

July 24, 2002/Calendar No. 23

M 910478(C) ZMK

IN THE MATTER OF an application submitted by Brighton Development, LLC **for the modification of Restrictive Declaration D-131 and its subsequent amendments**, pursuant to Section 2b of that Restrictive Declaration (1998 Declaration) which was previously approved as part of an application for a modification of Restrictive Declaration D-131 (C 910478(A) ZMK), and originally approved as part of an application for a Zoning Map Amendment (C 910478 ZMK), for a residential development on property generally bounded by Brighton Beach Avenue, Seacoast Terrace, a park and Coney Island Avenue (Block 8720, part of Lot 14), in an R7-1 District, Community District 13, Brooklyn.

WHEREAS, on May 22, 2002 Brighton Development, LLC submitted an application (M 910478(C) ZMK) for the modification of Restrictive Declaration D-131 and its subsequent amendments, for the residential development located on Block 8720, part of Lot 14, in the Borough of Brooklyn; and

WHEREAS, Restrictive Declaration D-131 (the 1992 Declaration) was originally entered into in connection with approval of an amendment to the Zoning Map (C 910478 ZMK), change in City Map (C 910479 MMK), and special permits for an attended parking garage and height and set back waivers (C 910480 ZSK), submitted by Alexander Muss and Sons (AMS) to facilitate a large scale residential development on Block 8720, part of Lot 14 in Community District 13, Borough of Brooklyn; and

WHEREAS, the zoning map amendment application (C 910478 ZMK) and all related actions and the AMS Project were the subject of a Final Supplemental Environmental Impact Statement which was certified as complete on July 10, 1992 (the "1992 FSEIS"); and

WHEREAS, the AMS Project did not proceed and AMS no longer had any interest in developing the subject property pursuant to the earlier approval; and

WHEREAS, in furtherance of a modified project, a new Restrictive Declaration D-131 (the 1998 Declaration) was approved by the City Planning Commission on August 8, 1998, Calendar No. 6, as part of an approved application (M 910478(A) ZMK), and was subsequently approved by the City Council on August 27, 1998, allowing for and including: a maximum of 850 dwelling units and 1.25 million square feet of floor area in buildings, ranging in height from 3 to 12 stories, as shown on three alternative layouts; a maximum of 1,200 accessory parking spaces; and a requirement to provide publically accessible open space and improvements; and the maintenance of certain off-site areas adjacent to the property. In addition, concurrent application (N 980424 ZAK) was approved, pursuant to Section 62-722 of the Zoning Resolution, for an authorization to modify the elevation requirement for a visual corridor; and

WHEREAS, Restrictive Declaration D-131 (the 1998 Declaration) was modified (M 910478 (B) ZMK) and approved by the City Planning Commission on June 25, 2001, changing the phasing and the scheduling of public improvements and their temporary certificate of occupancy milestones; and

WHEREAS, pursuant to the modification, the Brighton Beach Avenue open space would be expanded from 43,700 to 53,820 square feet; and

WHEREAS, the modification would permit the number of 12-story buildings to increase from two buildings to a total of five buildings and would allow an additional floor to be added to four buildings, increasing their size from seven- to eight- stories; and

WHEREAS, pursuant to the modification, the width of the pedestrian easement on the west side of Seacoast Terrace would be reduced from ten- to eight feet and the four-foot street planting strip would be relocated from the east side to the west side of the pedestrian easement; and

WHEREAS, the modification would provide a private beach access area from the development through the 50-foot natural parkstrip at the southern end of the development, and beneath the boardwalk; and

WHEREAS, Restrictive Declaration D-131 is proposed to be amended to incorporate these modifications; and

WHEREAS, this application (M 910478(C) ZMK) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA) and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq., and the New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order 91 of 1977. It was determined that this application would not result in environmental impacts that would be substantially different from or greater than those described in the 1992 FSEIS for the AMS project. By letter dated May 28, 2002, it was determined that the proposed changes do not alter the

conclusions of the earlier review and that therefore, the Notice of Completion issued on July 10, 1992 remains in effect; and

WHEREAS, this application was referred by the Department of City Planning to Community Board 13 on May 30, 2002; and

WHEREAS, Community Board 13, on June 26, 2002, by a vote of 33 to 1, with 0 abstentions adopted a resolution recommending approval of the application; and.

WHEREAS, the Commission believes that the subject 15 acre site, located at the waterfront, and well connected to public transportation, continues to provides an excellent opportunity for new residential development; and

WHEREAS, the Commission believes that the expansion of the Brighton Beach Avenue open space by approximately 10,120 square feet, from 43,700 to 53, 820 square feet, is a desirable public amenity and neighborhood improvement; and

WHEREAS, the Commission believes that allowing the number of 12-story buildings to increase from two to a total of five buildings, and allowing an additional floor for four buildings, increasing their size from seven- to eight- stories, is in keeping with the overall scale of planned and approved development, in as much, as the development continues to adhere to restrictive declaration maximums of 850 units and 1.25 million square feet of floor area; and

WHEREAS, the Commission concurs that reducing the width of the pedestrian easement on the west side of Seacoast Terrace from ten- to eight feet and relocating the four-foot street planting strip from the east side to the westside of the pedestrian easement would prevent the need to move existing curb and sidewalk lines and the ensuing destruction of mature hedges and trees and loss of additional parking spaces, and would allow the new construction to utilize existing foundation elements; and

WHEREAS, the Commission agrees that adding direct beach access from the development through the natural planting strip and under the boardwalk is an appropriate amenity for tenant/owners; and

WHEREAS, the Commission has determined that the application warrants approval; and

THEREFORE, be it **RESOLVED** that the City Planning Commission, after consideration of the proposed modification, and the sufficiency of information in the 1992 FSEIS, finds that the application will not result in environmental impacts substantially different from or greater than those described in the 1992 FSEIS and would not alter the conclusions of the 1992 FSEIS, and that having considered such materials and the 1992 FSEIS for which a Notice of Completion was issued on July 10, 1992, the City Planning Commission certifies that the requirements of the New York State Environmental Quality Review Act and regulations promulgated pursuant thereto have been met, and finds that, consistent with social, economic, and other essential considerations from among the reasonable alternatives thereto, the action to be approved is one which minimizes or avoids adverse

environmental impacts to the maximum extent practicable, by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

The report of the City Planning Commission, together with the 1992 FSEIS and an Environmental Assessment and Technical Memorandum dated May 22, 2002 and revised on May 28, 2002 constitutes the written statement of facts that form the basis of the decision; and be it further

RESOLVED, that the application (M 910478(C) ZMK) submitted by Brighton Development, LLC for the modification of Restrictive Declaration D-131 (the 1998 Declaration), for the property generally bounded by Brighton Beach Avenue, Brighton Beach Park, Seacoast Terrace and Coney island Avenue (Block 8720, part of Lot 14), in an R7-1 District, Community District 13, Borough of Brooklyn is approved subject to the following conditions:

1. The property that is the subject of this application (M 910478(C) ZMK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Moss Gilday Group, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>	<u>Prepared By</u>
BB-Alt-01	Alternate Plan No.1	5/23/02	MGG
LP1	Overall landscape Plan	5/08/02	MGG
LP3	Seacoast Terrace Improvements	5/08/02	MGG
LP-4	Overall Site Plan Brighton Beach Avenue East & West	5/01/02	MGG

LP-5	Secondary Entrance Illustrative Plans/Elevations	5/23/02	MGG
LP-6	Natural Area/Park Strip Landscape Plan	5/08/02	MGG

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. A copy of this resolution and the restrictive declaration described below and any subsequent modifications to either document 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.
5. The development shall include those mitigative measures listed in the Final Supplemental Environmental Impact Statement (CEQR No. 89-299(A)) dated July 10, 1992.
6. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this approval to the lessee, sublessee or occupant.

7. Development pursuant to this resolution shall be allowed only after the attached restrictive declaration dated July 18, 2002 and executed by Brighton Development, LLC., the terms of which are hereby incorporated in this resolution, shall have been recorded and filed in the Office of the Register of the City of New York, County of Kings.

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 and the attached restrictive declaration whose provisions shall constitute conditions of the approvals granted herein, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said approval. 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 any approvals hereby granted or of the attached restrictive declaration.

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 approval.

The above resolution (M 910478(C) ZMK), duly adopted by the City Planning Commission on July 24, 2002 (Calendar No.23), is filed with the Office of the Speaker, City Council together with a copy of the plans of the development.

AMANDA M. BURDEN, AICP , Chair
KENNETH J. KNUCKLES, Vice-Chairman
ANGELA BATTAGLIA, IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, R.A.,
ALEXANDER GARVIN, JANE D. GOL, WILLIAM J. GRINKER
JOHN MEROLO, Commissioners

JOSEPH B. ROSE, Commissioner, No

KAREN A. PHILLIPS, RICHARD W. EADDY, Commissioners, Abstaining



BROOKLYN COMMUNITY BOARD 13

2900 West 8th Street, Brooklyn, NY 11224
(718) 266-3001 FAX (718) 266-3920

MARTY MARKOWITZ
Borough President

MITCHELL WESSON
Chairperson

CHUCK REICHENTHAL
District Manager

June 27, 2002

New York City Planning Commission

Attention: Mr. Richard Jacobs

To Whom It May Concern:

Re: APPLICATION NO. M 910478 (C) ZMK

Name of Applicant: Muss Development Co.

PUBLIC INFORMATION MEETING HELD: Wed., June 26, 2002 - Coney Island Hospital
COMMITTEE INFORMATIONAL MEETING HELD - Dept. Of Motor Vehicles

BOARD VOTE: Wed., June 26, 2002 - Coney Island Hospital - Quorum present.

Community Board #13 APPROVES APPLICATION #M910478 (c) ZMK.

Proposed modification of previously approved application (C 910478 ZMK) for an Amendment of Zoning Map, Section Nos. 28d and 29b changing the subject area from C3, R6, and C1-2 Districts to an R7-1 District, which was approved by the Community Board 13 and City Planning Commission. Application C910478 ZMK and the Restrictive declaration D-131 was the subject of several subsequent modifications. Community Board 13 IS IN FAVOR of application M910478 (C) ZMK for the following requests: (1) increasing Brighton Beach Ave. Open space from 43,700 sq. Ft. to 53,700 sq. Ft.; increasing the number of 12 story buildings on site from two to five and increasing the height of four seven-story buildings to eight stories; reducing width of pedestrian easement west of Seacoast Terrace from 10' to 8' and move the four feet wide street planting strip from east side of the pedestrian easement to west side; reopening beach access from the development to the beach through the 50-foot park strip south of the development and beneath the Boardwalk.

IN FAVOR 33 OPPOSED: 1

Chuck Reichenthal
District Manager

FOURTH AMENDED DECLARATION

THIS FOURTH AMENDED DECLARATION made as of the 18th day of July, 2002 by **BRIGHTON DEVELOPMENT, LLC**, Brighton One, LLC, Brighton Two, LLC, Brighton Three, LLC, Brighton Four, LLC, and Brighton Six, LLC, each a Delaware limited liability company having offices at 118-35 Queens Boulevard, Forest Hills, New York 11375 (collectively "Declarant").

WITNESSETH:

WHEREAS, Declarant was the Owner of certain real property and improvements thereon located in the Borough of Brooklyn, Kings County, City and State of New York, which property is designated as a portion of Lot 14, on Block 8720 on the Tax Map of the City of New York, generally bounded by Coney Island Avenue to the west, Brighton Beach Avenue to the north, Seacoast Terrace (a privately-owned, improved, mapped street) to the east and a public park to the south, and is more particularly described on Exhibit A attached hereto and incorporated herein, which property is referred to herein as the "Subject Property";

WHEREAS, Declarant's predecessor-in-interest previously executed a Declaration, made as of the 30th day of July, 1998 (recorded January 12, 1999 in Reel 4371, Page 652), as amended by a First Amended Declaration dated as of February 20, 1999 (recorded March 10, 1999, Reel 4416, Page 2499), a Second Amended Declaration dated as of April 28, 1999 (recorded May 19, 1999 in Reel 4482, Page 4482), a Third Amended Declaration dated as of June 27, 2001 (recorded July 12, 2001 in Reel 5215, Page 1299) (the Declarations as so previously amended shall be referred to herein

as the “Original Declaration”) restricting the manner in which the Subject Property may be developed, redeveloped, maintained and operated;

WHEREAS, Declarant further desires to amend the Original Declaration to (i) increase the Brighton Beach Avenue Open Space from 43,700 square feet to 53,820 square feet, (ii) increase the number of stories of three (3) buildings by one (1) story each to twelve (12) stories, and to increase the stories of four (4) buildings by one (1) story each from seven (7) to eight (8) stories; (iii) reduce from ten (10) feet wide to eight (8) feet wide the Permanent Public Pedestrian Easement (the “Revised Permanent Public Pedestrian Easement”), and (iv) re-open direct beach access from the Subject Property across the Park Strip to the beach.

WHEREAS, Declarant is prepared to restrict the manner in which the Subject Property may be developed, redeveloped, maintained and operated, and to undertake to construct and maintain the enlarged Brighton Beach Avenue Open Space and the revised Public Pedestrian Easement, as set forth herein, and intends these restrictions to benefit all land, including land owned by the City, lying within a one-half ($\frac{1}{2}$) mile radius of the Subject Property; and

WHEREAS, Declarant represents and warrants that there are no restrictions of record on the use of the Subject Property, nor any present or presently existing future estates or interests in the Subject Property, nor any liens, obligations, covenants, easements, limitations or encumbrances of any kind, the requirements of which have not been waived or subordinated, which would prevent or preclude, presently or potentially, the imposition of the restrictions, covenants, obligations, and agreements of this Declaration.

NOW THEREFORE, Declarant does hereby declare and agree that the Original Declaration is further modified as set forth below.

1. a. Paragraph 2(a) of the Original Declaration shall be modified to delete the date "5/25/01" under the "Last Revised Date" Column and the date "5/8/02" shall be inserted in lieu thereof in regard to Drawings Nos. L.P.-1, L.P.-3, and L.P.-6, and the date "7/28/98" shall be deleted and the date "5/1/02" shall be inserted in lieu thereof in regard to Drawing No. L.P.-4, the date "5/25/01" shall be deleted and the date "5/23/02" shall be inserted in lieu thereof in regard to Drawing No. L.P.-5 and the date "7/20/98" shall be deleted and the date "5/23/02" shall be inserted thereof in regard to Drawing No. BB Alt.-01, all as shown on Exhibit B attached hereto and incorporated herein.

b. Paragraph 2 of the Original Declaration shall be modified by adding a new subparagraph 2 (e) as follows:

(e) "Declarant shall be permitted to increase the number of stories in each of Buildings J, K and L by one (1) story each to twelve (12) stories as shown on Drawing No. BB Alt.-01, drawn by "Stanley Michael Krebushevski, Architect" and revised by "Moss Gilday Group," dated 5/23/02, (the "BB Alt.-01 Drawing") so that Declarant shall be permitted to build no more than five (5) twelve (12) story buildings on the Subject Property. Declarant shall also be permitted to increase the number of stories in each of Buildings F, G, H and I from seven (7) stories to eight (8) stories each."

2. Paragraph 6 of the Original Declaration shall be modified by deleting "43,700 square feet" in subparagraph (a) thereof and substituting in lieu thereof "53,820 square feet."

3. Paragraph 8(a)(ii) of the Original Declaration shall be modified by deleting “Declarant shall construct and complete the Permanent Public Pedestrian Easement in accordance with the Public Improvements Plan prior to the issuance of a TCO for the seven hundred forty-eighth (748th) Residential Unit,” and substituting in lieu thereof “Declarant shall construct and complete the Revised Permanent Public Pedestrian Easement in accordance with the Drawing entitled L.P.-1, dated 5/8/02, L.P. -3 dated 5/8/02 and L.P.-5 dated 5/23/02, drawn by Moss Gilday Group which shows the Revised Permanent Public Pedestrian Easement reduced from ten (10) foot to an eight (8) foot width and the four (4) foot wide planting bed moved westerly adjacent to Buildings G and I as the buildings are shown on Drawing No. BB Alt.-01, dated 5/23/02, Declarant shall complete the Revised Permanent Public Pedestrian Easement prior to the issuance of TCO for seven hundred forty-eight (748th) Residential Unit”.

4. Declarant shall be permitted to reopen direct beach access from the Subject Property to the Beach as shown on Drawing L.P.-6, dated 5/8/02, drawn by Moss Gilday Group.

5. Except as specifically modified by this Fourth Amended Declaration, all of the terms, provisions and conditions of the Original Declaration are hereby ratified and confirmed and shall remain in full force and effect.

6. Except as otherwise expressly provided in this Fourth Amended Declaration, defined terms shall have the meaning ascribed to them in the Original Declaration.

7. The Original Declaration, as amended by this Fourth Amended Declaration, may hereafter be further modified, amended, revised or, except as otherwise provided in the Original Declaration, canceled in accordance with the terms of the Original Declaration.

IN WITNESS WHEREOF, Declarant has executed this Fourth Amended Declaration as of the date first written above.

BRIGHTON DEVELOPMENT, LLC

BY: _____

BRIGHTON ONE, LLC

BY: _____

BRIGHTON TWO, LLC

BY: _____

BRIGHTON THREE, LLC

BY: _____

BRIGHTON FOUR, LLC

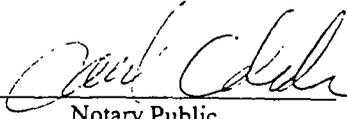
BY: _____

BRIGHTON SIX, LLC

BY: _____

STATE OF NEW YORK)
)ss:
COUNTY OF QUEENS)

On the 18th day of July, in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Joshua L. Muss, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

CAROL COLODNER
Notary Public, State of New York
No. 41-4767538
Qualified in Queens County
Commission Expires 7/1/03

STATE OF NEW YORK)
)ss:
COUNTY OF QUEENS)

On the 18th day of July, in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Joshua L. Muss, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

CAROL COLODNER
Notary Public, State of New York
No. 41-4767538
Qualified in Queens County
Commission Expires 7/1/03

STATE OF NEW YORK)
)ss:
COUNTY OF QUEENS)

On the 18th day of July, in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Joshua L. Muss, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

CAROL COLODNER
Notary Public, State of New York
No. 41-4767538
Qualified in Queens County
Commission Expires 7/1/03

STATE OF NEW YORK)
)ss:
COUNTY OF QUEENS)

On the 18th day of July, in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Joshua L. Muss, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

CAROL COLODNER
Notary Public, State of New York
No. 41-4767538
Qualified in Queens County
Commission Expires 7/28/03

STATE OF NEW YORK)
)ss:
COUNTY OF QUEENS)

On the 18th day of July, in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Joshua L. Muss, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

CAROL COLODNER
Notary Public, State of New York
No. 41-4767538
Qualified in Queens County
Commission Expires 7/28/03

STATE OF NEW YORK)
)ss:
COUNTY OF QUEENS)

On the 18th day of July, in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Joshua L. Muss, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

CAROL COLODNER
Notary Public, State of New York
No. 41-4767538
Qualified in Queens County
Commission Expires 7/28/03