "Mortgage") made by [*Insert Applicable Entity*] (the "Mortgagor"), in favor of
the Mortgagee, in the original principal amount of \$_____, recorded in the Office of the Register
of the City of New York, County of New York, in Reel ___, Page ___; and

WHEREAS, the Mortgage encumbers all or a portion of the property (the "Premises")
known as Block 1730, Lots [*insert relevant Lots*], as described in **Exhibit A** annexed hereto, on
the Tax Map of the City of New York, County of the New York, and made a part hereof, and any
improvements thereon (such improvements and the Premises are collectively referred to herein
as the "Subject Property"), which Subject Property is the subject of a restrictive declaration dated
, (the "Declaration"), made by Lenox Terrace Development Associates, 73-77 West 132nd Street
Holdings, LLC, Sixth Lenox Terrace Associates LLC, Third Lenox Terrace Associates LLC,
Second Lenox Terrace Associates LLC, First Lenox Terrace Associates LLC, Fourth Lenox
Terrace Associates LLC, and Fifth Lenox Terrace Associates LLC; and

WHEREAS, Mortgagee represents that the Mortgage represents its sole interest in the
Subject Property; and

WHEREAS, the Declaration, which is intended to be recorded in the Office of said
Register simultaneously with the recording hereof, shall subject the Subject Property and the
sale, conveyance, transfer, assignment, lease, occupancy, mortgage and encumbrance thereof to
certain restrictions, covenants, obligations, easements and agreements contained in the
Declaration; and

WHEREAS, the Mortgagee agrees, at the request of the Mortgagor, to waive its right to
execute the Declaration and to subordinate the Mortgage to the Declaration.

NOW, THEREFORE, the Mortgagee (i) hereby waives any rights it has to execute, and
consents to the execution by the Mortgagor of, the Declaration and (ii) hereby agrees that the
Mortgage, any liens, operations and effects thereof, and any extensions, renewals, modifications
and consolidations of the Mortgage, shall in all respects be subject and subordinate to the terms
and provisions of the Declaration.

This Waiver of Execution of Restrictive Declaration and Subordination of Mortgage shall
be binding upon the Mortgagee and its heirs, legal representatives, successors and assigns.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Mortgagee has duly executed this Waiver of Execution of Restrictive Declaration and Subordination of Mortgage as of the date and year first above written.

MORTGAGEE:

By:

Name:
Title:

ACKNOWLEDGMENT

State of New York
County of ____

On the ____ day of _____ in the year 2019 before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

EXHIBIT C
PLANS

EXHIBIT D

HANSBOROUGH RECREATION CENTER EXERCISE EQUIPMENT