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**IN THE MATTER OF** an application submitted by Cipico Construction Inc. 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 permit the distribution of total allowable floor area without regard for zoning lot lines or district boundaries and to modify the minimum base height requirements of Section 23-664 (Modified height and setback regulations for certain Inclusionary Housing buildings or affordable independent residence for seniors) to facilitate a proposed mixed-use development, within a large-scale general development, on property bounded by 10<sup>th</sup> Street, Vernon Boulevard, Broadway, 11<sup>th</sup> Street, and 33<sup>rd</sup> Road (Block 315, Lot 1), in R6B and R7X/C1-3 Districts, Borough of Queens, Community District 1.

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This application for a special permit was filed by Cipico Construction Inc. on April 16, 2019. The proposed special permit, along with its related actions, would facilitate the development of a mixed-use, large-scale general development containing residential, commercial, and community facility uses and publicly-accessible open space on a full block site (Block 315, Lot 1) bounded by Vernon Boulevard and Broadway to the north, 11<sup>th</sup> Street to the east, 33<sup>rd</sup> Road to the south and 10<sup>th</sup> Street to the west in Astoria, Queens Community District 1.

### **RELATED ACTIONS**

In addition to the special permit (C 190386 ZSQ) which 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 100421 ZMQ**      Zoning map amendment changing from an R5 District to an R6B District and an R7X/C1-3 District.

**N 190151 ZRQ**      Zoning text amendment to designate a Mandatory Inclusionary Housing (MIH) area.

## **BACKGROUND**

The applicant is proposing to construct three new mixed-use buildings as part of a large-scale general development (LSGD), including market-rate and affordable housing, retail and community facility spaces, and private and publicly-accessible open spaces, on a 77,345 square-foot irregularly-shaped block located near the East River in the southwesterly portion of Astoria, Queens. The development site consists of the block bounded by Vernon Boulevard and Broadway to the north, 11<sup>th</sup> Street to the east, 33<sup>rd</sup> Road to the south, and 10<sup>th</sup> Street to the west (Project Area). Each of the proposed mixed-use buildings would have community facility and residential uses. Retail uses are proposed in a building to be situated along Vernon Boulevard. The proposed publicly-accessible open space would have an area of 16,546 square feet. It is planned to be located directly across 10<sup>th</sup> Street from the sculpture garden of the Noguchi Museum, and it is designed for passive recreation as well as to accommodate a range of event and cultural arts programming. A special permit, as well as, zoning map and text amendments, would be required to facilitate the new development located at this full-block location.

The Project Area, and its surroundings south of Broadway, have been zoned R5 since 1961, but are predominately developed with non-conforming industrial and commercial uses.

The 2010 Astoria Rezoning (C 100199 ZMQ), sponsored by the Department of City Planning (DCP), rezoned all or portions of 238 blocks to the north of the Project Area. The rezoning was intended to more closely reflect established development patterns, direct opportunities for residential and commercial growth to locations along wide streets and transit resources, and provide incentives for affordable housing. To the north of the Project Area, an R7A District is mapped along Vernon Boulevard and Broadway. An associated text amendment established a voluntary Inclusionary Housing Program in the R7A District mapped along Vernon Boulevard north of Broadway, as well as other rezoned locations. R7A zoning generally allows residential buildings of around eight stories in height. C1-3 and C2-3 commercial overlays are also mapped along Vernon Boulevard and Broadway, but there are few existing commercial uses. An R5B District is mapped northeast of the Project Area, which is predominately developed with two-story residential buildings.

The neighborhood surrounding the Project Area is predominately developed with a mix of residential, commercial, light industrial, community facility, park, and vacant/parking uses. The prevailing built form in the surrounding area varies by use. New multi-family residential developments to the north of the Project Area range from eight to 20- stories tall. Older housing stock includes one- to two-story residential buildings and multi-family walkup apartment buildings. Commercial and light industrial buildings are generally low-scale, high lot coverage, warehouse buildings.

Immediately to the west of the Project Area is the Noguchi Museum, located on a triangular block situated between 10th Street, 33rd Road, and Vernon Boulevard. The museum is an approximately 27,000 square-foot, two-story building with an open-air sculpture garden occupying the northwest corner of 10th Street and 33rd Road.

Further to the west of the Project Area across Vernon Boulevard is a Costco wholesale store, its accessory surface parking lot and a publicly-accessible waterfront esplanade. Costco is located between Socrates Sculpture Park and Rainey Park. Both parks are owned by the NYC Department of Parks and Recreation (“DPR”). Socrates Sculpture Park is managed by a non-profit organization that operates it as an outdoor public art museum.

To the east of the Project Area across 11<sup>th</sup> Street is a one-story building occupied by automobile repair uses, a surface lot used for parking taxi cabs and a small, one-story warehouse building. A vacant lot occupies the rest of the block. The area further east and southeast is predominately developed with a mix of automotive, warehouse, distribution and light industrial uses housed in low-rise buildings with high lot coverage.

The area to the south of the Project Area has a mix of low-rise industrial and residential uses. Directly south of the Project Area is a one-story building occupied by welding and stone importing and carving businesses. Farther south are two- to four-story residential buildings. Other blocks to the south have a similar mix of industrial uses and two- to four-story residential buildings.

A landmarked building, the six-story former Sohmer Piano Factory Company (LP-2172,

designated February 27, 2007), is located to the north of the Project Area. The piano factory was converted to residential condominiums in 2010.

Community facility uses in the surrounding area, in addition to the Noguchi Museum, include Long Island City High School (Q450), located to the east of the Project Area, and the Islamic Unity Mosque and Ideal Islamic School, located northeast of the Project Area.

The surrounding area is well served by public transit. Bus lines proximate to the Project Area include the Q104 (Sunnyside/Ravenswood) running along Broadway and the Q103 (Astoria/Hunters Point) running along Vernon Boulevard. Three blocks to the east is the Q69 (Long Island City/Jackson Heights) running along 21st Street. The Broadway elevated transit station, with access to the N and W lines, is located approximately 3/4-mile east of the Project Area at Broadway and 31st Street. The 21st Street-Queensbridge subway station serving the F line is located approximately one mile south of the Project Area. The Astoria stop of the NYC Ferry is approximately 1/2-mile north of the project area. The ferry route includes stops at Roosevelt Island, Long Island City Gantry Plaza, East 34th Street, and Wall Street.

The Project Area is currently developed with a non-conforming one-story warehouse that occupies a small portion of the site, while much of the site is used for open storage of construction materials and related equipment. The proposed actions would facilitate the development of a LSGD consisting of three, mixed-use buildings with a total of approximately 334,084 square feet of floor area that would include 11,236 square feet of commercial floor area, 6,882 square feet of community facility floor area, and 315,965 square feet of residential floor area. Overall, the LSGD was originally proposed to provide a total of 351 dwelling units, of which approximately 113 would be permanently affordable under the Mandatory Inclusionary Housing (MIH) Program. In response to Community Board 1's request that there be larger unit sizes to accommodate larger households, on May 23, 2019, the applicant revised the proposal to 330 units, with an increase in the number of larger apartments in the LSGD (108 two-bedroom and 15 three-bedroom units). The total number of permanently affordable apartments was changed from 113 to 92.

In addition, the LSGD would provide approximately 16,546 square feet of publicly accessible landscaped open space at the southwest corner of the site and approximately 1,189 square feet of publicly accessible open space located at the northern edge of the site. A subsurface accessory parking garage with 166 accessory parking spaces is proposed to have entry and exit locations on 11<sup>th</sup> Street. The proposed site plan provides for commercial space to be situated along the Vernon Boulevard frontage, community facility spaces on 10<sup>th</sup> Street, Vernon Boulevard and 11<sup>th</sup> Street frontages, and the residential lobbies on 10<sup>th</sup> Street and 11<sup>th</sup> Street. Individual building descriptions as originally proposed are as follows:

#### *Building A*

Building A would be a five-story residential building with ground floor community facilities located at the southern end of the Project Area at the corner of 33<sup>rd</sup> Road and 11<sup>th</sup> Street. It would contain approximately 29,405 square feet of floor area, including 4,266 square feet of community facility floor area and 25,139 square feet of residential floor area. Building A would contain 30 dwelling units with approximately eight permanently affordable units. Its base height would be 45 feet, and it would have a maximum building height of 55 feet after a 10-foot setback along 11<sup>th</sup> Street and a 15-foot setback along 33<sup>rd</sup> Road. Community facility space would be in the ground floor, at the corner, and the residential lobby would be located midblock on 11<sup>th</sup> Street.

#### *Building B*

Building B would be a nine-story, residential building with ground floor community facility space. It would have a T-shaped floorplate, with approximately 150 feet of frontage on 11<sup>th</sup> Street and approximately 60 feet of frontage on 10<sup>th</sup> Street. The building would contain approximately 95,134 square feet of floor area, about 93,839 square feet of which would be developed as 110 dwelling units, with approximately 33 permanently affordable units. Building B would be composed of four-, five-, and nine-story elements. It would rise to nine-stories on its 11<sup>th</sup> Street frontage, while its four-story portion, having a height of 45 feet, would front on 10<sup>th</sup> Street, opposite the low-scale Noguchi Museum to the west. Residential lobbies would be located on the building's 11<sup>th</sup> and 10<sup>th</sup> Street frontages. An approximately 1,294 square-foot community facility space would be located on the building's 10<sup>th</sup> Street frontage adjacent to the publicly-accessible open space, which is

described in greater detail below. An accessory parking garage with 166 spaces would be in the cellar, accessed by two new curb cuts on 11<sup>th</sup> Street—one for ingress and one for egress.

### *Building C*

Building C is proposed to be a 14-story mixed-use building with residential units and ground floor commercial and community facility uses. This building, with approximately 209,546 square feet of floor area, would be located at the northern end of the Project Area, and would have frontage on 10<sup>th</sup> Street, Vernon Boulevard, and 11<sup>th</sup> Street. The ground floor would contain 11,236 square feet of commercial floor area and 1,321 square feet of community facility floor area. Building C would also contain approximately 196,998 square feet of residential floor area developed with approximately 210 dwelling units, including approximately 63 permanently affordable units. Building C would have eight-, nine-, 10-, 11-, and 14-story elements above a base height of 65 feet (six stories). Its tallest portion (145 feet) would be at the northern end of the Project Area near the intersection of Vernon Boulevard and Broadway. Due to the resiliency standards, the ground floor of Building C would be elevated above surrounding sidewalk grades by over four and one-half feet to a design flood height of 13 feet, and it would be accessed from the Vernon Boulevard sidewalk by either a stairway to be located in the center of this frontage or from an approximately 1,189 square-foot triangular publicly-accessible open space to be located at the northernmost edge of the Project Area with seating, stairs and a ramp for accessibility. Residential lobbies to be located on 10<sup>th</sup> Street and 11<sup>th</sup> Street would be accessed at existing sidewalk grades with interior stairs and lifts.

### *Open Space Areas*

At the southwest corner of the Project Area, an approximately 16,546 square-foot landscaped publicly-accessible open space area would be provided. This public open space would be accessible from multiple entrances on 33<sup>rd</sup> Road and 10<sup>th</sup> Street, and its hours of operation would be 7:00 am until 8:00 pm from April 15<sup>th</sup> until October 31<sup>st</sup>, and from dawn to dusk from November 1<sup>st</sup> until April 14<sup>th</sup>. The park-like open space would feature extensive landscaping, a raised stage/platform, freestanding benches, built in seating, moveable café tables and chairs and lighting. Planting beds to facilitate landscaping with a variety of trees, including evergreen conifer trees, would be situated along 10<sup>th</sup> Street facing the Noguchi Museum sculpture garden to create year-

round natural buffering between the proposed development and the museum. The public open space is designed to allow passive recreation and flexibility for community oriented cultural arts activities and other special events. In addition, the approximately 1,189 square foot public open space at the northern edge of the site would draw visitors into the new commercial uses along Vernon Boulevard. Taken as a whole, these two public open spaces would provide a combined open space area of approximately 17,734 square feet total which is equivalent to approximately 22.9 percent of the site.

A second more interior and privately-oriented open area of approximately 15,868 square feet would be provided between Buildings B and C. This open area would be accessory to the 330 new residential units and satisfies residential recreation space requirements under the Quality Housing guidelines for R6 and R7 districts. Based on the total proposed residential floor area of 315,566 square feet, a minimum of 10,426 square feet of recreation space would be required to comply with the Quality Housing guidelines. A portion of the private open space would also be allocated for accessory use by commercial tenants for outdoor dining or other accessory uses depending on the needs of commercial tenants. This accessory outdoor space would only be accessible from the commercial establishment entrances along Vernon Boulevard, and it would not provide any access to the private open space.

To facilitate the proposed development, three actions are required: a zoning map amendment to rezone the project area from an R5 zoning district to R6B and R7X/C1-3 zoning districts (C 100421 ZMQ); a zoning text amendment to establish the project area as an MIH area (N 190151 ZRQ); and a special permit pursuant to ZR 74-743 to allow within a LSGD the distribution of floor area without regard for zoning lot lines and to modify the minimum base height requirements of Section 23-664 (C 190386 ZSQ).

#### *Zoning Map Amendment (C 100421 ZMQ)*

The proposed zoning map change would rezone an existing R5 zoning district on the block containing the Project Area (Block 315, Lot 1) with an R6B zoning district having a depth of 100 feet from the 33<sup>rd</sup> Road street line where Building A would be built and an R7X/C1-3 zoning district on the remainder of the block where Building B and Building C would be built. The

existing and proposed residential zoning districts differ in allowable housing scale. Compared to the maximum residential FAR of 1.25 in an R5 zoning district, the proposed R6B zoning district permits a maximum FAR of 2.2 with the provision of inclusionary housing, and a maximum building height of 55 feet compared to 40 feet in an R5 zoning district. The proposed R7X zoning district permits a maximum FAR of 6.0 with the provision of inclusionary housing. The maximum building height in an R7X zoning district is 145 feet.

*Zoning Text Amendment (N 190151 ZRQ)*

The proposed zoning text amendment would modify Appendix F to establish an MIH area encompassing Block 315. MIH Options 1 and 2 are proposed for this MIH Area.

*Zoning Special Permit (C 190386 ZSQ)*

The requested special permit for LSGD pursuant to Section 74-743 would allow two waivers necessary to facilitate a site plan and building massing strategy that would better relate to the surrounding area. As noted previously, development on the blocks surrounding the Project Area varies from eight- to 20-story multi-family buildings in the area north of Broadway to the low-scale residential and light industrial uses to the east, south, and west. The two-story Noguchi Museum and its outdoor sculpture garden are especially important elements to be considered for harmonious development of the Project Area.

The special permit would facilitate the deployment of allowable zoning floor area to concentrate building heights on the more northerly portion of the Project Area close to adjoining wide streets - Vernon Boulevard, Broadway, and 11<sup>th</sup> Street. The portion of Building C that would reach a height of 14 stories (145 feet) would be located at the northern end of the site while portions of Buildings A and B would be much lower at the southern end of the site at five and four stories, respectively. Additionally, over 16,500 square feet of area located in the southwest corner of the Project Area closest to the Noguchi Museum would be left unbuilt and landscaped as publicly-accessible open space.

In order to facilitate the building massing and site plan of the LSGD, a zoning special permit to allow the distribution of floor area without regard for zoning lot lines would also be needed.

Pursuant to Section 23-154, the maximum permitted floor area within the Project Area's two zoning lots would be a total of 393,017 square feet. Zoning Lot A, which is proposed to be at the southern end of the Project Area within both R6B and R7X/C1-3 zoning districts, would be allowed a subtotal of 207,469 square feet of floor area and Zoning Lot B, which is proposed to be at the northern end of the Project Area within the R7X/C1-3 zoning district, would be allowed a maximum of 185,548 square feet of floor area. The proposed LSGD, however, would allow Zoning Lot B to exceed the maximum permitted floor area of 185,548 square feet on the zoning lot by 23,998 square feet by shifting this amount from Zoning Lot A. A proposed waiver pursuant to Section 74-743(a)(1) would allow the 23,998 square feet of floor area that exceeds the maximum floor area permitted on Zoning Lot B to be calculated without regard to zoning lot lines. The proposed waiver would result in a compliant overall floor area for the LSGD of 334,085 square feet, below the maximum 393,017 square feet of combined floor area that would be permitted within the Project Area. The proposed distribution of floor area allows the reduced height and publicly-accessible open space on Zoning Lot A in the southern portion of the Project Area.

The second LSGD special permit waiver would allow portions of Building B to have a base height of only 45 feet, which is less than the minimum base height of 60 feet required in the proposed R7X zoning district. The proposed waiver of the minimum base height would allow Building B to have a height of 45 feet at its 10<sup>th</sup> Street frontage and a base height of 45 feet along its 11<sup>th</sup> Street frontage. This base height would match the base height of Building A within the R6B zoning district, so as to respond to the lower scale of the surrounding R5 zoning district and especially the Noguchi Museum and sculpture garden.

## **ENVIRONMENTAL REVIEW**

This application (C 190386 ZSQ), in conjunction with the related applications (C 100421 ZMQ and N 190151 ZRQ), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 12DCP139Q. The lead agency is the City Planning Commission.

After a study of the potential environmental impact of the proposed actions, a Negative Declaration was issued on April 22, 2019. This Negative Declaration includes an (E) designation to avoid the potential for significant adverse impacts related to air quality, noise and hazardous materials (E-518). The requirements of the (E) designation are described in the Environmental Assessment Statement and Negative Declaration.

### **WATERFRONT REVITALIZATION PROGRAM**

This application (C 190386 ZSQ) was reviewed by DCP for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, as approved by the New York City Council on October 30, 2013 and by the New York State Department of State on February 3, 2016, pursuant to the New York State Waterfront Revitalization and Coastal Resources Act of 1981, (New York State Executive Law, Section 910 *et seq.*). The designated WRP number is 14-006. This action was determined to be consistent with the policies of the WRP.

### **UNIFORM LAND USE REVIEW**

This application (C 190386 ZSQ) was certified as complete by DCP on April 22, 2019 and duly referred to Queens Community Board 1 and the Queens Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

### **Community Board Public Hearing**

Queens Community Board 1 held a public hearing on this application (C 190386 ZSQ) on May 23, 2019 and on that day, by a vote of 22 in favor, two opposed, with two abstentions, adopted a resolution recommending approval of the application.

### **Borough President Recommendation**

The Queens Borough President held a public hearing on this application (C 190386 ZSQ) on June 13, 2019 and on July 15, 2019 issued a recommendation approving the application with the following conditions:

- “The applicant should honor their commitments to the community board and that the changes as presented are memorialized with the Departments of City Planning, and

Housing Preservation and Development as stipulated by Community Board 1 in their recommendation;

The applicant should work with the building trades and service unions on agreements that would bring the skills and experience needed to build the project efficiently and safely during construction, and to assure the quality and success of the development upon completion.”

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

On July 31, 2019, (Calendar No. 7), the City Planning Commission scheduled August 14, 2019 for a public hearing on this application (C 190386 ZSQ) and the related applications (C 100421 ZMQ and N 190151 ZRQ). The hearing was duly held on August 14, 2019 (Calendar No.58). There were three speakers in favor of the application and none opposed.

A representative of the applicant summarized the requested actions, including a description of the zoning map change, zoning text change and special permit to facilitate a large-scale general development. The representative emphasized the public benefits that would be facilitated by the approval of the applications, including: a large publicly-accessible open space, community facilities, new local retail and commercial uses, and permanently affordable housing. The speaker also stated that the overall design of the three proposed new buildings would be respectful of the relationship with the Noguchi Museum across 10<sup>th</sup> Street.

A resident of Astoria, and member of a construction union, stated that the proposed project would help bring much needed affordable housing and jobs and further goals for the economic development of Astoria.

A resident of Queensbridge Houses stated that the project would provide an exciting new development opportunity and would bring new jobs into the area and benefit the neighborhood.

There were no other speakers on the application, and the hearing was closed.

## CONSIDERATION

The Commission believes that this application for a special permit (C 190386 ZSQ), in conjunction with the related applications for a zoning map amendment and a text amendment (C 100421 ZMQ and N 190151 ZRQ), is appropriate.

The approval of these applications will support new development on an underutilized site and facilitate the development of new housing, including permanently affordable housing. The Commission believes that the proposed LSGD will enliven the block and support the growing residential community in western Astoria by providing both affordable and market rate units. The Commission further believes that proposed massing and the siting of the three new buildings will allow for a visually open and inviting public space at the southeast corner of the Project Area and would respect the low scale character of the Noguchi Museum across 10<sup>th</sup> Street.

### *Zoning Map Amendment*

The Commission believes that the proposed zoning map amendment (C 100421 ZMQ) to change the existing R5 zoning district to an R6B zoning district on the southern half of the block, and an R7X/C1-3 District on the northern half of the Project Area, is appropriate. Both R6B and R7X zoning districts allow for an increase in maximum floor area for residential uses that would create more opportunities for housing and further the objectives of the City's Housing New York: A Five-Borough, Ten-Year Plan. The existing R5 zoning district does not permit commercial use and has a maximum FAR of 1.25 for residential uses. The maximum FAR in an R6B zoning district is 2.2 with MIH and 6.0 in an R7X zoning district with MIH. The Commission believes that the proposed C1-3 district paired with the proposed R7X district is appropriate to provide local commercial uses in an area that has traditionally lacked much basic retail offerings, such as supermarkets, restaurants and drugstores. The Commission believes that these zoning map changes, in conjunction with the zoning text amendment and the special permit, will allow for an appropriate density and mix of uses immediately adjacent to Vernon Boulevard and Broadway—both major thoroughfares. The Commission also believes that the proposed density, bulk and mix of uses will provide an appropriate transition between the older, and lower density industrial fabric of the side streets off Vernon Boulevard and the newer, higher density residential mixed-use fabric on the waterfront.

### *Zoning Text Amendment*

The Commission believes that the proposed zoning text amendment (N 190151 ZRQ) for establishing an MIH area is appropriate. The action will designate a new MIH area coterminous with the rezoning area. The MIH area will allow both Options 1 and 2. The project sponsor will use Option 1 for permanently affordable apartments in Buildings A and B and use Option 2 for affordable units in Building C. Option 1 requires that 25 percent of residential floor area be set aside for affordable housing units for residents with incomes averaging 60 percent of the area median income. Option 2 requires that 30 percent of residential floor area be set aside for affordable housing units for residents with incomes averaging 80 percent of the area median income. This action is consistent with the goal of providing additional permanently affordable homes in the city.

### *Zoning Special Permit*

The Commission believes that the proposed special permit (C 190386 ZSQ) pursuant to Section 74-743 is appropriate. The proposed building form, which would not be permitted by the underlying zoning, will provide an inviting public open space that will complement and connect to the waterfront as well as adjacent arts institutions such as the Noguchi Museum, without obstructing public views or light and air. The overall building massing of four and five stories at the southern end before rising to 10, 12 and 14 stories at the northern end closest to Vernon Boulevard and Broadway is respectful of the area's built form. The special permit will permit the distribution of total allowable floor area without regard for zoning lot lines and modify the minimum base height requirements to facilitate this improved building massing and site plan to ensure the project is consistent with the existing context. A restrictive declaration is required to be filed before development pursuant to the special permit can commence, and it will ensure that an approximately 16,546 square-foot publicly accessible open space will be set aside for the public that is well-lit and inviting.

## **FINDINGS**

The Commission notes that the conditions set forth in Section 74-743 of the Zoning Resolution have been satisfied, and hereby makes the following findings pursuant to Section 74-743 of the Zoning Resolution:

- (1) for a #large-scale general development# the distribution of #floor area#, #open space#, #dwelling units#, #rooming units# and the location of #buildings#, primary business entrances and #show windows# will result in a better site plan and a better relationship among #buildings# and open areas to adjacent #streets#, surrounding development, adjacent open areas and shorelines than would be possible without such distribution and will thus benefit both the occupants of the #large-scale general development#, the neighborhood and the City as a whole;
- (2) the distribution of #floor area# and location of #buildings# will not unduly increase the #bulk# of #buildings# in any one #block# or unduly obstruct access of light and air to the detriment of the occupants or users of #buildings# in the #block# or nearby #blocks# or of people using the public #streets#;
- (3) 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;
- (4) 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.

## **RESOLUTION**

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

**RESOLVED**, that the City Planning Commission, in its capacity as the City Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed action is consistent with WRP policies; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter that based on the environmental determination, and the consideration and findings described in this report, the application submitted by Cipico Construction Inc. pursuant for the grant of a special permit pursuant to Section 74-743 of the Zoning Resolution:

1. to permit the distribution of total allowable floor area without regard for zoning lot lines or district boundaries
2. to modify the minimum base height requirements of Sections 23-664 to facilitate a proposed mixed-use development, within a large-scale general development

on property bounded by 10<sup>th</sup> Street, Vernon Boulevard, Broadway, 11<sup>th</sup> Street and 33<sup>rd</sup> Road (Block 315, Lot 1), in R6B and R7X/C1-3 districts in Astoria, Borough of Queens, Community District 1, is approved subject to the following terms and conditions:

1. The development that is the subject of this application (C 190386 ZSQ) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following approved plans prepared by Gerald J. Caliendo, Architects, and Starr Whitehouse Landscape Architects filed with this application and incorporated in this resolution, and in accordance with the provisions and procedures set forth in the Restrictive Declaration:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-300	Zoning Analysis	4.9.19
Z-400	Site Plan Proposed Conditions	4.9.19
Z-600	Waiver Plan	4.9.19

Z-601	Sections Building C	4.9.19
Z-602	Sections Building C	4.9.19
Z-603	Sections Building A & B	4.9.19
Z-604	Sections Building A & B	4.9.19
Z-605	Sections Building A & B	4.9.19
Z-606	Sections Building A & B	4.9.19
L-100	Schematic Design Materials Plan	7.26.19
L-101	Schematic Design Lighting Plan	4.30.19
L-200	Schematic Design Layout Plan	4.30.19
L-300	Schematic Design Grading Plan	4.30.19
L-400	Furnishings and Programming	7/26/19
L-500	Schematic Design Sections I	4/16/19
L-501	Schematic Design Sections II	4/16/19

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 their construction, operation and maintenance.
  
4. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this report and resolution and any subsequent modifications shall be provided to the Attorney General of the State of New York at the time of application for any such

condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.

5. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sub-lessee or occupant.
6. 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, has been executed and recorded in the Office of the Register, Queens County.
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 and the restrictive declarations whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any 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 or government, or any private person or entity. Any such filature 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 or of the restrictive declarations.
8. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city or such employees or agents failure to act in accordance with the provisions of this special permit.

The above resolution (C 190386 ZSQ), duly adopted by the City Planning Commission on September 11, 2019 (Calendar No. 7) is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

**MARISA LAGO**, *Chair*

**KENNETH J. KNUCKLES, Esq.**, *Vice Chairman*

**DAVID J. BURNEY, ALLEN P. CAPPELLI, Esq., ALFRED C. CERULLO, III,**

**MICHELLE de la UZ, JOSEPH I. DOUEK, RICHARD W. EADDY,**

**HOPE KNIGHT, ANNA HAYES LEVIN, ORLANDO MARIN,**

**LARISA ORTIZ, RAJ RAMPERSHAD** *Commissioners*

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

THIS DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT (this "Declaration"), is made as of this \_\_\_\_ day of \_\_\_\_\_ 2019 by CIPICO CONSTRUCTION INC., a domestic business corporation, having an address at 58-08 48th Street, Maspeth, NY 11378 (the "Declarant").

### **WITNESSETH:**

WHEREAS, the Declarant is the fee owner of certain real property located in the Borough and County of Queens, City and State of New York, known as and by the street address 32-01 Vernon Boulevard and designated for real property tax purposes as Block 315, Lot 1, which real property is more particularly described in **Exhibit A** annexed hereto and made a part hereof (the "Subject Property"): and

WHEREAS, Declarant desires to improve the Subject Property as a "large-scale general development" meeting the requirements of a "large-scale general development" as such term is defined in Section 12-10 of the Zoning Resolution of the City of New York, effective December 15, 1961, as amended (such proposed improvement of the Subject Property hereinafter referred to as the "Large-Scale Development Project"); and

WHEREAS, in connection with the Large-Scale Development Project, Declarant has filed an application with the New York City Department of City Planning ("City Planning") for approval by New York City Planning Commission (the "Commission" or "CPC") of: (1) a Map Amendment to Zoning Map 9a to change the Subject Property from an R5 zoning district to R6B and R7X/C1-3 zoning districts, under Application No. 100421 ZMQ; (2) a Text Amendment to Appendix F of the Zoning Resolution to create a Mandatory Inclusionary Housing district at the Subject Property under Application No. N 190151 ZRQ; and (3) a Special Permit, pursuant to Zoning Resolution Section 74-743, to waive certain distribution of floor area across zoning lot boundaries and minimum base height regulations applicable to the Subject Property under Application No. 190386 ZSQ (the "Large-Scale Special Permit") (collectively, the "Land Use Applications");

WHEREAS, the site plan for the Large-Scale Development Project, attached hereto as **Exhibit B**, designates publicly accessible open space areas that are to be constructed and maintained by Declarant and accessible to the public as set forth in this Declaration (referred to herein as the "Publicly Accessible Open Space");

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 Zoning Resolution Section 12-10 be filed with the Commission; and

WHEREAS, Ultimate Abstract (the "Title Company") has certified in the certification (the "Certification") attached hereto as **Exhibit C** and made a part hereof, that as of \_\_\_\_\_, Declarant is the sole party-in-interest (the "Party-in-Interest") in the Subject Property, as such term is defined in the definition of "zoning lot" in Section 12-10 of the Zoning Resolution;

WHEREAS, The Party-in-Interest to the Subject Property has executed this Declaration;  
and

WHEREAS, Declarant desires to restrict the manner in which the Subject Property is developed in the future, and intends these restrictions to benefit all the land, including land owned by the City, lying within a one-half-mile radius of the Subject Property.

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

### **DEVELOPMENT AND USE OF THE SUBJECT PROPERTY**

1.1 Designation of Large-Scale General Development. Declarant hereby declares and agrees that, following the Effective Date (as defined in Section 4.4), the Subject Property, if developed pursuant to the Large-Scale Special Permit, shall be treated as a large-scale general development site and shall be developed and enlarged as a single unit.

1.2 Development of Large-Scale Development Site. If the Subject Property is developed in whole or part in accordance with the Large-Scale Special Permit, Declarant covenants that the Subject Property shall be developed in substantial conformity with the following plans prepared by Gerald J. Caliendo Architect, P.C. approved as part of the Large-Scale Special Permit and annexed hereto in **Exhibit D** and made a part hereof:

<b>Drawing No.</b>	<b>Title</b>	<b>Date</b>
Z-300	Zoning Analysis	4/9/2019
Z-400	Site Plan Proposed Conditions	4/9/2019
Z-600	Waiver Plan	4/9/2019
Z-601	Sections Building C	4/9/2019
Z-602	Sections Building C	4/9/2019
Z-603	Sections Building A & B	4/9/2019
Z-604	Sections Building A & B	4/9/2019
Z-605	Sections Building A & B	4/9/2019
Z-606	Sections Building A & B	4/9/2019
L-100	Schematic Design Materials Plan	7/26/2019
L-101	Schematic Design Lighting Plan	4/30/2019
L-200	Schematic Design Layout Plan	4/30/2019
L-300	Schematic Design Grading Plan	4/30/2019
L-400	Furnishings and Programming	7/26/2019
L-500	Schematic Design Sections I	4/16/2019
L-501	Schematic Design Sections II	4/16/2019

1.3 If the Declarants seek to develop the Subject Property other than pursuant to the Large Scale Special Permits, the Large Scale Special Permits shall be deemed surrendered and Declarants may not develop the Subject Property except as permitted by the zoning district regulations and any other applicable restrictions.

## ARTICLE II

### **PUBLICLY ACCESSIBLE OPEN SPACE**

#### 2.1 Construction of the Publicly Accessible Open Space.

(a) Declarant shall construct the Publicly Accessible Open Space substantially in accordance with the specifications in Drawing No. Z-400.00 of the Plans, attached hereto in Exhibit B.

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

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

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

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

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

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

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

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

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

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

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

## 2.2 Public Access Easement.

(a) Immediately upon the certification of Substantial Completion, Declarant grants the City of New York and the general public a permanent, perpetual access easement over the entirety of the Publicly Accessible Open Space, unobstructed from the surface of the Publicly Accessible Open Space to the sky, for the purposes of (i) passive recreational use by the general public and (ii) pedestrian access (the “Public Access Easement”).

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

## 2.3 Hours of Access.

(a) The Publicly Accessible Open Space shall be open and accessible to the public each day during the hours of 7 am to 8 pm from April 15th to October 31st and from dawn until dusk from November 1st to April 14th.

(b) Declarant may only close the Publicly Accessible Open Space, in a manner that reduces the area closed to the utmost extent, in order to: (a) perform required maintenance, repairs, or replacements of the Publicly Accessible Open Space, or portions thereof, and shall notify the Chair of such closure no less than seven (7) days in advance and such notice shall set forth the area and duration of closure as well as confirm the posting of signs providing prior notice to the public at appropriate locations and entrances of the Publicly Accessible Open Space; or (b) perform required repair, restoration, rehabilitation, renovation, or replacement of pipes, utility lines or conduits or other equipment on or under a the Publicly Accessible Open Space and shall notify the Chair of such closure no less than ten (10) days in advance and such notice shall set forth the area and duration of closure as well as confirm the posting of signs providing prior notice to the public at appropriate locations and entrances of the Publicly Accessible Open Space; or (c) to make emergency repairs to mitigate hazardous site conditions or address other emergency conditions as specified in Article 2.3(c).

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

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

2.4 Maintenance and Repair. Declarant shall be responsible for the maintenance and repair of the Publicly Accessible Open Space in accordance with the standards set forth herein (the "Maintenance and Repair Obligations"). All such maintenance shall be performed in a good and worker-like manner.

(a) Cleaning.

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

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

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

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

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

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

(b) Landscape Maintenance. A maintenance program for the planted portions of the Publicly Accessible Open Space shall be established, consisting of a "Spring Start-up Period" program, a "Season Closing Period" program, and a continuing maintenance program through the "Growing Season."

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

(a) Remove any winter protectives from trees, shrubs and other planting materials;

(b) Remove all landscaping debris including leaves and dead branches;

(c) Prune and trim trees that have overextended, dead or otherwise unsightly branches to maintain natural form;

(d) Remove or destroy any weeds growing between paving blocks, pavement, and concrete areas;

(e) Apply commercially available nitrogen rich fertilizer to trees, shrubs, planting materials and other lawn areas as appropriate;

(f) Remove any sand deposited as a result of winter sandings;

(g) Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with specimens of substantially equal type and reasonable size;

(h) Reseed grassed areas as needed.

(ii) Season Closing Period: The Season Closing Period shall begin on October 1st and shall terminate not later than November 1st of each calendar year. The following work shall be undertaken and carried out during the Season Closing Period:

- (a) Rake and collect leaves;
- (b) Wrap trees, shrubs, and other plant materials as necessary to ensure adequate winter protection;
- (c) Apply commercially available nitrogen rich fertilizer to all lawn areas;
- (d) Reseed grassed areas as needed.

(iii) Growing Season: The Growing Season shall commence at the end of the Spring Start-up period and shall terminate at the end of the Season Closing Period. The following work shall be undertaken and carried out during the Growing Season:

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

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

- (i) Benches or Other Seating: Maintenance, including replacement of any broken or missing slats and painting, as necessary;
- (ii) Walls or Other Barriers: Any broken or materially cracked walls, or barriers shall be repaired or removed and replaced;
- (iii) Paving: All paved surfaces shall be maintained so as to be safe and attractive;
- (iv) Signage: All signs and graphics shall be maintained in good condition and all vandalized or damaged signage shall be promptly cleaned or replaced with new signage or graphics;

(v) Painting: All items with painted surfaces shall be painted on an “as needed” basis. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the installed color;

(vi) Plant Materials and Trees: Plant materials and trees that are dead, diseased and/or otherwise unhealthy shall be replaced with healthy specimens of substantially equal type and reasonable size; and

(vii) Construction Defects and Hazardous Conditions: Declarant shall periodically inspect the Publicly Accessible Open Space for construction defects and hazardous conditions and shall promptly repair and remediate any construction defects or hazardous conditions, as well as implement any safety measures required on an interim basis to protect public safety.

2.5 Signage. Pursuant to Local Law 116 of 2018, the Publicly Accessible Open Space qualifies as a Privately Owned Public Space (“POPS”), and Declarant shall comply with any signage regulations therein promulgated by the Department of City Planning regarding POPS and the sign regulations set forth in Zoning Resolution Section 37-75.

### ARTICLE III

#### **DEFAULTS AND REMEDIES**

3.1 Declarant acknowledges that the restrictions, covenants, and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. If Declarant fails to perform any of Declarant’s obligations under this Declaration, the City shall have the right to enforce this Declaration against Declarant and exercise any administrative legal or equitable remedy available to the City, and Declarant hereby consents to same; provided that this Declaration shall not be deemed to diminish Declarant’s or any other Party in Interest’s right to exercise any and all administrative, legal, or equitable remedies otherwise available to it, and provided further, that the City’s rights of enforcement shall be subject to the cure provisions and periods set forth in Section 3.3. 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; provided, however, that such right of revocation shall not permit or be construed to permit the revocation of any certificate of occupancy for any use or improvement that exists on the Subject Property as of the date of this Declaration;

3.2 Notwithstanding any provision of this Declaration, only Declarant, and Declarant’s successors and assigns and the City, acting through CPC, shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration. Nothing contained herein should be construed or deemed to allow any other person or entity to have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Land Use Applications.

3.3 Prior to City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, City shall give Declarant, every mortgagee of all or any portion of the Property (a "Mortgagee") and every Party in Interest thirty (30) business days written notice of such alleged violation, during which period Declarant, any Party in Interest and Mortgagee shall have the opportunity to effect a cure of such alleged violation or to demonstrate to City why the alleged violation has not occurred. If a Mortgagee or Party in Interest performs any obligation or effects any cure Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including CPC and City, as if performed by Declarant. If Declarant, any Party in Interest or Mortgagee commences to effect such cure within such thirty (30) day period (or if cure is not capable of being commenced within such thirty (30) day period, Declarant, any Party in Interest or Mortgagee commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid thirty (30) day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as Declarant, any Party in Interest or Mortgagee continues to proceed diligently with the effectuation of such cure. In the event that more than one Declarant exists at any time on the Subject Property, notice shall be provided to all Declarants from whom City has received notice in accordance with Section 3, and the right to cure shall apply equally to all Declarants.

3.4 If, after due notice and opportunity to cure as set forth in this Declaration, Declarant, Mortgagee or a Party in Interest shall fail to cure the alleged violation, the City may exercise any and all of its rights, including without limitation those delineated in this Section 3 and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Declarant is in default of a material obligation under this Declaration.

## ARTICLE IV

### MISCELLANEOUS

4.1 Representation. Declarant hereby represents and warrants that there is no restriction of record on the development, enlargement, or use of the Subject Property, nor any present or presently existing estate or interest in the Subject Property, nor any existing lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the restriction and obligation to develop and enlarge the Subject Property as a large-scale general development as set forth herein.

4.2 Binding Effect. The restrictions, covenants, rights and agreements set forth in this Declaration shall be binding upon Declarant and any successor or assign of Declarant; provided that the Declaration shall be binding on any Declarant only for the period during which such Declarant, or any successor or assign thereof, is the holder of an interest in the Subject Property and only to the extent of such Declarant's interest in the Subject Property. At such time as a Declarant or any successor to a Declarant no longer holds an interest in the Subject Property, such Declarant's or such Declarant's successor's obligations and liability under this Declaration shall wholly cease and terminate and the party succeeding such Declarant or such Declarant's successor shall assume the obligations and liability of Declarant pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party assumes an interest in

the Subject Property to the extent of such party's interest in the Subject Property. For purposes of this Declaration, any successor to a Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of any interest in the Subject Property.

4.3 Recordation. Declarant shall File and record this Declaration in the Office of the City Register of the City of New York (the "Register's Office"), indexing it against the Subject Property on or after the date within five (5) business days of the New York City Council's approval of the Land Use Applications by an affirmative vote or by operation of law as set forth in New York City Charter Section 197-d (such date, the "Recording Date"). Declarant shall promptly provide to the Chairperson of the CPC a copy of the Declaration as recorded, so certified by the City Register. If Declarant fails to so record this Declaration by the Recording Date, CPC may record a duplicate original of this Declaration, but all costs of recording, whether undertaken by Declarant or by CPC, shall be borne by Declarant.

4.4 Effective Date. This Declaration and the provisions and covenants hereof shall become effective as of the date of recordation of this Declaration in accordance with Section 4.3 above.

4.5 Notice.

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

(i) if to Declarant:

to the address at the commencement of this Declaration

with a copy to:

Akerman LLP  
Attn: Joshua J. Rinesmith, Esq.  
666 Fifth Avenue, 20th Floor  
New York, NY 10103

(ii) if to CPC:

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

with a copy to:

the General Counsel of CPC at the same address

(iii) if to a Party in Interest other than Declarant: at the address provided in writing to CPC in accordance with this Section 7

(iv) if to a Mortgagee:

at the address provided in writing to CPC in accordance with this Section 4

4.6 Declarant, CPC, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 4, change any name or address for purposes of this Declaration. In order to be deemed effective any Notice shall be sent or delivered in at least one of the following manners: (A) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed delivered for all purposes hereunder five days after being actually mailed; (B) sent by overnight courier service, in which case the Notice shall be deemed delivered for all purposes hereunder on the date the Notice was actually received or was refused; or (C) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received. All Notices from CPC to Declarant shall also be sent to every Mortgagee of whom CPC has notice, and no Notice shall be deemed properly given to Declarant without such notice to such Mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the City or the CPC shall be provided to all Declarants of whom CPC has notice.

#### 4.7 Applications.

(a) Declarant shall include a copy of this Declaration with any application made to the New York City Department of Buildings for a foundation, new building, alteration, or other permit (a "Permit") for any portion of the Large-Scale Development Project subject to the Large-Scale Special Permits. 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 Large-Scale Development Project, in such phase or order as Declarant sees fit in Declarant's sole discretion.

(b) Nothing in this Declaration shall be construed to prevent Declarant or any of Declarant's successors or assigns from making any application of any sort to any governmental agency or department (each an "Agency") in connection with the development of the Subject Property; provided, that Declarant shall include a copy of this Declaration in connection with any application for any such discretionary approval, and provided that nothing in this Section 4.7(b) shall be construed as superseding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

4.8 Severability. In the event that any of the provisions of the Declaration shall be deemed, decreed, adjudged, or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severable and the remainder of this Declaration shall continue to be in full force and effect.

4.9 Applicable Law. This Declaration shall be governed and construed by the laws of the State of New York, without regard to principles of conflicts of law.

**ARTICLE V**

**AMENDMENT, MODIFICATION AND CANCELLATION**

5.1 This Declaration may be amended, cancelled, or modified only upon application by Declarant with the express written consent of CPC or an agency succeeding to CPC's jurisdiction and no other approval shall be required from any other public body, private person, or legal entity of any kind.

5.2 Notwithstanding anything to the contrary contained in Article 5.1 hereof, the Chair of CPC may by its express written consent administratively approve modifications or amendments to this Declaration that, in the sole judgment of the Chair, are determined by the Chair to be a minor amendment or modification of this Declaration, and such minor modifications and amendments shall not require the approval of CPC.

**IN WITNESS WHEREOF**, the undersigned has executed this Declaration this

\_\_\_\_\_.

\_\_\_\_\_

By:

Name:

Title:

[Standard Acknowledgment]