



**IN THE MATTER OF** an application submitted by the NYC Department of Housing Preservation and Development 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 23-65 (Tower Regulations), 23-651 (Tower-on-a-base) and the rear yard requirements of Sections 24-33 (Permitted Obstructions in Required Yards or Rear Yard Equivalents) and 24-382 (Required Rear Yard Equivalents), in connection with a proposed mixed use development, within a large scale general development, on property generally bounded by East 112<sup>th</sup> Street, Park Avenue, East 111<sup>th</sup> Street and Madison Avenue (Lots 20, 22, 23, 25, 28, 29, 31, 33, 35, 37, 38, 39, 40, 41, 42, 43, 45, 46, 48, 50, 51, 52, 53, 54, 121 & 122), in R9 and R9/C2-5 Districts, Borough of Manhattan, Community District 11.

The application for the grant of a special permit pursuant to Section 74-743 of the zoning Resolution to facilitate the development of three predominately residential mixed use buildings containing approximately 655 affordable dwelling units, commercial and community facility floor area, community gardens, and publicly accessible open space in the Borough of Manhattan, Community District 11, was submitted by the Department of Housing Preservation and Development (HPD) on April 17, 2017.

**RELATED ACTIONS**

In addition to the proposed special permit (C 170365 ZSM), that is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

- C 170361 ZMM      Zoning map amendment to change existing R7-2 and R7-2/C1-4 districts to R9 and R9/C2-5 districts.
  
- N 170362 ZRM      Zoning text amendment to designate a Mandatory Inclusionary Housing (MIH) area.
  
- C 170363 HAM      Urban Development Action Area Project (UDAAP) designation and

- project approval and the disposition of City-owned property.
- C 170364 PQM Acquisition of a portion of the disposition area by the City for community garden use.
- C 170366 ZSM Special permit pursuant to allow commercial use above the level of the second story within a mixed-use building.
- C 170367 ZSM Special permit to modify parking requirements within a Large-Scale General Development.
- N 170368 ZCM Certification from the City Planning Commission to modify the ground-floor use requirements for a building facing a wide street.

## **BACKGROUND**

HPD requests that grant of a special permit pursuant to Section 74-743 of the Zoning Resolution to modify the height and setback regulations and yard requirements applicable to the a proposed mixed use development on property bounded by East 112<sup>th</sup> Street to the north, Park Avenue to east, East 111<sup>th</sup> Street to the south and Madison Avenue to the west (Block 1617, Lots 20, 22, 23, 25, 28, 29, 31, 33, 35, 37-43, 45, 46, 48, 50-54, 121 and 122) in the East Harlem neighborhood of Community District 11, Manhattan to facilitate the development of three predominantly residential mixed-use buildings containing approximately 655 affordable dwelling units, commercial floor area and community facility floor area.

A full background discussion and description of this application appear in the report on the related UDAAP action (C 170363 HAM).

## **ENVIRONMENTAL REVIEW**

This application (C 170365 ZSM), in conjunction with the related actions (C 170361 ZMM, N Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 17DCP048M. The lead agency is the City Planning Commission.

A summary of the environmental review, including the Final Environmental Impact Statement (FEIS), issued on September 19, 2017, appears in the report on the related UDAAP action (C 170363 HAM).

### **UNIFORM LAND USE REVIEW**

This application (C 170365 ZSM), in conjunction with the related actions (C 170361 ZMM, C 170363 HAM, C 170364 PQM, C 170366 ZSM and C 170367 ZSM), was certified as complete by the Department of City Planning on April 24, 2017 and was duly referred to Manhattan Community Board 11 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 applications for a zoning text amendment ( N 170362 ZRM) and a City Planning Commission certification (N 170368 ZCM), which were referred for information and review in accordance with the procedures for non-ULURP matters.

### **Community Board Public Hearing**

Community Board 11 held a public hearing on this application (C 170365 ZSM) on June 27, 2017 and on that date, by a vote of 29 in favor, five in opposition, and with three abstentions, adopted a resolution recommending approval with conditions.

A summary of the Community Board's recommendations appears in the report on the related UDAAP action (C 170363 HAM).

### **Borough President Recommendation**

This application (C 170365 ZSM) was considered by the Manhattan Borough President, who issued a recommendation approving the application with conditions on August 2, 2017.

A summary of the Borough President's recommendations appear in the report for the related UDAAP action (C 170363 HAM).

### **City Planning Commission Public Hearing**

On August 9, 2017 (Calendar No. 24), the City Planning Commission scheduled August 23, 2017 for a public hearing on this application (C 170365 ZSM) and the applications for the related actions. The hearing was duly held on August 23, 2017 (Calendar No. 42).

There were eight speakers in favor of the application and none in opposition, as described in the report on the related UDAAP action (C 170363 HAM).

### **CONSIDERATION**

The Commission believes that this proposed special permit, in conjunction with the related actions, is appropriate.

A full consideration and analysis of the issues and the reasons for approving the application appears in the report on the related UDAAP action (C 170363 HAM).

### **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 74-743 of the Zoning Resolution (Special provisions for bulk modification):

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 I 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 lights and air to the detriment of the occupants or users of the #buildings# in the #block# or nearby #blocks# or of people using the public #streets#;
3. not applicable;
4. considering the size of the proposed #large-scale general development#, the #streets# providing access to such #large-scale general development# will be adequate to handle traffic resulting therefrom;
5. 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 Sendero Verde Development Alternative in the Final Environmental Impact Statement (FEIS) of the Harlem Neighborhood Rezoning applications, for which a Notice of Completion was issued on September 19, 2017, with respect to this application (CEQR No. 17DCP048M), and the Technical Memorandum, dated September 29, 2017, the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and Regulations have been met and that:

1. Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one which avoids or minimizes adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts identified in the Sendero Verde Development Alternative of the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval, pursuant to the Land Disposition Agreement(s) with the City, those project components related to the environment and mitigation measures determined to be practicable.

The report of the City Planning Commission, together with the FEIS and the Technical Memorandum dated September 29, 2017, constitute 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**, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the

New York City Charter, that based on environmental determination and the consideration and findings described in this report, the application submitted by the NYC Department of Housing Preservation and Development 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 23-65 (Tower Regulations, 23-651 (Tower-on-a-base) and the rear yard requirements of Sections 24-33 (Permitted Obstructions in Required Rear Yards or Rear Yard Equivalents) and 24-382 (Required Rear Yard Equivalents), in connection with a proposed mixed use development, within a large scale general development on property generally bounded by East 112<sup>th</sup> Street, Park Avenue, East 111<sup>th</sup> Street, and Madison Avenue (Block 1617, Lots 20, 22, 23, 25, 28, 29, 31, 33, 35, 37, 38, 39, 40, 41, 42, 43, 45, 46, 48, 50, 51, 52, 53, 54, 121 & 122), in R9 and R9/C2-5 Districts, Borough of Manhattan, Community District 11, is approved, subject to the following conditions:

1. The application that is the subject of this application (C 170365 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications, and zoning computations indicated on the following plans, prepared by Handel Architects, LLP, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-002.00	Zoning Analysis	04/17/2017
Z-005.00	Tower Coverage Diagrams and Base Plane Analysis	09/22/2017
Z-010.00	Site Plan (Roof Plan)	09/22/2017
Z-030.00	Special Permit Bulk Modifications Waiver Plan at Roof	09/22/2017
Z-040.00	Waiver Section A	09/22/2017
Z-041.00	Waiver Section B	09/22/2017
Z-042.00	Waiver Section C	09/22/2017
Z-043.00	Waiver Section D	09/22/2017

Z-044.00	Waiver Section E	09/22/2017
Z-045.00	Waiver Section F	09/22/2017
Z-046.00	Waiver Section G	09/22/2017

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

occupant.

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

The above resolution (C 170365 ZSM), duly adopted by the City Planning Commission on October 2, 2017 (Calendar No. 9), 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***  
**RAYANN BESSER, ALFRED C. CERULLO, III,**  
**MICHELLE R. DE LA UZ,**  
**JOSEPH DOUEK, RICHARD W. EADDY,**  
**CHERYL COHEN EFFRON, HOPE KNIGHT, ANNA HAYES LEVIN,**  
**ORLANDO MARIN, LARISA ORTIZ *Commissioners***

**EXHIBIT A**

**DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT**

**NEW YORK COUNTY**

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

Block 1617, Lots 20, 22, 23, 25, 28, 29, 31, 33, 35, 37-43, 45, 46, 48, 50-54, 121, and 122

**RECORD AND RETURN TO:**

Holland & Knight LLP  
31 West 52<sup>nd</sup> Street  
New York, NY 10019

Attention: Barak A. Wrobel, Esq.

**DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT**

**THIS DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT** (“**Declaration**”), made as of the \_\_\_\_ day of \_\_\_\_\_, 2017, by [ ], a limited liability company established pursuant to the laws of the State of New York, having an address at c/o Jonathan Rose Companies, 551 Fifth Avenue, New York, New York 10176 (“**Declarant**”).

**W I T N E S S E T H:**

**WHEREAS**, the Declarant is the fee owner of certain real property located in the Borough of Manhattan, County of New York, City and State of New York, identified on the Tax Map of the City of New York, County of New York (“**Tax Map**”) as Block 1617, Lots [1], which real property is more particularly described in Exhibit A annexed hereto and made a part hereof (the “**Phase 1 Parcel**”); and

**WHEREAS**, the City of New York (the “**City**”) acting through the New York City Department of Housing Preservation and Development (“**HPD**”) is the fee owner of certain real property located in the Borough of Manhattan, County of New York, City and State of New York, identified on the Tax Map as Block 1617, Lots [2], which real property is more particularly described in Exhibit B annexed hereto and made a part hereof (the “**City Parcel**”, together with the Phase 1 Parcel the “**Subject Property**”); and

**WHEREAS**, the Declarant desires to improve the Subject Property as a "large-scale general development" meeting the requirements of the definition of “large-scale general development” set forth in Section 12-10 of the Zoning Resolution of the City of New York, effective December 15, 1961, as amended to date and as same may hereafter be amended (the “**Zoning Resolution**” or “**ZR**”) (such proposed improvement of the Subject Property, the “**Proposed Development**”); and

**WHEREAS**, In connection with the Proposed Development, Declarant has filed applications with the New York City Department of City Planning (hereinafter “**DCP**”) for approval by the New York City Planning Commission (the “**Commission**”) of: (i) a Zoning Map Amendment to change the Subject Property from a R7-2 district with C1-4 commercial overlays along the Avenue frontages to a R9 district with C2-5 commercial overlays along the Avenue frontages (C 170361 ZMM) (the “**Zoning Map Amendment**”); (ii) a Zoning Text Amendment to Appendix F of the Zoning Resolution to establish a Mandatory Inclusionary Housing Area (N

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1 select those tax lots disposed of to Declarant in connection with first phase of development.

2 select those tax lots retained by HPD in connection with first phase of development.

170362 ZRM) (the “**Zoning Text Amendment**”); (iii) an Urban Development Action Area Project designation and project approval for Block 1617, Lots 20, 22-34, 35-54, and 121 and approval of the disposition of City-owned property for Lots 20, 22-34, 35-54, and 121 (C 170363 HAM) (“**UDAAP and Disposition**”); (iv) an Authorization for the City to acquire current Lots 22, 121, 122, 35 and parts of Lots 23, 25, 28 and 37 for use as community gardens in the Large-Scale Development Project (C 170364 PQM) (the “**Acquisition Action**”); (v) a Special Permit, pursuant to ZR Section 74-743, to modify certain bulk regulations applicable to the development of the Subject Property (C 170365 ZSM) (the “**Large-Scale Bulk Special Permit**”); (vi) a Special Permit, pursuant to ZR Section 74-744(b), to allow commercial use above the level of the second story in a mixed use building contrary to the provisions set forth in ZR Section 32-42 (C 170366 ZSM) (the “**Large-Scale Use Special Permit**”, together with the Large-Scale Bulk Special Permit the “**Large-Scale Special Permits**”); (vii) a Special Permit, pursuant to ZR Section 74-532, to waive accessory off-street parking spaces required in connection with units of affordable housing made available to families earning over 80% AMI (C 170367 ZSM) (the “**Parking Special Permit**”); (viii) a Certification, pursuant to ZR Section 32-435, to waive the requirement that a minimum of 50% of a building wall facing upon a wide street be occupied at the ground level by commercial uses (C 170368 ZCM) (the “**Certification**”) (collectively, the “**Land Use Applications**”); and

**WHEREAS** to insure that the development of the Subject Property is consistent with the analyses set forth in Final Environmental Impact Statement for City Environmental Quality Review Application No. 17DCP048M (the “**FEIS**”), 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 (“**SEORA**”), and incorporates certain (i) requirements for mitigation of significant adverse environmental impacts (“**Mitigation Measures**”), and (ii) certain project components related to the environment which were material to the analysis of environmental impacts in the FEIS (“**PCREs**”), certain restrictions to the development, operation, use and maintenance of the Subject Property shall be set forth in the land disposition agreement entered into between Declarant and the City in connection with and as a condition of the construction of the Proposed Development on the Subject Property pursuant to approval of the Land Use Applications; 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 Commission; and

**WHEREAS**, all parties in interest (as such term is defined in the definition of “zoning lot” in ZR Section 12-10) to the Subject Property as shown on the Certification of Parties in Interest prepared by [ \_\_\_\_\_ ], dated \_\_\_\_\_, 201\_\_, and attached hereto as **Exhibit C**, have joined in this Declaration or have waived their respective rights to execute this

Declaration by written instrument annexed hereto as Exhibit C :1 (which instruments are intended to be recorded in the Register’s Office simultaneously with the recordation of this Declaration), or have previously waived their right to do so; and

**WHEREAS**, the Declarant desires to restrict the manner in which the Subject Property may be developed, redeveloped, maintained and operated in the future, and intends these restrictions to benefit all the land on the Subject Property;

**NOW, THEREFORE**, the Declarant does hereby declare and agree that the Subject Property shall be held, sold, transferred, conveyed and occupied subject to the restrictions, covenants, obligations, easements, and agreements of this Declaration, which shall run with the Subject Property and which shall be binding on the Declarant, its successors and assigns as follows:

**1. Designation of Large-Scale General Development.** Declarant hereby declares and agrees that, following the Effective Date (as defined in **Section 6** hereof), the Subject Property, if developed pursuant to the Large Scale Special Permits, shall be treated and developed as a “large-scale general development”, as such term is defined in the Zoning Resolution in effect on the Effective Date, and shall be developed and enlarged as a single unit.

**2. Development and Use of the Subject Property.**

(a) **Plans.** If the Subject Property is developed in whole or part in accordance with the Large Scale Special Permits, Declarant covenants and agrees that the Proposed Development on the Subject Property shall be constructed substantially in accordance with the following plans prepared by Handel Architects LLP, and annexed hereto as Exhibit D and made a part hereof (collectively, the “**Plans**”):

<b>Drawing No.</b>	<b>Title</b>	<b>Last Revised Date</b>
Z-002.00	ZONING ANALYSIS	04/17/17
Z-005.00	TOWER COVERAGE DIAGRAMS AND BASE PLANE ANALYSIS	09/22/17
Z-010.00	SITE PLAN (ROOF PLAN)	09/22/17
Z-025.00	SPECIAL PERMIT USE MODIFICATION GROUND FLOOR PLAN	09/22/17
Z-026.00	SPECIAL PERMIT USE MODIFICATION 3RD FLOOR PLAN	09/22/17
Z-030.00	SPECIAL PERMIT BULK MODIFICATIONS WAIVER PLAN AT ROOF	09/22/17

Z-031.00	CERTIFICATION USE MODIFICATION - GROUND FLOOR PLAN	09/22/17
Z-040.00	WAIVER SECTION A	09/22/17
Z-041.00	WAIVER SECTION B	09/22/17
Z-042.00	WAIVER SECTION C	09/22/17
Z-043.00	WAIVER SECTION D	09/22/17
Z-044.00	WAIVER SECTION E	09/22/17
Z-045.00	WAIVER SECTION F	09/22/17
Z-046.00	WAIVER SECTION G	09/22/17

(b) **Representation.** Declarant hereby represents and warrants that as of the Effective Date there will be no restriction of record on the development, enlargement, or use of the Subject Property, nor any then-existing estate or interest in the Subject Property, nor any 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.

**3. Publicly Accessible Area.** Declarant shall construct and complete the publicly accessible area delineated on the Plans (the “**Publicly Accessible Area**”) in connection with the third and final building of the Proposed Development, in accordance with the provision set forth in **Section 3** hereof. The design and location of the pathway portion and stair portion of the Publicly Accessible Area delineated on Drawing Z-010.00, “Site Plan (Roof Plan)”, of the Plans (the “**Pathway**” and “**Stair**”, respectively) shall be in accordance with such Drawing. The design of the courtyard portion of the Publicly Accessible Area delineated on the aforementioned Drawing (the “**Courtyard**”) shall be in accordance with the Courtyard Certification (hereinafter defined) provisions set forth in this **Section 3**.

(a) **Courtyard Design.** Declarant shall not accept a New Building permit from the New York City Department of Buildings (“**DOB**”) for the construction of the third and final building of the Proposed Development until the Chair of the Commission (the “**Chair**”) certifies to Declarant and DOB (the “**Courtyard Certification**”) that the design of the Courtyard delineated on the Plans is consistent with the Courtyard public access area design principles and guidelines set forth in Exhibit E attached hereto (the “**Courtyard Design Guidelines**”), which shall not be unreasonably withheld or delayed, in accordance with the following provisions:

(i) **Submission.** To initiate review and issuance of the Courtyard Certification, Declarant shall submit a dimensioned site plan including specifications of the landscape and hardscape elements proposed for the Courtyard (the “**Courtyard Certification Plan**”), with sufficient detail to enable the Chair to determine whether the Courtyard Certification Plan is consistent with the Courtyard Design Guidelines.

(ii) **Initial Review.** Within thirty (30) days of such submission (the “**Initial Review Period**”), the Chair shall either (A) issue the Courtyard Certification, or (B) notify Declarant in writing of any Courtyard Design Guidelines that the Courtyard Certification Plan is not consistent with, in which case Declarant shall submit revised drawings addressing such deficiencies.

(iii) **Subsequent Review.** Within fifteen (15) days of a submission responsive to notification pursuant to clause (B) of **Section 3(a)(ii)** hereof (the “**Subsequent Review Period**”), the Chair shall either (A) issue the Courtyard Certification, or (B) notify Declarant in writing of any Courtyard Design Guidelines that the Courtyard Certification Plan is not consistent with, in which case Declarant shall submit revised drawings addressing such deficiencies. This process shall continue until the Chair has issued the Courtyard Certification.

(iv) Notwithstanding anything to the contrary set forth in this **Section 3(a)**, if, within the Initial Review Period, or the Subsequent Review Period, as applicable, the Chair does not issue the Courtyard Certification, and fails to notify the Declarant in writing of any Courtyard Design Guidelines that the Courtyard Certification Plan is not consistent with, the Courtyard Certification shall, upon notice to the Chair, be deemed issued and Declarant may accept a New Building permit from DOB for the third and final building.

(b) **Construction of the Publicly Accessible Area.** Declarant shall construct the Pathway and Stair in substantial accordance with the Plans. Declarant shall construct the Courtyard in substantial accordance with the Courtyard Certification Plan approved by the Chair pursuant to the Courtyard Certification.

(c) **Modification of Courtyard.** Any modification to the design of the Courtyard that is not substantially in accordance with the approved Courtyard Certification Plan shall be made only upon written approval of the Chair, which approval shall not be unreasonably withheld or delayed. Chair review and approval of proposed modifications to the design of the Courtyard set forth on the approved Courtyard Certification Plan shall be in accordance with, and pursuant to, the review provisions set forth in **Section 3(a)** hereof.

(d) **Completion of the Public Access Area.**

(i) Substantial Completion. Declarant shall not accept a Temporary Certificate of Occupancy from DOB for the third and final building of the Proposed Development until the Chair certifies to Declarant and DOB that the Publicly Accessible Area is Substantially Complete (defined herein), in accordance with the following provisions:

a. *Notification*. Declarant shall notify the Chair at such time as it believes that the Publicly Accessible Area is Substantially Complete and shall request that the Chair issue a certification, in the form of Exhibit F annexed hereto (the "**Notice of Substantial Completion**"), to Declarant and DOB certifying the Substantial Completion of the Publicly Accessible Area in accordance with the Plans (with respect to the Pathway and Stair) and the Courtyard Certification Plan approved pursuant to the Courtyard Certification (with respect to the Courtyard).

b. *Initial Review*. Not later than twenty (20) days of its receipt of the notification set forth in **Section 3(d)(i)(a)** herein (the "**Substantial Completion Initial Review Period**"), the Chair shall either (A) issue the Notice of Substantial Completion, or (B) deliver to Declarant written notice setting forth in detail the reasons why the Publicly Accessible Area is not Substantially Complete and the items which need to be completed in order to determine that the Publicly Accessible Area is Substantially Complete. If the Chair notifies the Declarant that the Publicly Accessible Area is not Substantially Complete in accordance with the Plans (with respect to the Pathway and Stair) or the Courtyard Certification Plan approved pursuant to the Courtyard Certification (with respect to the Courtyard), such notice shall contain a detailed statement of the reasons for withholding the Notice of Substantial Completion in the form of a "punch list" of items remaining to be completed or to be satisfactorily performed (the "**Punch List**"). The Punch List shall not include items which, pursuant to the definition of Substantial Completion herein, are not required to be completed to achieve Substantial Completion.

c. *Subsequent Review*. Upon performing the work specified in the Punch List, Declarant shall notify the Chair of such completion. Not later than ten (10) calendar days of receipt of such notice (the "**Substantial Completion Subsequent Review Period**") the Chair shall either (A) issue the Notice of Substantial Completion, or (B) notify Declarant in writing of any Punch List items that have not been completed or satisfactory performed. This process shall continue until the Chair has issued the Notice of Substantial Completion.

d. Notwithstanding anything to the contrary set forth in **Section 3** hereof, if, within the Substantial Completion Initial Review Period, or the Substantial Completion Subsequent Review Period, as applicable, the Chair fails to

provide the Notice of Substantial Completion, or fails to notify the Declarant in writing of any Punch List items which have not been completed or satisfactorily performed, then the Chair shall be deemed to have issued the Notice of Substantial Completion, and Declarant may accept a Temporary Certificate of Occupancy from DOB for the third and final building.

e. Substantial Completion, or Substantially Complete, with respect to the Publicly Accessible Area, shall be mean that the Publicly Accessible Area has been constructed substantially in accordance with the Plans (with respect to the Pathway and Stair) and the Courtyard Certification Plan (with respect to the Courtyard), as same may be amended from time to time in accordance herewith, and has been completed to such an extent that all portions of the improvement may be operated and made available for public use. The Publicly Accessible Area shall be deemed Substantially Complete notwithstanding that (a) minor or insubstantial items of construction, decoration or mechanical adjustment remain to be performed, or (b) Declarant has not completed any relevant planting or vegetation or tasks that must occur seasonally.

(ii) Final Completion. Declarant shall not accept a Permanent Certificate of Occupancy from DOB for the third and final building of the Proposed Development constructed on the Subject Property pursuant to the Large-Scale Special Permits until the Chair certifies to Declarant and DOB that the Publicly Accessible Area is Finally Complete (defined herein), in accordance with the following provisions:

a. *Notification*. Declarant shall notify the Chair at such time as it believes that the Publicly Accessible Area is Finally Complete and shall request that the Chair issue a certification, in the form of Exhibit G annexed hereto (the "**Notice of Final Completion**"), to Declarant and DOB certifying the Final Completion of Publicly Accessible Area in accordance with the Plans (with respect to the Pathway and Stair) and the Courtyard Certification Plan approved pursuant to the Courtyard Certification (with respect to the Courtyard).

b. *Initial Review*. Not later than twenty (20) days of its receipt of the notification set forth in **Section 3(d)(ii)(a)** herein (the "**Final Completion Initial Review Period**"), the Chair shall either (A) issue the Notice of Final Completion, or (B) or deliver to Declarant written notice setting forth in detail the reasons why the Publicly Accessible Area is not Finally Complete and the items which need to be completed in order to determine that the Publicly Accessible Area is Finally Complete. If the Chair notifies the Declarant that the Publicly Accessible Area is not Finally Complete in accordance with the Plans (with respect to the Pathway and Stair) or the Courtyard Certification Plan approved pursuant to the Courtyard

Certification (with respect to the Courtyard), such notice shall contain a detailed statement of the reasons for withholding the Notice of Final Completion in the form of a Punch List.

c. *Subsequent Review.* Upon performing the work specified in the Punch List, Declarant shall notify the Chair of such completion. Not later than ten (10) calendar days of receipt of such notice (the “**Final Completion Subsequent Review Period**”) the Chair shall either (A) issue the Notice of Final Completion, or (B) notify Declarant in writing of any Punch List items that have not been completed or satisfactory performed. This process shall continue until the Chair has issued the Notice of Final Completion.

d. Notwithstanding anything to the contrary set forth in **Section 3** hereof, if, within the Final Completion Initial Review Period, or the Final Completion Subsequent Review Period, as applicable, the Chair fails to provide the Notice of Final Completion, or fails to notify the Declarant in writing of any Punch List items which have not been completed or satisfactory performed, then the Chair shall be deemed to have issued the Notice of Final Completion, and Declarant may accept a Final Certificate of Occupancy from DOB for the third and final building.

e. “Final Completion” or “Finally Complete” shall mean the completion of all relevant items of work, including any Punch List or other items that remained to be completed after Substantial Completion

(f) **Public Access Area Easement.**

(i) Declarant covenants that, immediately upon the issuance of the Notice of Substantial Completion, it (as the burdened party) shall grant, convey and transfer to the City and the general public (as the benefited party) a permanent, perpetual, non-exclusive public access easement over and encompassing the Publicly Accessible Area, unobstructed from the surface thereof to the sky (the “**Publicly Accessible Easement**”), for the purpose of (i) passive recreational use by the general public and (ii) access for fire, police and other emergency services. Such easement (i) shall be effectuated without the necessity for recording a separate instrument and (ii) upon such issuance of a Notice of Substantial Completion, shall be prior in interest to any property interest on the Subject Property or any portion thereof that is recorded after the date of this Declaration. The Publicly Accessible Easement shall be subject to the following conditions:

(ii) No member of the general public shall use any portion of the Publicly Accessible Area for any activity or in a manner which injures, endangers or unreasonably disturbs the comfort, peace, health or safety of any person, or disturbs or causes injury to plant or animal life, or causes damage to the Subject Property or any person.

(iii) The Public Access Area shall be open to the public between the hours of 8AM to 8PM from April 15<sup>th</sup> to October 31<sup>st</sup>, and between the hours of 8AM to 6PM from November 1<sup>st</sup> to April 14<sup>th</sup>.

(iv) Declarant shall have the right, but not the obligation, to establish rules and regulations governing public use of, and behavior in, the Publicly Accessible Area, which rules and regulations shall not conflict with Department of Parks and Recreation Rules and Regulations (56 RCNY §1-01 et seq.) unless Declarant has sought and received the consent of the Chair. Declarant shall operate the Publicly Accessible Area in conformity with the Department of Parks and Recreation Rules and Regulations unless and until it promulgates rules and regulations of its own for use of the Publicly Accessible Area.

(v) Declarant may close the Publicly Accessible Area or portions thereof for periods as may be necessary: (i) to accomplish maintenance and repairs or replacements, (ii) for safety and security, logistics and public safety during construction of maintenance of buildings surrounding the Publicly Accessible Area, (iii) to make emergency repairs to mitigate hazardous conditions; and (iv) to address other emergency conditions.

(vi) Notwithstanding the foregoing, Declarant may close the Publicly Accessible Area one day in each calendar year for private events to avoid public dedication.

**(g) Maintenance and Operation.**

(i) Declarant shall provide or, in Declarant's sole discretion, cause to be provided, all services required for the maintenance and repair of the Publicly Accessible Area, and any paving, landscaping, equipment or furniture provided therein, as and when reasonably needed to preserve the Publicly Accessible Area and the amenities contained therein neat, clean and in good working order and condition as set forth in this Section.

(ii) Cleaning.

a. Trash shall be collected regularly. Litter and other obstructions shall be removed as needed.

b. Walkways and paths shall be cleaned and cleared as needed and maintained in good condition.

c. Appropriate measures shall be taken to control rodents and pigeons.

d. Graffiti shall be promptly removed or painted over.

e. Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.

f. Snow shall be promptly removed from walkways, and fallen branches and trees shall be removed promptly.

(ii) Landscape and Feature Maintenance.

a. Appropriate maintenance for planted areas shall be undertaken, including: pruning, trimming, and weeding; removal and replacement of plants, branches and trees that are dead or blighted; wrapping of trees, shrubs, and other plants as necessary to ensure adequate winter protection, and subsequent removal come springtime; replanting, reseeding and fertilizing as needed; mowing of grass and watering of plantings as needed.

b. Adequate lighting levels shall be maintained, and lighting equipment shall be repaired or replaced as necessary.

(ii) Repairs and Replacements. Repairs and replacements of features in the Publicly Accessible Area shall occur as needed to maintain the Publicly Accessible Area in a state of good repair. All repairs and replacements shall occur promptly and in substantial compliance with the Plans and Courtyard Certification Plan certified by the Chair pursuant to this Declaration. Repairs shall include, but are not limited to, the following items:

a. Seating: All seating shall be repaired and repainted as necessary, including replacement of any moveable seating that has been removed.

b. Walls or Other Barriers: Any broken or cracked walls, fences or other barriers shall be repaired or replaced.

c. Paving: All paved surfaces shall be maintained in a safe and attractive condition.

d. Painting: All painted items shall be repainted and rust or other extraneous matter removed as needed.

e. Signage: All signs shall be maintained in good condition and cleaned or replaced if vandalized.

f. Construction Defects and Hazardous Conditions: The Publicly Accessible Area shall be periodically inspected for construction defects and hazardous conditions, and any portion or feature that exhibits defects or hazardous conditions shall be promptly repaired or replaced.

(h) **Property Owner's Association.**

(i) Applicability. The provisions of this **Section 3(h)** shall only apply if Declarant forms an Association with respect to the Subject Property.

(ii) *Property Owners' Association*. In order to perform Declarant's maintenance obligations with respect to the Publicly Accessible Area, and to ensure ongoing public access to the Publicly Accessible Area in accordance with the provisions hereof, Declarant shall cause to be organized a property owners' association (the "**Association**") upon the earlier of the following occurrences: (i) the issuance of a Temporary Certificate of Occupancy for any portion of the Proposed Development (A) governed by a condominium regime, (B) conveyed to a housing corporation to be governed by a cooperative regime, or (C) governed by such other legal regime which shall require the organization of a not-for-profit membership organization comprising homeowners, and (ii) the date of Substantial Completion of the Publicly Accessible Area.

(iii) The obligations of the Association under this Declaration shall commence the date of its organization (the "**Association Obligation Date**"), whether required to be formed as set forth above or otherwise, upon which time the provisions of this Section shall be operative.

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

(v) *Obligations*. The Association shall be established to, among other things, assume Declarant's maintenance obligations of the Publicly Accessible Area as set forth in this Declaration.

(vi) *Members*. The members of the Association shall consist of (A) the fee owners (other than a Unit Interested Party and other than the City) of any portion of the Proposed Development, and (B) the Boards of Managers of any portion of the Proposed Development which is subject to a declaration of condominium (the "**Association Members**"). A "**Unit Interested Party**" shall mean all lessees and occupants of any individual residential or commercial condominium unit, and all holders of a mortgage or other lien encumbering any such residential or commercial condominium unit.

(vii) *Powers.* To the extent permitted by law, Declarant shall cause the Association to be established with the power and authority to:

- a. impose fees or assessments against the Association Members, for the purpose of collecting funds reasonably necessary to satisfy the obligations of the Association pursuant to this Declaration;
- b. collect, receive, administer, protect, invest and dispose of funds;
- c. bring and defend actions and negotiate and settle claims to recover fees or assessments owed to the Association pursuant to this Declaration;
- d. to the extent permitted by law, impose liens, fines or assessments against individual lot or unit owners for the purpose of collecting funds reasonably necessary and sufficient to fund the obligations of the Association pursuant to this Declaration; and
- e. exercise any and all of such powers as may be necessary or appropriate for purposes of this Declaration and as may be granted to the Association in furtherance of the Association's purposes pursuant to the New York Not-for-Profit Corporation Law.

(viii) *Successors.* Every deed conveying title to, or a partial interest in, the Subject Property, other than a deed to an Affordable Housing Unit (“**Affordable Housing Unit**” shall mean (i) an individual residential apartment consisting solely of Affordable Housing as such term is defined in Section 23-911 of the Zoning Resolution, or (ii) a Superintendent Unit; provided, however, that there shall not be more than one (1) Superintendent Unit in each building located in the Proposed Development), every lease held or granted by a cooperative corporation owning the Subject Property or any portion thereof, every lease of all or substantially all of the Subject Property, or the declaration of condominium imposed on any portion of the Subject Property shall contain a recital or other provision that (a) the Unit Interested Party (other than a Unit Interested Party that owns an Affordable Housing Unit) is liable for its pro rata share of the assessment by the Association to the condominium in which such unit is located for the Association's obligations under this Declaration, and (b) maintenance of the Publicly Accessible Area, and the cost of maintenance of the Publicly Accessible Area, and all other obligations of the Association under this Declaration, are essential elements of the City actions permitting the development of the Proposed Development in accordance with the provisions of this Declaration and in accordance with any other approvals granted by the City.

(ix) *Assessments.*

a. The Association shall assess all real property within the Subject Property, other than the Affordable Housing Units, (the “**Assessment Property**”) in order to obtain funds for the Publicly Accessible Area obligations of the Association pursuant to this Declaration. The Assessment Property shall be assessed on a reasonable prorated basis as determined by Declarant, in compliance with all applicable laws. For Association Members that are residential condominiums, commercial condominiums or cooperative corporations, a reasonable basis for such proration shall be conclusively established if the Attorney General of the State of New York accepts for filing an offering plan for the sale of interests in such condominium, as applicable, which plan describes such proration.

b. Each periodic assessment by the Association, together with such interest, costs and reasonable attorney’s fees as may be assessed in accordance with the provisions of this Declaration, shall be the obligation of the Association Members against whom the assessment is charged at the time such assessment falls due and may not be waived by such Association Member. The Association may bring an action to recover any delinquent assessment, including interest, costs and reasonable attorney’s fees of any such action, at law or at equity, against the Association Member obligated to pay the same. In the event an Association Member has not paid its assessment to the Association within ninety (90) days of the date such payment was due, the Association shall take all reasonable measures as may be required in order to collect such unpaid assessment.

c. The periodic assessments shall be a charge on the land and a continuing lien upon the property owned by the Association Member against which each such assessment is made. The periodic assessments charged to an Association Member that is a condominium shall be included within the common charges of the condominium. The Association may bring an action to foreclose the Association’s lien against the property owned by such Association Member, or a Unit Interested Party (other than the owner of an Affordable Housing Unit), as the case may be, to recover such delinquent assessment(s), including interest and costs and reasonable attorneys’ fees of any such action. Any Unit Interested Party, other than the owner of an Affordable Housing Unit, by acceptance of a deed or a lease to a portion of the Assessment Property, thereby agrees to the provisions of this Section. Any Unit Owner may eliminate the Association’s lien described above on his or her unit by payment to the Association of such Unit Owner’s prorated share of the periodic assessment by the Association to the condominium in which such Unit is located. No Association Member or Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Publicly Accessible Open Space or abandonment of the Association’s property, or by renunciation of membership in the Association, provided, however, that a Unit Owner’s liability

with respect to future assessments ends upon the valid sale or transfer of such Unit Owner's interest in the Assessment Property. A Unit Owner may give to the Association nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

d. Notwithstanding any contrary term set forth in this Declaration, the Association Members that may be assessed for the operation and maintenance of the Publicly Accessible Area shall not include the holder of a mortgage or other lien encumbering (i) the fee estate in the Assessment Property or any portion thereof, or (ii) the lessee's estate in a ground lease of all or substantially all of the Assessment Property or all or substantially all of any parcel or portion thereof, or (iii) any single building to be built on the Assessment Property, unless and until any such mortgagee succeeds to either (x) a fee interest in the Assessment Property or any portion thereof or (y) the lessee's estate in a ground lease of all or substantially all the Assessment Property or all or substantially all of any parcel or portion thereof (the interests described in sub-clauses (x) or (y) immediately preceding being each referred to as a "**Possessory Interest**") by foreclosure of the lien of the mortgage or other lien or acceptance of a deed or other transfer in lieu of foreclosure or exercise of an option to convert an interest as mortgagee into an Possessory Interest in any such fee or ground leasehold estate in the Assessment Property or by other means permitted under Legal Requirements ("**Legal Requirements**") shall mean all applicable laws, statutes and ordinances, and all orders, rules, regulations, interpretations, directives and requirements, of any Governmental Authority having jurisdiction over the Subject Property) from time to time; and no such mortgagee or lien holder shall be liable for any assessment imposed by the Association pursuant to this Article until the mortgagee or lien holder succeeds to such Possessory Interest.

**4. Binding Effect.** The restrictions, covenants, rights and agreements set forth in this Declaration shall be binding upon Declarant, or Declarant's successor or assign thereof, and any party acquiring an interest in any portion of the Subject Property (which party shall become a Declarant); provided that the Declaration shall be binding on any Declarant, or Declarant's successor or assign thereof, only for the period during which such Declarant, or Declarant's successor or assign thereof, is the holder of an interest in the Subject Property and only to the extent of such Declarant's, or Declarant's successor or assign thereof, interest in the Subject Property. At such time as a Declarant, or Declarant's successor or assign thereof, no longer holds an interest in the Subject Property, such Declarant's, or Declarant's successor or assign thereof, obligations and liability under this Declaration shall wholly cease and terminate and the party succeeding such Declarant, or Declarant's successor or assign thereof, shall assume the obligations and liability of Declarant, or Declarant's successor or assign thereof, 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.

**5. Recordation.**

(a) **Effective Date.** This Declaration and the provisions and covenants hereof shall become effective only upon the Effective Date (defined hereinafter), provided, that in the event that any administrative, judicial, or other action or enforcement proceeding is brought challenging the validity of the Large Scale Special Permits, the approval of any of the Land Use Applications, the conveyance of any portion of the Subject Property to the Declarant or any action undertaken in connection with or related thereto, then the Effective Date shall be deferred to the date of final resolution of such action or proceeding, including any appeals, upholding in all respects the validity of the Large Scale Special Permits, the approval of the Land Use Applications, the conveyance of any portion of the Subject Property, or such related action(s), as the case may be.

(i) **“Effective Date”** shall mean the date upon which the Final Approval (hereinafter defined) becomes effective.

(ii) **“Final Approval”** shall mean approval of the Land Use Applications (with the exception of the Certification) by the Commission pursuant to New York City Charter Section 197-c, which shall be effective on the date that the City Council’s period of review has expired, unless (a) pursuant to New York City Charter Section 197-d(b), the City Council reviews the decision of the Commission approving the Land Use Applications and takes final action pursuant to New York City Charter Section 197-d approving the Land Use Applications, in which event “Final Approval” shall mean such approval of the Land Use Applications by the City Council or (b) the City Council disapproves the decision of the Commission and the Office of the Mayor files a written disapproval of the City Council’s action pursuant to New York City Charter Section 197-d(e), and the City Council does not override the Office of the Mayor’s disapproval, in which event “Final Approval” shall mean the Office of the Mayor’s written disapproval pursuant to such New York City Charter Section 197-d(e). Notwithstanding anything to the contrary contained in this Declaration, “Final Approval” shall not be deemed to have occurred for any purpose of this Declaration if the final action taken pursuant to New York City Charter Section 197-d is disapproval of the Land Use Applications.

(b) **Recordation.** Within ten (10) business days of the date hereof, Declarant shall endeavor to file and record this Declaration (together with all of the exhibits hereto) in the Office of the City Register of the City of New York (the "**Register's Office**"), indexing this Declaration against the Subject Property. Declarant shall deliver to the Commission a copy of all such documents, as recorded, certified by the Register, promptly upon receipt of such documents from

the register. If Declarant fails to so record such documents, then the City may record duplicate originals of such documents. However, all fees paid or payable for the purpose of recording such documents, whether undertaken by Declarant, or by the City (as permitted in accordance with this paragraph), shall be borne by Declarant.

**6. Limitation of Liability and Indemnification.**

**(a) Limitation of Liability.**

(i) The City shall look solely to the fee estate and interest of Declarant and any and all of its successors and assigns in the Subject Property, on an *in rem* basis only, for the collection of any money judgment recovered against Declarant or its successors and assigns, and no other property of Declarant or its principals, partners, shareholders, directors, members, officers or employees or successors and assigns shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration, and Declarant shall have no personal liability under this Declaration. In the event that any building in the Proposed Development is converted to condominium form of ownership, every condominium unit (other than an Affordable Housing Unit) shall, as successor in interest to Declarant, be subject to levy or execution for the satisfaction of any monetary remedies of the City, to the extent of each Unit Interested Party's Individual Assessment Interest, and provided that such enforcement procedures shall be taken simultaneously against all the condominium units in the Proposed Development and not against selected individual units only. The "**Individual Assessment Interest**" shall mean the Unit Interested Party's percentage interest in the common elements of the condominium in which such condominium unit is located applied to the assessment imposed by the Association on the condominium in which such condominium unit is located. In the event of a default in the obligations of the Association as set forth herein, the City shall have a lien upon the property owned by each Unit Interested Party solely to the extent of each such Unit Interested Party's unpaid Individual Assessment Interest, which lien shall include such Unit Interested Party's obligation for the costs of collection of such Unit Interested Party's unpaid Individual Assessment Interest. Such lien shall be subordinate to the lien of any Mortgage, the lien of any real property taxes, and the lien of the board of managers of any such condominium for unpaid common charges of the condominium, and the lien of the Association pursuant to the provisions of this Declaration. The City agrees that, prior to enforcing its rights against a Unit Interested Party, the City shall first attempt to enforce its rights under this Declaration against Declarant, the Association and the boards of managers of any condominium association. In the event that the Association shall default in its obligations under this Declaration, the City shall have the right to obtain from the Association and/or boards of managers of any condominium association, the names of the Unit Interested Parties who have not paid their Individual Assessment Interests. Notwithstanding the

foregoing, nothing in this Section shall be deemed to preclude, qualify, limit or prevent any of the City's governmental rights, powers or remedies, including without limitation, with respect to the satisfaction of the remedies of the City, under any laws, statutes, codes or ordinances.

(ii) The restrictions, covenants and agreements set forth in this Declaration shall bind Declarant and any successor-in-interest only for the period during which Declarant and any such successor-in-interest is the holder of a fee interest in, or is a Party in Interest of, the Subject Property and only to the extent of such fee interest or the interest rendering Declarant a Party in Interest. At such time as the named Declarant has no further fee interest in the Subject Property and is no longer a Party in Interest of the Subject Property, such Declarant's obligations and liability with respect to this Declaration shall wholly cease and terminate from and after the conveyance of Declarant's interest and Declarant's successors-in-interest in the Subject Property by acceptance of such conveyance automatically shall be deemed to assume Declarant's obligations and liabilities here-under to the extent of such successor-in interest's interest.

(b) **Indemnification.**

(i) If Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed, Declarant shall indemnify and hold harmless the City from and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of Declarant's obligations under this Declaration, provided, however, that nothing in this Section shall impose on the Association any indemnification obligations other than the reasonable legal and administrative expenses incurred by the City arising out of or in connection with the enforcement of such obligations. If any judgment is obtained against Declarant from a court of competent jurisdiction in connection with this Declaration and such judgment is upheld on final appeal or the time for further review of such judgment or appeal by other proceeding has lapsed, Declarant shall indemnify and hold harmless the City from and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of said judgment.

(ii) Declarant shall indemnify and hold harmless the City and their respective officers, employees and agents from and against any and all claims, actions or judgments for loss, damage or injury, including death or personal or property damage of whatsoever kind or nature, arising from Declarant's default under this Agreement (including, without limitation, if Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Agreement and such finding is upheld on

final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed), or the negligence of Declarant, its agents, servants or employees in undertaking its obligations under this Agreement unless such claims, actions or judgments arose out of the negligence, recklessness or willful acts of the City, its agents or its employees; provided, however, that should any such claim be made or action brought, Declarant shall have the right to defend such claim or action with attorneys reasonably acceptable to the City. No such claim or action shall be settled without the written consent of City, unless (i) the City is indemnified fully pursuant to this Section, and (ii) the City has no obligation under the settlement, financial or otherwise.

(iii) The City shall indemnify and hold harmless Declarant and their respective officers, employees and agents from and against any and all claims, actions or judgments for loss, damage or injury, including death or personal or property damage of whatsoever kind or nature, arising from the City's default under this Declaration (provided that the City is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed), or the negligence of the City, its agents, servants or employees in undertaking its obligations under this Declaration unless such claims, actions or judgments arose out of the negligence, recklessness or willful acts of Declarant, its agents or their employees.

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

(a) if to Declarant:  
[                    ]  
c/o Jonathan Rose Companies  
551 Fifth Avenue  
New York, New York 10176

L+M Development Partners  
1865 Palmer Avenue, Suite 203  
Larchmont, New York 10538

with a copy to:  
Holland & Knight LLP  
31 West 52<sup>nd</sup> Street  
New York, New York 10019  
Attn: Barak A. Wrobel

(b) if to the Commission:

New York City Planning Commission  
120 Broadway, 31<sup>st</sup> Floor  
New York, New York 10271  
Attention: Chairperson

with a copy to:

The general counsel of Commission at the same address

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

at the address provided in writing to Commission in accordance with this Section 7.

(d) if to a mortgagee of all or any portion of the Subject Property (a “**Mortgagee**”):

at the address provided in writing to Commission in accordance with this Section 7.

Declarant, Commission, any Party-in-Interest, and any Mortgagee may, by notice provided in accordance with this Section 7, 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: (i) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed delivered for all purposes hereunder five days after being actually mailed; (ii) 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 (iii) 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 Commission to a Declarant shall also be sent to every Mortgagee of whom Commission has notice, and no Notice shall be deemed properly given to a Declarant without such notice to such Mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the City or the Commission shall be provided to all Declarants of whom Commission has notice.

## **8. Enforcement, Defaults and Remedies.**

(a) Declarant acknowledges that the restrictions, covenants, and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. If a Declarant fails to perform any of a Declarant’s obligations under this Declaration, the City shall have the right to enforce this Declaration against Declarant and exercise any administrative, legal, or equitable remedy available to the City, and Declarant hereby consents to

same; provided that this Declaration shall not be deemed to diminish Declarant's or any other Party-in-Interest's right to exercise any and all administrative, legal, or equitable remedies otherwise available to it, and provided further, that the City's rights of enforcement under this Declaration shall be subject to the cure provisions and periods set forth in this Declaration. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive and that the City and any agency thereof may pursue other remedies not specifically set forth herein including, but not limited to, a mandatory injunction compelling Declarant to comply with the terms of this Declaration and a revocation by the City of any certificate of occupancy, temporary or permanent, for any portion of the Large Scale Development Project on the Subject Property subject to the Large-Scale Special Permits.

(b) **Denial of Public Access.** If the City has reason to believe that the use and enjoyment of the Publicly Accessible Area by any member of the public has, without reasonable cause, been denied by Declarant, and the City determines that such denial of access with respect to the right of public access under the Publicly Accessible Easement is in violation of the provisions of this Declaration, the City shall have, after (a) notice to Declarant and (b) an opportunity for Declarant to present evidence disputing such alleged denial of access, in addition to such other rights as may be available at law or equity, the right to seek civil penalties at the New York City Environmental Control Board for a violation relating to privately owned public space.

(c) **No Enforcement by Third Parties.** Notwithstanding any provision of this Declaration to the contrary, only Declarant, Declarant's successors and assigns, and the City shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration. Nothing contained herein should be construed or deemed to allow any other person or entity to have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Large-Scale Special Permits. In any proceedings brought by the City against Declarant seeking to deny or revoke building permits or certificates of occupancy with respect to the Proposed Development on the Subject Property, or to revoke any Large-Scale Special Permits approved by the Land Use Applications, or to 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 a Declarant is associated with a particular lot or portion(s) of lots developed as part of the Proposed Development on the Subject Property, then the City shall only deny or seek the revocation of building permits or certificates of occupancy for such lot(s) or portion(s) of lots, and only seek to impose a fine, lien or other penalty on such lot(s) or portion(s) of a lot, and any such event or occurrence shall not provide the basis for denial or revocation of the Special Permits approved by the Land Use Applications or building permits or certificates of occupancy, or the imposition of any fine, lien or other penalty, with respect to other lot(s) or portion(s) of a lot comprising a portion of the Proposed Development for which no such failure to comply has occurred. No Person other than Declarant, any Mortgagee, all holders of all holders of mortgages secured by any condominium unit or other individual residential unit located within the Subject Property and, from and after the Association

Obligation Date, the Association, shall have any right to enforce the provisions of this Declaration. This Declaration shall not create any enforceable interest or right in any Person, other than Declarant, any Mortgagee and, from and after the Association Obligation Date, the Association, any of which shall be deemed to be a proper Person to enforce the provisions of this Declaration, and nothing contained herein shall be deemed to allow any other Person, any interest or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Applications.

(d) **Notice and Cure.**

(i) 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 Declarant, every Mortgagee and every Party-in-Interest thirty (30) business days written notice of such alleged violation, during which period the Declarant, any Party-in-Interest and any Mortgagee shall have the opportunity to effect a cure of such alleged violation or to demonstrate to City why the alleged violation has not occurred. If a Mortgagee or Party-in-Interest performs any obligation or effects any cure a Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including the Commission and City, as if performed by Declarant. If Declarant, any Party-in-Interest or Mortgagee commences to effect such cure within such thirty (30) day period (or if cure is not capable of being commenced within such thirty (30) day period, Declarant, any Party-in-Interest or Mortgagee commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid thirty (30) day period (as such may be extended or shortened in accordance with the preceding clause) shall be extended for so long as Declarant, any Party-in-Interest or Mortgagee continues to proceed diligently with the effectuation of such cure, as determined by the City. In the event ownership of any of the lots comprising the Subject Property is held by multiple Declarants, notice as to those lots shall be provided to all Declarants of such lots from whom the City has received notice in accordance with Section 7 hereof.

(ii) If, after due notice and opportunity to cure as set forth in this Declaration, Declarant fails to observe any of the terms or conditions of this Declaration, and Declarant fails to cure such violation within the applicable grace period provided in herein, then, upon the expiration of such cure period, prior to institution by the City of any action or proceeding against Declarant, every Mortgagee and Party in Interest shall be given thirty (30) days written notice of such alleged violation by the City, during which period each Mortgagee and Party in Interest shall have the opportunity to effect such cure. If any Mortgagee or 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 Mortgagee or Party in Interest continues to proceed diligently toward such cure. If a Mortgagee or Party in Interest performs any obligation or effects any cure Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including the Commission and the City, as if performed by Declarant.

(iii) If, after due notice and opportunity to cure as set forth in this Declaration, Declarant, Mortgagee or a Party-in-Interest shall fail to cure the alleged breach or other violation under this Declaration within the applicable grace period provided herein, the City may exercise any and all of its rights, including without limitation those delineated herein, and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that a Declarant is in default of a material obligation under this Declaration. The time period for curing any violation by a Declarant, Mortgagee, and/or Party-in-Interest shall be subject to extension for Uncontrollable Circumstances pursuant to **Section 8(f)** hereof. The time period for curing any violation by Declarant, Mortgagee, and/or Party-in-Interest shall be subject to extension for Uncontrollable Circumstances pursuant to the provisions of this Declaration.

**(f) Uncontrollable Circumstances.**

(i) In the event that, as the result of an Uncontrollable Circumstance, Declarant is unable to perform or complete any obligation (including but not limited to Substantially Complete or Finally Complete the Publicly Accessible Area) (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 requirement, where applicable, Declarant may, upon notice to the Chair (a “**Delay Notice**”) within forty-eight (48) hours after the occurrence of such Uncontrollable Circumstance becomes apparent, request that the Chair, certify the existence of such Uncontrollable Circumstance. Any Delay Notice shall include a description of the Uncontrollable Circumstance and its probable duration and impact on the work in question (as reasonably determined by Declarant). In the exercise of his or her reasonable judgment, the Chair shall thereafter, within ten (10) days of its receipt of the Delay Notice, (x) certify in writing that the Uncontrollable Circumstance has occurred, or (y) notify Declarant that it does not reasonably believe that the Uncontrollable Circumstance has occurred, and set forth with reasonable specificity the reasons therefor. Failure to respond within such ten (10) day period shall be deemed to be a determination by the Chair that Uncontrollable Circumstance has occurred. If the Chair certifies that an Uncontrollable Circumstance exists, the Chair shall grant Declarant appropriate relief,

including notifying DOB that a Building Permit, TCO or a PCO (as applicable) may be issued for any buildings, or portions thereof, located within the Subject Property. Upon cessation of the Uncontrollable Circumstance, Declarant shall promptly recommence its obligations under this Declaration subject to the Uncontrollable Circumstance. As a condition to granting relief as aforesaid, the Chair may require that Declarant post a letter of credit or other security, in a form reasonably acceptable to the Chair and naming the City as beneficiary, to secure Declarant's obligation to Finally Complete the Publicly Accessible Area upon the cessation of the Uncontrollable Circumstance. Such security shall be in a sum equal to 175% of the estimated cost of the remaining work required to Finally Complete the Publicly Accessible Area, as certified by Declarant's architect or landscape architect. Declarant shall be obligated to re-commence construction of the Publicly Accessible Area to Substantially Complete or Finally Complete same at the end of the Uncontrollable Circumstance specified in the Delay Notice, or such lesser period of time as the Chair reasonably determines the Uncontrollable Circumstances shall continue; provided, however, any delay arising by reason of a Uncontrollable Circumstance shall be deemed to continue so long as the Uncontrollable Circumstance continues. If Declarant fails to resume performance of the Publicly Accessible Area work within three (3) months after the cessation of the Uncontrollable Circumstance (as reasonably determined by the Chair), the City may undertake performance of the Publicly Accessible Area work, and draw upon the aforesaid security, to the extent required to complete the Publicly Accessible Area work. Upon Final Completion of the Publicly Accessible Area (either by Declarant or the City), the City shall return the aforesaid security (or the undrawn balance thereof) to Declarant. Declarant hereby grant the City a license to enter upon such portions of the Subject Property as shall be required to exercise the self-help rights conferred upon the City by this Section. The City hereby agrees to indemnify, defend and hold each indemnified party (hereinafter defined) harmless from and against any claims arising by reason of its exercise of the self-help rights set forth in this Article, except to the extent such claim is caused by or contributed by the negligence of the Indemnified Parties.

(ii) "Uncontrollable Circumstance" shall mean: an occurrence beyond the reasonable control of Declarant which delays the performance of Declarant's obligations hereunder, provided that Declarant has taken all reasonable steps reasonably necessary to control or to minimize such delay, and which occurrences shall include, but not be limited to: (i) a strike, lockout or labor dispute; (ii) the inability to obtain labor or materials or reasonable substitutes therefor; (iii) acts of God; (iv) restrictions, regulations, orders, controls or judgments of any Governmental Authority; (v) undue material delay in the issuance of approvals by any Governmental Authority, provided that such delay is not caused by any act or omission of Declarant; (vi) enemy or hostile government action, civil commotion, insurrection, terrorism, revolution or sabotage; (vii) fire or other casualty; (viii) a taking of the whole or any portion of the Subject Property by condemnation or eminent domain; (ix) inclement weather substantially delaying construction of any relevant

portion of the Subject Property; (x) unforeseen underground or soil conditions, provided that Declarant did not and could not reasonably have anticipated the existence thereof as of the date hereof; (xi) the denial of access to adjoining real property, notwithstanding the existence of a right of access to such real property in favor of Declarant arising by contract, this Declaration; or Legal Requirements, (xii) failure or inability of a public utility to provide adequate power, heat or light or any other utility service; or (xiii) orders of any court of competent jurisdiction, including, without limitation, any litigation which results in an injunction or restraining order prohibiting or otherwise delaying the construction of any portion of the Subject Property.

**9. Applications.**

(a) Declarant and/or Declarant's successors or assigns shall include a copy of this Declaration with any application made to DOB for a foundation, new building, alteration, or other permit for any portion of the Proposed Development subject to the Land Use Applications. Nothing in this Declaration, including but not limited to the declaration and covenant made in **Section 1** hereof to develop and enlarge the Subject Property as a single unit, shall be construed to prohibit or preclude Declarant from filing for, or DOB from issuing, any permit for all or any portion of the Proposed Development, in such phase or order as the Declarant sees fit in the Declarant's sole discretion.

(b) Subject to the requirements of **Section 10** hereof, nothing in this Declaration shall be construed to prevent Declarant or any of Declarant's successors or assigns from making any application of any sort to any governmental agency or department (each an "**Agency**") in connection with the development of the Subject Property; provided, that Declarant shall include a copy of this Declaration in connection with any application for any such discretionary approval, and provided that nothing in this **Section 9(b)** shall be construed as superseding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

**10. Amendment, Modification and Cancellation.**

(a) This Declaration may be amended, cancelled, or modified upon application by Declarant and upon the express written approval of Commission or an agency succeeding to Commission's jurisdiction. No other approval by any other public body, private person, or legal entity of any kind shall be required for such modification, amendment or cancellation.

(b) Notwithstanding anything to the contrary contained in this Declaration, any change to this Declaration proposed by Declarant and submitted to the Chair, which the Chair deems to be a minor modification of this Declaration, may, by express written consent, be approved administratively by the Chair and no other approval or consent shall be required from the Commission, any public body, private person or legal entity of any kind.

(c) Notwithstanding anything to the contrary contained in this Declaration, for so long as Declarant (including any successor to its interest as fee owner of all or any portion of the Subject Property, other than a Unit Interested Party) shall hold any fee interest in the Subject Property, or any portion thereof, (i) all Unit Interested Parties, (ii) all boards of managers of any condominium or cooperative association, and (iii) the Association, hereby (x) irrevocably consent to any amendment, modification, cancellation, revision or other change in this Declaration by Declarant; (y) waive and subordinate any rights they may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration, and (z) nominate, constitute and appoint Declarant, their true and lawful attorney-in-fact, coupled with an interest, to execute any document or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

(d) Notwithstanding anything to the contrary contained in this Declaration, if the Land Use Applications, as approved or modified by the City Council, 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, Declarant shall notify the Chair of Declarant's 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, Declarant shall provide a copy thereof to Commission so certified by the Register's Office. If some of the Land Use Applications are declared invalid, then Declarant may apply for modification, amendment or cancellation of this Declaration in accordance with this **Section 10**.

(e) From and after the date that no Declarant holds any fee interest in the Subject Property or any portion thereof (other than one or more individual residential or commercial condominium units), and provided the Association shall have been organized as provided in this Declaration, the Association shall be deemed to be the sole Declarant and Party-in-Interest under this Declaration for that portion of the Proposed Development upon that portion of the Subject Property for which the Association was formed. In such event, the Association shall be the sole party with any right to amend, modify, cancel, revise or otherwise change this Declaration, or make any application therefor, and each and every Unit Interested Party hereby (x) irrevocably consents to any amendment, modification, cancellation, revision or other change in this Declaration by the Association; (y) waives and subordinates any rights it may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration, and (z) nominates, constitutes and appoints the Association its true and lawful attorney-in-fact, coupled with an interest to execute any documents or

instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

**11. Severability.** In the event that any provision of this Declaration shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction and the judgment of such court shall be upheld on final appeal, or the time for further review of such judgment on appeal or by other proceeding has lapsed, such provision shall be severable, and the remainder of this Declaration shall continue to be of full force and effect.

**12. Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

**13. Exhibits.** Any and all exhibits, appendices, or attachments referred to herein are hereby incorporated fully and made an integral part of this Declaration by reference.

**14. Approvals.** Wherever in this Declaration the certification, consent or approval of Declarant, the Chair, or the Commissioner is required or permitted to be given, it is understood that time is of the essence and such certification, consent or approval will not be unreasonably withheld or delayed.

**15. Further Assurances.** Declarant and the City each agree to execute, acknowledge and deliver such further instruments, and take such other or further actions as may be reasonably required in order to carry out and effectuate the intent and purpose of this Declaration or to confirm or perfect any right to be created or transferred hereunder, all at the sole cost and expense of the party requesting such further assurances.

**16. Estoppel Certificates.** Whenever requested by a party, the other party shall within ten (10) days thereafter furnish to the requesting party a written certificate setting forth: (i) that this Declaration is in full force and effect and has not been modified (or, if this Declaration has been modified, that this Declaration is in full force and effect, as modified) and (ii) whether or not, to the best of its knowledge, the requesting party is in default under any provisions of this Declaration and if such a default exists, the nature of such default.

**17. Counterparts.** This Declaration may be executed in one or more counterparts, each of which shall be an original and all of which, together, shall constitute one agreement.

**18. Right to Sue.** Nothing contained herein shall prevent Declarant from asserting any claim or action against the City, or any of its agencies or any of its officials, arising out of the performance by the City, or agency thereof, or failure of the City or agency thereof, to perform, any the obligations of the City, or agency thereof, under this Declaration or the exercise, by the City, or any agency thereof, of any of its rights under this Declaration. Nothing contained herein shall prevent the City of New York or any of its officials from asserting any claim or action against

Declarant arising out of Declarant's performance of, or failure to perform, any of its obligations under this Declaration, or the exercise by Declarant of any of their rights under this Declaration.

[Signature page follows]

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

[ \_\_\_\_\_ ], a

New York limited liability company

By: \_\_\_\_\_

Name:

Title:

**ACKNOWLEDGEMENT**

STATE OF )  
 ) SS.:  
COUNTY OF )

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

\_\_\_\_\_

Notary Public

**EXHIBIT A**

**EXHIBIT A**

**PHASE I PARCEL  
PROPERTY DESCRIPTION**

**EXHIBIT B**

**CITY PARCEL**

**PROPERTY DESCRIPTION**

**EXHIBIT C**

**CERTIFICATION OF PARTIES-IN-INTEREST**

**(SEPARATE ATTACHMENT)**

**EXHIBIT C:1**

**WAIVERS AND SUBORDINATION**

**(SEPARATE ATTACHMENT)**

**EXHIBIT A**

**EXHIBIT D**

**PLANS**

**(SEPARATE ATTACHMENT)**

**EXHIBIT A**

**EXHIBIT E**

**PUBLIC ACCESS AREA DESIGN GUIDELINES  
(SEPARATE ATTACHMENT)**

## **PUBLIC ACCESS AREA DESIGN GUIDELINES**

### **SENDERO VERDE**

#### **General Principles**

The proposed Sendero Verde development includes a raised courtyard portion of the project's publicly accessible area as set forth on the Plans attached to this Declaration (the Courtyard), which serves as both open space for the development's residential and non-residential tenants and as publicly accessible open space for the public. The final approved design of the Courtyard should demonstrate it is inviting to the public, provide a variety of experiences to its users, and integrate well into the context of the Sendero Verde development and the surrounding community. The spaces should incorporate features to serve users of all ages.

#### **Public Access Area Design Guidelines**

- **Variety of landscape elements:** The Courtyard should incorporate a variety of features including softscape, walking areas, hardscape, and space for active uses such as a play area. A variety of planting types, paving materials and landscape features should be provided in order to create visual interest.
- **Provide for a Variety of Experiences:** The Courtyard should allow for quiet contemplation and relaxation, animated interaction among groups of individuals and space for active families. Design elements suitable for different activities should include areas for seating with close proximity to plantings.
- **Closure:** For times when the public access area is not open to the public, a gate or other mechanism may be used to close access from the street and inform the public that the area is closed. However, chain link fences may not be utilized. Such gate(s) should fold away entirely to the side of the path or public access area when open to public and without stanchions or posts remaining in the middle of the path when the gate is open.
- **Signage:** Adequate signage or other design and wayfinding mechanisms should be used at each street entrance and/or every location with a closure/gate to invite members of the public into and inform them about the public access area.
- **Adequate lighting:** The public access area should be appropriately illuminated. Lighting of walking and activity areas, within the sustainability goals of the development and the residential

character of the adjacent buildings, should be provided in a manner that creates a safe and usable space.

- **Variety of seating:** A variety of seating shall be used to provide varied and comfortable seating options for a variety of users in both solitary and social seating arrangements.
- **Adjacent building walls:** The facades of the Sendero Verde development that surround the public access area should have visual interest at the pedestrian level. The design of the public access area should be harmonious with the design of the building facades that form walls around it.

**EXHIBIT F**

**FORM NOTICE OF SUBSTANTIAL COMPLETION**

[Letterhead of the Chair of the City Planning Commission]

[Date]

**NOTICE OF SUBSTANTIAL COMPLETION**

Re: Block \_\_\_\_\_, Lot \_\_\_\_\_, New York, New York

Dear \_\_\_\_\_:

This letter constitutes the Notice of Substantial Completion of the Courtyard pursuant to Section 3 of the Restrictive Declaration made by [] dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Declaration").

By this notice, the undersigned, for the City Planning Commission, confirms that the Courtyard (as defined in the Declaration) has been Substantially Completed (as defined in the Declaration) in accordance with all requirements of the Declaration.

Yours very truly,

---

[THIS LETTER SHALL BE MODIFIED AS APPROPRIATE TO THE CERTIFICATION  
BEING ISSUED]

**EXHIBIT G**  
**FORM NOTICE OF FINAL COMPLETION**

[Letterhead of the Chair of the City Planning Commission]

[Date]

**NOTICE OF FINAL COMPLETION**

Re: Block \_\_\_\_\_, Lot \_\_\_\_\_, New York, New York

Dear \_\_\_\_\_:

This letter constitutes the Notice of Final Completion of the Courtyard pursuant to Section 3 of the Restrictive Declaration made by [] dated as of \_\_\_\_\_, \_\_\_\_\_ (the “Declaration”).

By this notice, the undersigned, for the City Planning Commission, confirms that the Courtyard (as defined in the Declaration) has been Substantially Completed (as defined in the Declaration) in accordance with all requirements of the Declaration.

Yours very truly,

---

[THIS LETTER SHALL BE MODIFIED AS APPROPRIATE TO THE CERTIFICATION  
BEING ISSUED]