



NYC Buildings Department
280 Broadway, New York, NY 10007

Robert D. LiMandri, Acting Commissioner

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BUILDINGS BULLETIN
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BUILDINGS BULLETIN 2008-007

Legal

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Issuer: Mona Sehgal
General Counsel

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Purpose: To set forth procedures and requirements for the filing, review, approval and documentation of proposed easement agreements and restrictive declarations.

Related Code Section(s):

Caretaker's Apartment:

ZR 12-10 (definition of "accessory use")

Driveway/Frontage Space:

BC 501.3.1

BC 502.1 (definition of "frontage space")

ZR 25-21

ZR 25-30

ZR 36-20

ZR 36-30

ZR 44-20

27 291

27 232 (definition of "frontage space")

Egress:

BC 1001

27 354

Flood Zone (1968 Code):

27 292.1

27 317.1 (definition of "mixed use building")

27 317.2

27 RS 4-4

27 RS 4-5

27 RS 4-6

Flood Zone (2008 Code):

BC G304.1.2(2)

Light and Air:

BC 1203.4

BC 1205.2

27 732

27 746

Lotline Windows:

BC 704.8

27 280 (Table 3-4)

Off-street Parking:

ZR 25-55

ZR 36-45

ZR 44-34

Party Wall:

28 301.1

BC 705

27 332

Plumbing System:

PC 101

27 RS 16

Student Dormitory:

1RCNY 51-01

Subject(s): Easements, Egress easement agreement
Easements, Light and air easement agreement
Exterior walls, Lotline window restrictive declaration
Exterior walls, Party wall restrictive declaration
Fire resistance rated construction, Party wall restrictive declaration

Flood zone, Restrictive declaration
Means of egress, Egress easement agreement
Parking, Driveway restrictive declaration
Parking, Frontage space for parking access or FD access (driveway restrictive declaration)
Parking, Offsite parking restrictive declaration
Plumbing, Plumbing system restrictive declaration
Zoning, Floor area, mezzanine
Zoning, Restrictive declaration, caretaker's apartment
Zoning, Restrictive declaration, driveway
Zoning, Restrictive declaration, frontage space for parking or FD access
Zoning, Restrictive declaration, off site parking
Zoning, Restrictive declaration, student dormitory

BACKGROUND:

In order to allow the development of parcels where such development would otherwise be foreclosed by various statutory restrictions or requirements, the Department of Buildings may, at its option, pursuant to Sections 643 and 645 of the Charter of the City of New York, accept easement agreements or restrictive declarations that provide for alternate means of compliance with code requirements. In addition, compliance with certain provisions of zoning may require the execution of restrictive declarations.

SPECIFICS:

I. APPROVED FORMS

The following eleven easement agreements or restrictive declarations have been approved as to legal form and are annexed hereto:

1. Caretaker's Apartment Restrictive Declaration;
2. Driveway Restrictive Declaration*;
3. Egress Easement Agreement*;
4. Flood Zone Restrictive Declaration (applicable to buildings governed by the 1968 Building Code);
5. Flood Zone Restrictive Declaration (applicable to buildings governed by the 2008 Building Code).
6. Light and Air Easement Agreement*;
7. Lotline Window Restrictive Declaration;
8. Off Site Parking Restrictive Declaration;
9. Party Wall Restrictive Declaration*;
10. Plumbing System Restrictive Declaration* ; and
11. Student Dormitory Restrictive Declaration.

* It shall not be considered a substantive departure from the annexed approved forms to change the agreement from an easement to a restrictive declaration, in the event the properties are owned by the same owner(s) or to change a declaration to an easement agreement, in the event the properties are owned by different parties.

II. REQUIRED LANGUAGE

In order to be acceptable as to form, all proposed easements agreements and restrictive declarations must contain the following:

1. A "run with the land" clause. The agreement or declaration must be binding upon and inure to the benefit of the parties (both grantor and grantee) and their respective heirs, legal representatives, successors and assigns;
2. A metes and bounds description of all affected tax lots;
3. A clause stating that the agreement or declaration "shall not be modified, amended or terminated without the prior written consent of the New York City Department of Buildings;"
4. The specific statutory provision or other requirement being satisfied by the agreement or declaration;
5. The application number for which the agreement or declaration is required;
6. Where necessary to clarify the exact location of the benefited or burdened area, diagram(s) attached as an exhibit in the form of a plot plan with a cross-hatched portion indicating the area of easement, the egress route, etc.; and
7. A clause stating that a "Failure to comply with the terms of this restrictive declaration or easement agreement may result in the revocation of a building permit or certificate of occupancy."

III. SIGNATORY

All signatures must be notarized using the individual, partnership or corporate acknowledgment form.

A. SINGLE OWNER OR MULTIPLE OWNERS

Where one party owns all parcels affected by a proposed agreement, the agreement is to be in the form of a restrictive declaration, with the fee owner identified as "Declarant." Where the respective parcels are owned by different parties, the agreement is to be in the form of an easement, with the fee owners of the respective parcels identified as "grantor" and "grantee." Both grantor and grantee must execute the agreement.

B. LONG TERM TENANTS

Long term tenants may not bind the owners of the parcels, and therefore may not sign the agreement or declaration on behalf of the owner.

IV. PROCEDURE

A. APPLICATIONS SUBJECT TO PLAN EXAMINATION

1. All proposed easement agreements and restrictive declarations submitted in connection with applications undergoing plan examination must be submitted to the Borough Office for review and approval, before application approval and before recording.

- a. Review for substantive satisfaction of objection/compliance with statutory requirement

The assigned plan examiner will perform a technical review of the agreement or declaration and its attached exhibits to determine whether such an agreement or declaration, if approved as to form, satisfies the applicable objection or statutory requirement. This review may include confirmation of metes and bounds, and/or

determination that an egress route, driveway, number of parking spaces, etc., meet statutory requirements. The Light and Air Easement Agreement cannot be used between parties with buildings on separate zoning lots to satisfy the provisions of the New York City Zoning Resolution or Section 30 of the Multiple Dwelling Law, as these provisions require unrestricted light and air to be located on the same zoning lot as the building's windows.

If the agreement or declaration does not satisfy the applicable objection or statutory requirement, the plan examiner shall not remove the objection. Review of the agreement or declaration for compliance with an approved form need not proceed until the document satisfies substantive requirements.

b. Review for conformance with approved form

Once the plan examiner determines that the proposed easement agreement or restrictive declaration substantively satisfies the objection or statutory requirement, the plan examiner shall review the agreement or declaration for conformance with an approved form.

If the submission departs materially from the annexed approved forms, the plan examiner must request further review by referring it to the Borough Commissioner. The plan examiner's referral must identify the objection or statutory provision to be satisfied by the agreement or declaration.

The Borough Commissioner shall forward the agreement or declaration with the plan examiner's referral request to the General Counsel's Office for review. The General Counsel's Office will advise the Borough Commissioner whether the agreement or declaration is satisfactory as to form to satisfy such objection or statutory requirement. An application may not be approved until there is submitted to the Borough Office proof of the recording of the easement agreement or restrictive declaration (see paragraph "C" below).

B. APPLICATIONS FILED THROUGH THE PROFESSIONAL CERTIFICATION PROCESS

1. Identification of statutory requirement, Professional's Statement

For professionally certified applications, the professional engineer (PE) or registered architect (RA) must state on the Department's POC3 form the statutory requirement being satisfied by the agreement or declaration.

2. Verification of conformance with approved form

Proposed easement agreements and restrictive declarations that materially conform in all respects to one of the annexed approved forms need not be sent to the General Counsel's Office for review. A PE or RA may professionally certify that an agreement or declaration conforms to an approved form by following the procedure set forth under subsection "a," below. If the PE or RA has not professionally certified that the agreement or declaration conforms in all respects to one of the annexed approved forms, the applicant must submit a request for review to the General Counsel's Office by following the procedure set forth under subsection "b," below.

a. Professional certification of conformance with approved form

The PE or RA shall professionally certify on a POC3 form that the easement agreement or restrictive declaration satisfies a specific statutory requirement and conforms in all respects to one of the annexed approved forms. Once the PE or RA has professionally certified that the easement agreement or restrictive declaration satisfies the identified statutory requirement and conforms in all respects to a Department approved form, the owner must follow the procedure set forth below for recording the agreement or declaration.

b. General Counsel review of form

The applicant shall certify on a POC3 form that the easement agreement or declaration has been reviewed and accepted by the General Counsel's Office. General Counsel's Office will advise the attorney who has prepared the agreement whether it is acceptable as to form. Once it is determined to be acceptable as to form, the owner(s) must follow the procedure set forth below for recording the agreement or declaration. A copy of the General

Counsel Office approval must accompany the easement agreement or restrictive declaration that is filed with the application.

C. RECORDING OF THE EASEMENT AGREEMENT OR RESTRICTIVE DECLARATION

1. Execution, acknowledgement and recording

After an easement agreement or restrictive declaration has been approved as to form (or is professionally certified as conforming to a Department approved form), it must be signed by the fee owner(s), acknowledged and recorded at the county's Office of the City Register, or if in Richmond County, in the Richmond County Clerk's Office, against all the burdened and benefited tax lots. An application will not be approved, nor will a professionally certified application be accepted, until proof has been submitted that an approved or professionally certified agreement has been recorded.

2. Proof of recording

Prior to the approval of the application, or prior to the acceptance of a professionally certified application, the applicant must submit to the Borough Office proof that the agreement or declaration has been recorded against each tax lot. Proof that an agreement or declaration was recorded is evidenced by City Register number stamp, or reel and page number, from the appropriate county office for each tax lot.

The Borough Office may also accept as proof of recording, a copy of the agreement or declaration, together with an affirmation of an attorney stating that such copy is a true and exact copy of an approved or professionally certified agreement or declaration that was submitted for recording against each of the affected tax lots. The attorney affirmation must be signed and dated and must contain the following language:

I, _____ an attorney admitted to practice in the State of New York, hereby certify that I have compared the annexed copy of an approved or professionally certified _____ [specify title of easement agreement or restrictive declaration], with the original on file in _____ [specify county clerk's office] to be recorded against the following Tax Block(s) and Lot(s): Block _____ Lot _____ and have found that the _____ [specify title of easement agreement or restrictive declaration] is a true and complete copy thereof.

3. Retention in application folder

All documents pertaining to the approval or professional certification of the easement agreement or restrictive declaration and its recording are to be filed and retained within the Department of Buildings' application folder.

D. REFERENCE IN CERTIFICATE OF OCCUPANCY

Where an application will result in the issuance of a certificate of occupancy, the certificate of occupancy must include reference to the type of easement agreement or restrictive declaration, the city register numbers issued by the Office of the City Register, or if in Richmond County, the reel and page numbers.

CARETAKERS' APARTMENT RESTRICTIVE DECLARATION

DECLARATION, made this ____ day of _____, 200__, by _____, hereinafter referred to as the "Declarant," having an office/residing at _____.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block _____ Lot _____ on the Tax Map of the City of New York, hereinafter referred to as Parcel A, more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof;

WHEREAS, the Declarant has requested the New York City Department of Buildings (the "Department of Buildings") to act upon Application No. _____ to authorize construction of a caretakers' apartment (the "Caretakers' Apartment") and to issue [an amended/ a new] certificate of occupancy to permit an apartment on the _____ floor of a _____-story building located on Parcel A (the "Subject Premises") to be used as a Caretakers' Apartment pursuant to the provisions of New York City Zoning Resolution ("ZR") Section 12-10 (definition, "Accessory use"); and

WHEREAS, the Department of Buildings, pursuant to ZR § 12-10 ("Accessory use"), has required Declarant to execute and file this restrictive declaration prior to acting upon the Application and prior to the issuance of an amended/a new certificate of occupancy.

NOW, THEREFORE, in consideration of the issuance by the Department of Buildings of a building permit for the Subject Premises, Declarant does hereby declare, create, impose and establish the following:

1. The Declarant operates an establishment at the Subject Premises that is a use listed in Use Group _____ of the New York City Zoning Resolution;
2. The Subject Premises will contain no more than one living or sleeping accommodation for caretakers;
3. The Caretakers' Apartment will be used for living or sleeping accommodation for caretakers in connection with the Declarant's use of the establishment;
4. The Caretakers' Apartment at the Subject Premises will not exceed 1,200 square feet of floor area;
5. The caretaker(s) will provide the following maintenance and/or repair services for the Subject Premises:
 - a. Collect all refuse at the Subject Premises and maintain such refuse in refuse bins in order to perform periodic collection of such bins by private refuse collectors;
 - b. Maintain the sidewalk outside the Subject Premises in good repair and in a clean condition;
 - c. Maintain the facade of the Subject Premises in a clean and graffiti-free condition;

- d. Maintain and operate the mechanical equipment that heats the Subject Premises;
 - e. Maintain the Subject Premises in overall good repair; and
 - f. Perform any other caretaker functions necessary to insure the continuance of maintenance, security and good repair of the Subject Premises;
6. This declaration may not be modified, amended or terminated without the prior written consent of the Department of Buildings;
 7. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
 8. Failure to comply with the terms of this declaration may result in the revocation of a building permit or certificate of occupancy; and
 9. This declaration shall be recorded at the city register's (county clerk's) office against all affected parcels of land and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to buildings located on the affected parcels and in any deed for the conveyance thereof.

IN WITNESS WHEREOF, Declarant has made and executed the foregoing restrictive declaration as of the date hereinabove written.

 Declarant
 By:

STATE OF NEW YORK)
) ss.:

COUNTY OF _____)

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

 Notary Public

DRIVEWAY/FRONTAGE SPACE RESTRICTIVE DECLARATION

DECLARATION, made this ____ day of _____, 200__, by
hereinafter referred to as the “Declarant,” having an office/residing at _____.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block _____ Lot _____ on the Tax Map of the City of New York, hereinafter referred to as Parcel A, more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof;

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block _____ Lot _____ on the Tax Map of the City of New York hereinafter referred to as Parcel B, more particularly described by a metes and bounds description set forth in Schedule B annexed hereto and by this reference made a part hereof;

WHEREAS, the Declarant is desirous of creating a driveway for the purpose of permitting and enabling present and future owners of Parcels A and B, their heirs, successors and assigns to pass over the lands of both Parcels A and B for the purpose of ingress and egress to and from the _____ [location of ingress and egress route (e.g., front, rear)] of said parcels for pedestrian and motor vehicle use;

WHEREAS, the Declarant has requested the New York City Department of Buildings (the “Department of Buildings”) to act upon Application No(s). _____ to construct/alter _____;

WHEREAS, the Department of Buildings may approve the Application(s) upon the condition that the Declarant create a permanent easement for the benefit of present and future owners of Parcels A and B, such that the owners [either one or both of the following, depending on the circumstances of the application]: 1) have access to required parking per New York City Zoning Resolution Section _____ (e.g., §25-21 et. seq., §25-30 et. seq., §36-20 et. seq., §36-30 et. seq., §44-20 et. seq.) from a street; and 2) have frontage on a “frontage space” that provides Fire Department access to a street in accordance with Sections 27-291 and 27-232 (definition, “frontage space”) of the 1968 Building Code or Sections BC 501.3.1 and 502.1 (definition, “frontage space”) of the 2008 Building Code, as applicable; and

WHEREAS, a diagram marked Schedule C showing the two above referenced properties, the boundaries of each and a cross-hatched portion indicating the area of the driveway and frontage space (the “Access Area”) is attached hereto and made a part hereof, said Access Area being more particularly described by a metes and bounds description set forth in Schedule D annexed hereto and by this reference made a part hereof.

EGRESS EASEMENT AGREEMENT

EASEMENT AGREEMENT made this ___ day of _____, 200__, between _____, hereinafter referred to as the "Grantor," having an office/residing at _____ and _____, hereinafter referred to as the "Grantee," having an office/residing at _____.

WHEREAS, the Grantor is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block ___ Lot ___ on the Tax Map of the City of New York, hereinafter referred to as Parcel A and more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof;

WHEREAS, the Grantee is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block ___ Lot ___ on the Tax Map of the City of New York, hereinafter referred to as Parcel B and more particularly described by a metes and bounds description set forth in Schedule B annexed hereto and by this reference made a part hereof;

WHEREAS, the property of the Grantee, Parcel B, is situated to the _____ of the property of the Grantor, Parcel A, and said parcels are contiguous to one another;

WHEREAS, the Grantee has requested the New York City Department of Buildings (the "Department of Buildings") to act upon Application No. _____ to construct a new building/alter the existing building located on Parcel B;

WHEREAS, a second means of egress from Parcel B is required pursuant to Title 27 Chapter 1 Subchapter 6 (27-354 et seq.) of the 1968 Building Code or Chapter 10 of the 2008 Building Code, as applicable; and

WHEREAS, the Grantor is willing to grant to the Grantee a means of egress, in the event of fire or other emergency, from the _____ [location of easement route (e.g., front, rear)] of the property of the Grantee over such portion of the Grantor's property to afford access to the public street (the "Easement Area"), more particularly described by a metes and bounds description and a diagrammatic sketch with a cross-hatched portion indicating the Easement Area on Schedule C annexed hereto and by this reference made a part hereof.

NOW, THEREFORE, good and valuable consideration having been paid, Grantor for her/himself, her/his heirs, legal representatives, successors and assigns hereby makes the following grant:

1. Grantor hereby grants and conveys to Grantee, her/his heirs, legal representatives, successors and assigns and to any future owner of Parcel B, an easement over the Easement Area located on Parcel A, as may be necessary for the purpose of egress in the event of a fire or other emergency occurring on the property of the Grantee. [The access to the property of the Grantor shall be provided by means of _____, installed by the Grantor, approved by the Department of Buildings, which shall be situated on the property of the Grantee];
2. The Easement Area shall at all times be maintained and kept clear and unobstructed;

3. This easement agreement may not be modified, amended or terminated without the prior written consent of the Department of Buildings;
4. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
5. Failure to comply with the terms of this easement agreement may result in the revocation of a building permit or certificate of occupancy; and
6. This easement agreement shall be recorded at the city register's (county clerk's) office against all affected parcels of land and the cross-reference number and title of the easement agreement shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to buildings located on the affected parcels and in any deed for the conveyance thereof.

IN WITNESS WHEREOF, Grantor and Grantee have made and executed the foregoing easement agreement as of the date hereinabove written.

 Grantor
 By:

 Grantee
 By:

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

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

 Notary Public

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

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

 Notary Public

FLOOD ZONE RESTRICTIVE DECLARATION*

DECLARATION, made this _____ day of _____, 200__, by

hereinafter referred to as the “Declarant,” having an office/residing at
_____.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block _____ Lot _____ on the Tax Map of the City of New York, hereinafter referred to as Parcel A, more particularly described by a metes and bounds description on Schedule A annexed hereto and by this reference made a part hereof;

WHEREAS, Parcel A is located within Zone A as delineated in New York City Administrative Code Reference Standard RS 4-4 as a Special Flood Hazard Area, and as delineated on the Federal Emergency Management Agency’s Flood Insurance Rate Map for the City of New York, Panel _____ of _____ with an effective date of November 16, 1983 and subsequent amendments thereto;

WHEREAS, the Declarant has requested the New York City Department of Buildings (the “Department of Buildings”) to act upon Application No. _____ to construct/alter a mixed use building, as defined in Section 27-317.1 of the 1968 Building Code, on Parcel A (the “Building”) with non-habitable rooms located below the base flood elevation; and

WHEREAS, Section 27-317.2 of the 1968 Building Code allows mixed use buildings to be constructed or altered within Zone A with non-habitable portions located below the base flood elevation provided certain conditions are met and noted in a recorded declaration.

NOW, THEREFORE, in consideration of the issuance by the Department of Buildings of a building permit for the Building, the Declarant does hereby declare the following:

1. The Building is constructed and shall be maintained so as to provide entrance access at or above the base flood elevation;
2. The portion of the Building and all service equipment below the base flood elevation are flood-proofed, in accordance with reference standard RS 4-5;
3. No habitable rooms shall be located in such cellar or basement;
4. No more than one water closet and/or wash basin shall be provided in an enclosed space no larger than required by Section 27-292.1 of the 1968 Building Code or Reference Standard RS 4-6 located in such cellar or basement, and no roughing therein shall be allowed to accommodate any additional fixtures;
5. No accessory kitchen shall be located in such cellar or basement; however, one two-compartment laundry tray or similar appliance may be installed outside the water closet compartment;
6. The building permit application shall state that:

* This easement agreement is only applicable to buildings governed by the 1968 Building Code.

- a. The premises is located within the special flood hazard area;
 - b. The cellar or basement is located below the level of the base flood elevation; and
 - c. No portion of the cellar or basement shall be used for living purposes;
7. Failure to comply with the terms of this declaration may result in the revocation of a building permit or certificate of occupancy;
 8. This declaration may not be modified, amended or terminated without prior written consent of the Department of Buildings;
 9. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns; and
 10. This declaration shall be recorded at the city register's (county clerk's) office against all affected parcels of land and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to buildings located on the affected parcels and in any deed for the conveyance thereof.

IN WITNESS WHEREOF, Declarant has made and executed the foregoing restrictive declaration as of the date hereinabove written.

 Declarant
 By:

STATE OF NEW YORK

COUNTY OF _____) ss.:

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

 Notary Public

FLOOD ZONE RESTRICTIVE DECLARATION*

DECLARATION, made this _____ day of _____, 200__, by _____, hereinafter referred to as the “Declarant,” having an office/residing at _____.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block _____ Lot _____ on the Tax Map of the City of New York, hereinafter referred to as Parcel A, more particularly described by a metes and bounds description on Schedule A annexed hereto and by this reference made a part hereof; and

WHEREAS, the Declarant has requested the New York City Department of Buildings (the “Department of Buildings”) to act upon Application No. _____ to construct/alter a building or structure that is nonresidential (for flood zone purposes) and is either a post-FIRM new building or substantial improvement that contains dwelling units utilizing the dry floodproofing option set forth in Section BC G304.1.2(2) of the 2008 Building Code on Parcel A (the “Building”).

NOW, THEREFORE, in consideration of the issuance by the Department of Buildings of a building permit for the Building, the Declarant does hereby declare the following:

1. All rooms and spaces within the dwelling units shall be located at or above the design flood elevation;
2. No more than one toilet and one sink shall be located below the design flood elevation. Any such toilet room shall not be located within a dwelling unit and shall be no larger than required by Chapter 11 of the 2008 Building Code, and no roughing therein shall be permitted to accommodate additional fixtures;
3. No more than one two-compartment laundry tray shall be permitted below the design flood elevation;
4. No kitchen or kitchenettes shall be permitted below the design flood elevation;
5. Failure to comply with the terms of this declaration may result in the revocation of a building permit or certificate of occupancy;
6. This declaration may not be modified, amended or terminated without prior written consent of the Department of Buildings;
7. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns; and
8. This declaration shall be recorded at the city register’s (county clerk’s) office against all affected parcels of land and the cross-reference number and title of the declaration shall be recorded in the

* This easement agreement is only applicable to buildings governed by the 2008 Building Code.

permit application and on each temporary and permanent certificate of occupancy hereafter issued to buildings located on the affected parcels and in any deed for the conveyance thereof.

IN WITNESS WHEREOF, Declarant has made and executed the foregoing restrictive declaration as of the date hereinabove written.

Declarant

By:

STATE OF NEW YORK)

) ss.:

COUNTY OF _____)

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

Notary Public

SUPERSEDED

LIGHT AND AIR EASEMENT AGREEMENT

EASEMENT AGREEMENT made this ____ day of _____, 200__, between _____, hereinafter referred to as the "Grantor," having an office/residing at _____ and _____, hereinafter referred to as the "Grantee," having an office/residing at _____.

WHEREAS, the Grantor is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block _____ Lot _____ on the Tax Map of the City of New York, hereinafter referred to as Parcel A and more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof;

WHEREAS, the Grantee is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block _____ Lot _____ on the Tax Map of the City of New York, hereinafter referred to as Parcel B and more particularly described by a metes and bounds description set forth in Schedule B annexed hereto and by this reference made a part hereof;

WHEREAS, there is an existing/will be constructed a ____-story building on Parcel B;

WHEREAS, Grantee has requested the New York City Department of Buildings (the "Department of Buildings") to act upon Application No. _____ to construct a new building/to alter floors _____ to _____ for residential use on Parcel B; and

WHEREAS, the Department of Buildings may approve the Application upon the condition, *inter alia*, that Grantor create an easement for light and air for the benefit of the present and future owners of Parcel B in order to comply with the applicable provisions of Sections 27-732 and 27-746 of the 1968 Building Code or Sections BC 1203.4 and BC 1205.2 of the 2008 Building Code, as applicable. *

NOW, THEREFORE, good and valuable consideration having been paid, the Grantor for her/himself, her/his heirs, legal representatives, successors and assigns hereby makes the following grant to Grantee, her/his heirs, legal representatives, successors, and assigns and to any future owner of Parcel B:

1. The right to unrestricted light and air over Parcel A as described herein, such that any construction on Parcel A shall never infringe upon the light and air provided to Parcel B;
2. This easement agreement may not be modified, amended or terminated without the prior written consent of the Department of Buildings;

* This easement agreement may be entered into as a means of compliance with the 1968 or 2008 Building Codes by permitting such codes' light and air requirements to be satisfied on an adjacent tax lot. However, this agreement cannot be used to permit the required light and air to be satisfied on an adjacent zoning lot in lieu of compliance with the New York City Zoning Resolution or Section 30 of the Multiple Dwelling Law.

3. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
4. Failure to comply with the terms of this easement agreement may result in the revocation of a building permit or certificate of occupancy; and
5. This easement agreement shall be recorded at the city register's (county clerk's) office against all affected parcels of land and the cross-reference number and title of the easement agreement shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to buildings located on the affected parcels and in any deed for the conveyance thereof.

IN WITNESS WHEREOF, Parties have made and executed the foregoing easement agreement as of the date hereinabove written.

 Grantor
 By:

 Grantee
 By:

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

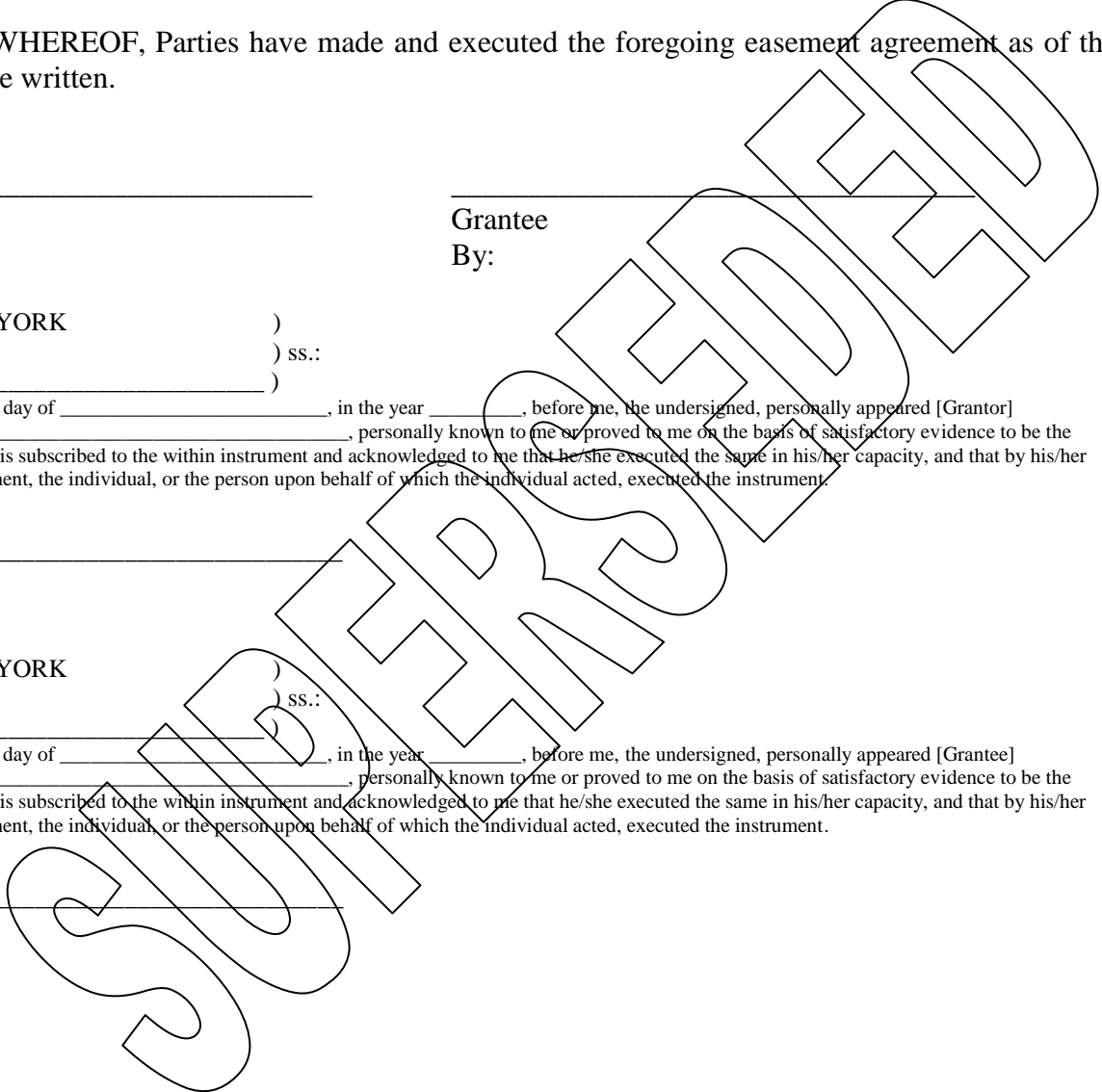
On the _____ day of _____, in the year _____, before me, the undersigned, personally appeared [Grantor] _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed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

 Notary Public

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

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

 Notary Public



LOTLINE WINDOW RESTRICTIVE DECLARATION

DECLARATION, made this _____ day of _____, 200____, by _____, hereinafter referred to as the "Declarant," having an office/residing at _____.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block _____ Lot _____ on the Tax Map of the City of New York, hereinafter referred to as Parcel A, more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof;

WHEREAS, the Declarant is desirous of constructing/altering a certain building on Parcel A (the "Building") which upon completion will have _____ stories [with one basement or cellar] and will be used for residential purposes on floors _____ [and for commercial and other business purposes on the other floors];

WHEREAS, the Declarant has requested the New York City Department of Buildings (the "Department of Buildings") to act upon Application No. _____ to construct exterior wall openings on floors _____ through _____ of the [direction wall faces (e.g., northerly, southerly)] _____ wall of the Building, as shown in the diagram annexed hereto as Schedule B, in excess of the permitted area established by Table 3-4 of Title 27, Chapter 1, Subchapter 3 of the 1968 Building Code (27-280) or Section BC 704.8 of the 2008 Building Code, as applicable;

WHEREAS, pursuant to footnote (b) of Table 3-4 and footnote (l) of Table 704.8, the Department of Buildings may permit exterior wall openings to be constructed in excess of the permitted area established by Table 3-4 and Table 704.8 under the conditions set forth in such footnote; and

WHEREAS, the Department of Buildings has advised the Declarant that one of the conditions for obtaining authorization allowing construction of said exterior wall openings is that Declarant must execute a restrictive declaration setting forth the conditions under which such exterior wall openings in excess of the permitted area would be closed with construction meeting the requirements of the Administrative Code of the City of New York.

NOW, THEREFORE, in consideration of the issuance by the Department of Buildings of a building permit for the Building, the Declarant does hereby declare, create, impose and establish the following:

1. If any building neighboring the Building is hereafter altered or constructed to come within a distance of less than 60 feet in a direct line (whether horizontally, vertically or diagonally) of any exterior openings in the _____ wall of the Building from the _____ to the _____ above-grade floors, then said exterior wall openings which fall within said distance limitation shall promptly be closed with construction meeting the fire resistance rating requirements for an exterior wall of the Building as provided in the Building Code and all other applicable laws, ordinances, codes rules and regulations;
2. This declaration may not be modified, amended or terminated without the prior written consent of the Department of Buildings;

3. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
4. Failure to comply with the terms of this declaration may result in the revocation of a building permit or certificate of occupancy; and
5. This declaration shall be recorded at the city register's (county clerk's) office against all affected parcels of land and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to buildings located on the affected parcels and in any deed for the conveyance thereof.

IN WITNESS WHEREOF, Declarant has made and executed the foregoing restrictive declaration as of the date hereinabove written.

Declarant

By:

STATE OF NEW YORK

COUNTY OF _____) ss.:

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

Notary Public

OFF SITE PARKING RESTRICTIVE DECLARATION

DECLARATION, made this _____ day of _____, 20__, by _____, hereafter referred to as the “Declarant,” having an office/residing at _____.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block _____ Lot _____ on the Tax Map of the City of New York, hereinafter referred to as Parcel A and more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof;

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block _____ Lot _____ on the Tax Map of the City of New York, hereinafter referred to as Parcel B and more particularly described by a metes and bounds description set forth in Schedule B annexed hereto and by this reference made a part hereof;

WHEREAS, a diagram marked Schedule C showing the description of Parcels A and B, the boundaries of each and the proposed parking spaces is attached hereto and made a part hereof;

WHEREAS, the Declarant has requested the Department of Buildings of the City of New York (the “Department of Buildings”) to act upon Application No. _____ to construct a new building/alter an existing building on Parcel B (the “Building”);

WHEREAS, Parcel A contains a parking area (“Parking Lot”) containing more than _____ spaces, of which _____ spaces are necessary to satisfy the parking requirements for the uses on Parcel A;

WHEREAS, the Parking Lot is to be used in accordance with the applicable provisions of the Zoning Resolution of the City of New York, part of which will serve as an accessory parking area for the Building; and

WHEREAS, the Department of Buildings requires the execution and recording of this Declaration in connection with the use of the Parking Lot as accessory off site parking for the Building pursuant to Section(s) 25-55; 36-45; and/or 44-34 of the Zoning Resolution of the City of New York.

NOW, THEREFORE, in consideration of the issuance by the Department of Buildings of a building permit for the Building, the Declarant hereby declares as follows:

1. The Declarant hereby covenants and agrees for itself, its successors and assigns that _____ spaces, as required for the Building at the time of the issuance of a building permit thereof, shall be reserved in the Parking Lot as accessory parking spaces to the Building;
2. The off site parking area covered by this declaration shall at all times be maintained and kept clear and unobstructed to allow utilization of the required parking spaces;
3. This declaration may not be modified, amended or terminated without the prior written consent of the Department of Buildings;

4. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
5. Failure to comply with the terms of this declaration may result in the revocation of a building permit or certificate of occupancy; and
6. This declaration shall be recorded at the city register's (county clerk's) office against all affected parcels of land and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to buildings located on the affected parcels and in any deed for the conveyance thereof.

IN WITNESS WHEREOF, Declarant has made and executed the foregoing restrictive declaration as of the date hereinabove written.

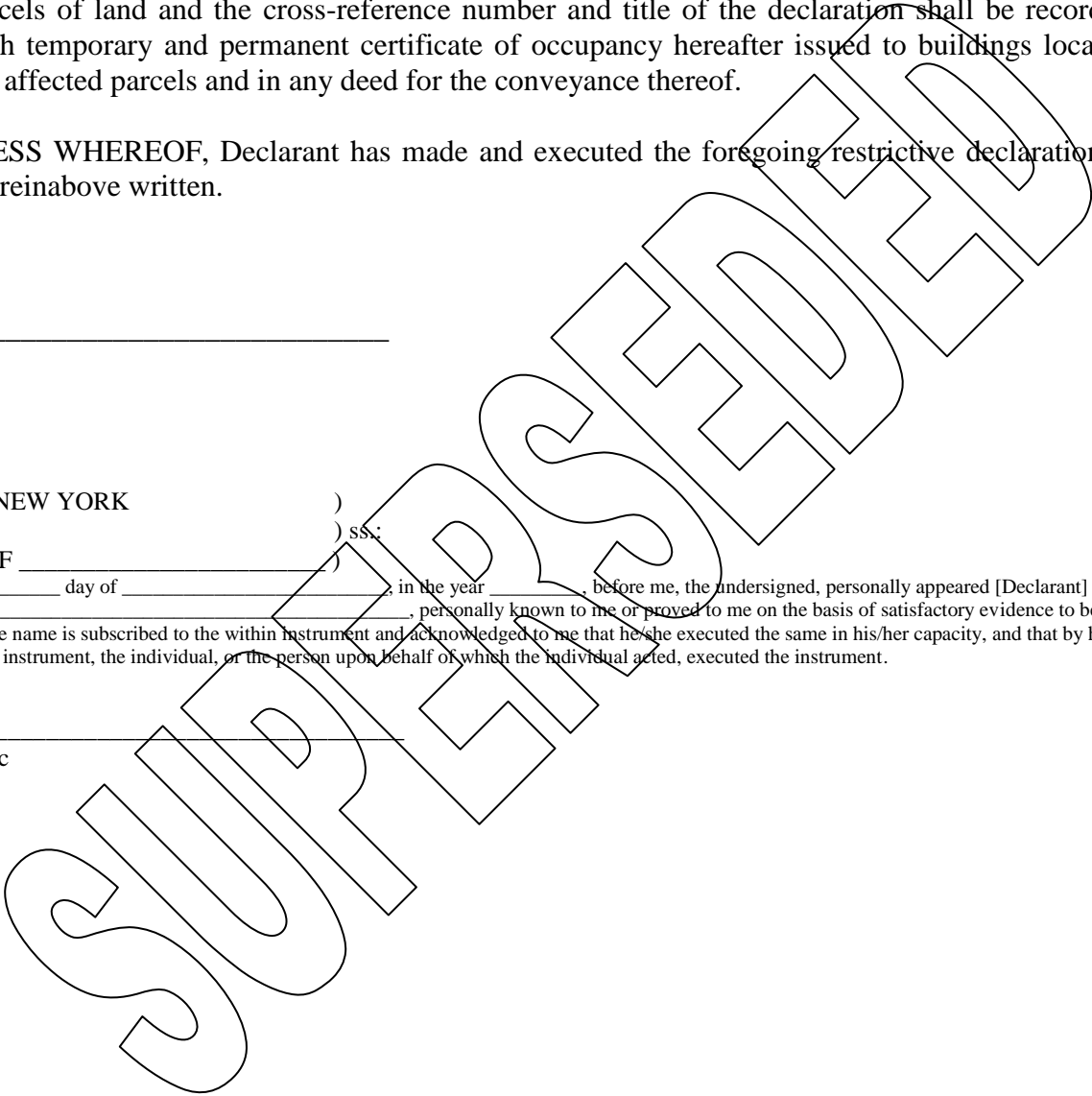
 Declarant
 By:

STATE OF NEW YORK)

COUNTY OF _____) ss.:

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

 Notary Public



PARTY WALL RESTRICTIVE DECLARATION

DECLARATION, made this day of _____, 2004, by _____, hereinafter referred to as the "Declarant," having an office at _____.

WHEREAS, the Declarant is the fee owner of certain land in the City of New York, Borough of _____, designated as Tax Lot(s) _____ in Tax Block _____ on the current Tax Map of the City of New York, more particularly described by metes and bounds description on Schedule A annexed hereto, hereinafter described as the "Premises;" and

WHEREAS, the Premises is to be developed with ____ adjoining residential buildings (the "Buildings") that share walls (the "Party Walls"), and which Party Walls are more particularly described by metes and bounds set forth in Schedule ____ annexed hereto and/or depicted in a diagram annexed hereto as Schedule ____ in the form of a plot plan with cross-hatched portion indicating the area of the Party Walls;

WHEREAS, the Declarant has applied to the New York City Department of Buildings (the "Department") for permits in connection with Application Nos. _____ to construct the Buildings and has indicated which of those Buildings will have Party Walls on the annexed Schedule ____; and

NOW, THEREFORE, Declarant declares as follows:

1. This Declaration shall apply to each of the Buildings on Schedule ____ wherein it has been indicated that such Building will have Party Walls;
2. Declarant states that each such Building having a Party Wall will be subject to the terms and provisions of Section 28-301.1 of the 2008 Building Code and either Section 27-332 of the 1968 Building Code or Section BC 705 of the 2008 Building Code, as applicable;
3. The Party Walls shall be used and maintained as party walls forever and Declarant and Declarant's heirs, legal representatives, successors, assigns and transferees shall be licensed and permitted to enter into the Buildings to make necessary excavations for the construction, maintenance and repair of the Party Walls;
4. The Party Walls, or portion or portions thereof, shall not be demolished, removed or altered without prior Department approval of an application for permit to demolish either of the Buildings and/or alter or remove all or part of the Party Walls, and application plans must clearly indicate the existing and proposed condition of the Party Walls;
5. This Declaration will not be considered to diminish or change any of the duties, rights or obligations of the Declarant or Declarant's heirs, legal representatives, successors, assigns and transferees under the common law, custom, usage and practice, as same pertain to party walls, except however the provisions of Sections 28-301.1 of the 2008 Building Code and Section 27-332 or Section BC 705, as applicable, to the extent that they are different, shall always control and be binding;
6. This Declaration may not be modified, amended or terminated without the prior written consent of the Department;

7. This Declaration shall run with the land and be binding upon and inure to the benefits of the Declarant and Declarant's heirs, legal representatives, successors, assigns and transferees;
8. Failure to comply with the terms of this Declaration may result in the denial or revocation of building permits or certificates of occupancy for the Buildings; and
9. This Declaration shall be recorded in the county register's (county clerk's) office against all affected parcels of land and the cross reference number and title of the Declaration shall be cited on each temporary and permanent certificate of occupancy hereafter issued to the Buildings and in any deed for the conveyance thereof.

IN WITNESS WHEREOF, Declarant has made and executed the foregoing Party Wall Restrictive Declaration as of the date hereinabove written.

Declarant

By:

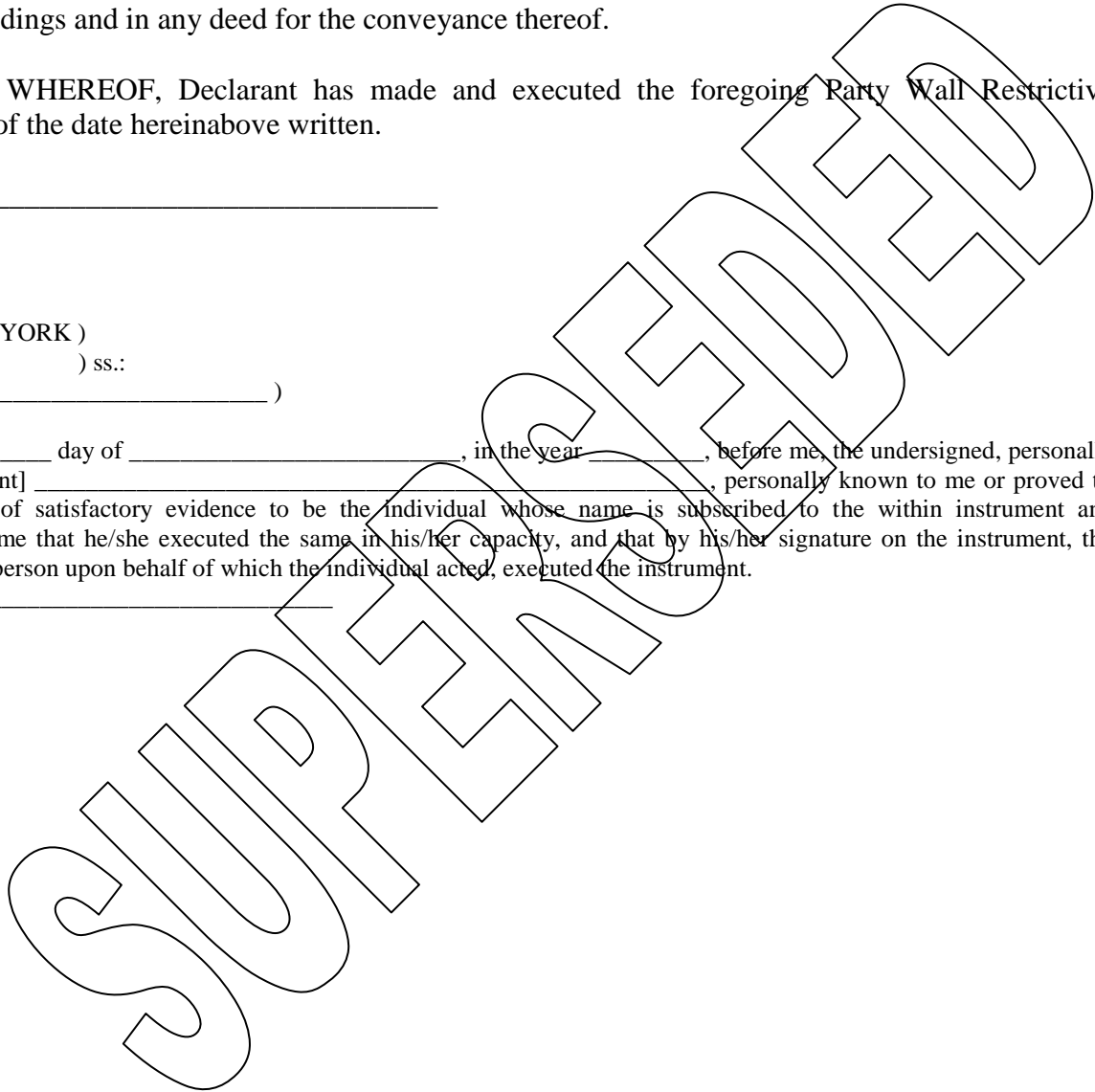
STATE OF NEW YORK)

) ss.:

COUNTY OF _____)

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

Notary Public



PLUMBING SYSTEM RESTRICTIVE DECLARATION

DECLARATION, made this ____ day of _____, 200____, by _____, hereinafter referred to as the “Declarant” having an office/residing at _____.

WHEREAS, Declarant is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block ____ Lot _____, hereinafter referred to as Parcel A, more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof;

WHEREAS, Declarant has requested the New York City Department of Buildings (the “Department of Buildings”) to _____ act upon _____ Application Nos. _____ (the “Applications”) to construct new buildings on Parcel A (the “Subject Premises”) as shown on the plot plan annexed hereto as Schedule B;

WHEREAS, the new buildings on the Subject Premises shall be serviced by a common plumbing system, and/or common house connection, including gas piping, sanitary and storm water drainage, sanitary facilities, water supplies and storm water and sewage disposal (the “Plumbing System”);

WHEREAS, the Plumbing System shall be located within the bounds of the Subject Premises as such area is shown on Application plans on file with the Department of Buildings and as described by metes and bounds as set forth in Schedule C and as shown on sketches annexed hereto as Schedule D (the “Easement Area”);

WHEREAS, Declarant wishes to insure that the use of the Subject Premises does not interfere with the installation, operation, inspection, maintenance, repair, construction and reconstruction of the Plumbing System; and

WHEREAS, the Department of Buildings may approve the permit Applications upon the condition, *inter alia*, that Declarant create an easement area for the Plumbing System for the benefit of the present and future owners of the Subject Premises in order to comply with Title 27 Chapter 1 Subchapter 16 of the 1968 Building Code, “Plumbing and Gas Piping” (§ 27-896 *et seq.*) and Reference Standard RS-16 or the 2008 Plumbing Code, as applicable.

NOW, THEREFORE, in consideration of the issuance by the Department of Buildings of a building permit for the Subject Premises, the Declarant for its/her/himself and heirs, successors and assigns, hereby declares as follows:

1. The Easement Area is a dedicated, unobstructed right of way that contains all of the elements of an internal private drain and extends to the public water supply system and sanitary or combined sewer;
2. The Easement Area measures a minimum width of ten feet and is located entirely outside of the building footprint and outside of all overhangs and projections that are less than fourteen feet in height above grade;

3. Current and future owners of the Subject Premises, successors, heirs, and assigns, shall have the right at all times, to enter upon permanent Easement Area with workers, materials, vehicles and equipment for the purpose of constructing, installing, reconstructing, laying, relaying, operating, maintaining, repairing, renewing, removing and inspecting the Plumbing System;
4. The Easement Area and Plumbing System shall be maintained and kept in good repair;
5. The Easement Area and Plumbing System shall be kept free and clear of any and all obstructions;
6. Any nuisance due to the use of the Plumbing System that would have an adverse effect on the health, safety, and welfare of the City of New York shall be promptly abated;
7. The covenants set forth herein shall run with the land and shall bind the Declarant, present owner(s) of the Subject Premises and any and all subsequent owners, heirs, legal representatives, successors and assigns of all or any part of the Subject Premises;
8. This declaration may not be amended or terminated without the prior written consent of the Department of Buildings;
9. Failure to comply with the terms of this declaration may result in the revocation of a building permit or certificate of occupancy by the Department of Buildings; and
10. This declaration shall be recorded at the city register's (county clerk's) office against all affected parcels of land and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to buildings located on the affected parcels and in any deed for the conveyance thereof.

IN WITNESS WHEREOF, Declarant has made and executed the foregoing declaration as of the date hereinabove written.

 Declarant
 By:

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

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

 Notary Public

STUDENT DORMITORY RESTRICTIVE DECLARATION

DECLARATION, made this ____ day of _____, 200__, by

hereinafter referred to as the “Declarant,” having an office/residing at
_____.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block _____ Lot _____ on the Tax Map of the City of New York, hereinafter referred to as Parcel A, more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof;

WHEREAS, the Declarant has requested the New York City Department of Buildings (the “Department of Buildings”) to act upon Application No. _____ (the “Application”) to authorize the use of a building or part of a building located on Parcel A (the “Subject Premises”) as a student dormitory, as defined by Title 1, Section 51-01(b) of the Rules of the City of New York (“RCNY”);

WHEREAS, _____ is a party/are parties holding an enforceable recorded interest that could result in such holder(s) obtaining possession of all or part of the Subject Premises designated as a student dormitory;

WHEREAS, the Department of Buildings, pursuant to 1 RCNY § 51-01(c)(2), has required Declarant to execute and file and record this restrictive declaration, and has required all parties holding an enforceable interest named above to execute this declaration, prior to acting upon the Application.

NOW, THEREFORE, in consideration of the issuance by the Department of Buildings of a building permit for the Subject Premises, Declarant does hereby declare, create, impose and establish the following:

1. The Subject Premises, or part of the Subject Premises, designated as a student dormitory shall only be used as a student dormitory as defined by 1 RCNY § 51-01(b), or other New York City Zoning Resolution Use Group 3 use;
2. Under no circumstances shall the units in the Subject Premises, or part of the Subject Premises, designated as a student dormitory be offered for sale pursuant to a cooperative or condominium plan;
3. The Declarant agrees to forego defenses to the enforcement of the provisions of 1 RCNY § 51-01;
4. The Declarant shall prominently display the name(s) of the school(s) operating the student dormitory on the exterior of the Subject Premises;
5. This declaration may not be modified, amended or terminated without the prior written consent of the Department of Buildings;
6. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;

- 7. Failure to comply with the terms of this declaration may result in the revocation of a building permit or certificate of occupancy; and
- 8. This declaration shall be recorded at the city register's (county clerk's) office against all affected parcels of land and the cross-reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to buildings located on the Subject Premises and in any deed for the conveyance thereof.

IN WITNESS WHEREOF, Declarant has made and executed the foregoing restrictive declaration as of the date hereinabove written.

 Declarant
 By:

 II. Party/Parties holding an enforceable recorded
 III. interest in all or part of the Subject Premises
 By:

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

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

 Notary Public

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

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

 Notary Public