



IN THE MATTER OF an application submitted by Brooklyn Yards Development LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section Nos. 22c & 22d:

1. changing from an R5 District to an R6 District property bounded by 59th Street, 16th Avenue, a line midway between 59th Street and 60th Street, a line 100 feet northwesterly of 16th Avenue;
2. changing from an M1-1 District to an R6 District property bounded by a line midway between 59th Street and 60th Street, 16th Avenue, 60th Street, the southerly boundary line of Long Island Railroad right-of-way (Bay Ridge Division), 15th Avenue, the northerly boundary line of Long Island Railroad right-of-way (Bay Ridge Division), and a line 460 feet southeasterly of 15th Avenue;
3. changing from an M1-1 District to a C4-5 District property bounded by the 61st Street, 15th Avenue, the southerly boundary line of Long Island Railroad right-of-way (Bay Ridge Division), and New Utrecht Avenue; and
4. establishing within the proposed R6 District a C2-4 District bounded by the 59th Street, 16th Avenue, 60th Street, and a line 100 feet northwesterly of 16th Avenue;

Borough of Brooklyn, Community Districts 11 & 12, as shown on a diagram (for illustrative purposes only) dated June 10, 2024, and subject to the conditions of CEQR Declaration E-749.

This application for a zoning map amendment was filed by Brooklyn Yards Development LLC on May 22nd, 2023, to change M1-1 and R5 districts to C4-5, R6, and R6/C2-4 districts. This application, in conjunction with the related actions, would facilitate the development of fourteen new buildings that would contain 335,100 square feet, including approximately 272,000 square feet of residential space with 270 dwelling units (81 of which would be income-restricted) and 64,000 square feet of commercial uses in the Borough Park neighborhood of Brooklyn, Community Districts 11 and 12.

RELATED ACTIONS

In addition to the zoning map amendment (C 230182 ZMK) that is the subject of this report, the proposed project also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

- N 230183 ZRK** Zoning text amendment to Appendix F of the Zoning Resolution (ZR) to map a new Mandatory Inclusionary Housing (MIH) area and to expand the Transit Zone;
- C 230184 ZSK** Special permit pursuant to Section 74-52 of the ZR to reduce the number of required accessory off-street parking spaces;
- C 230185 ZSK** Special permit pursuant to Section 74-61 of the ZR to allow development over portions of a railroad or transit right-of-way which has been permanently discontinued or terminated to be included in the lot area;
- N 230186 ZAK** Authorization by the City Planning Commission pursuant to Section 25-82 of the ZR to waive required enclosed bicycle parking spaces accessory to the residential use;
- N 230187 ZAK** Authorization pursuant to Section 25-82 of the ZR to waive required enclosed bicycle parking spaces accessory to the residential use;
- C 230188 ZSK** Special permit pursuant to Section 74-745 of the ZR to allow required or permitted accessory off-street parking spaces to be located anywhere within a large-scale general development (LSGD) without regard for zoning lot lines, in connection with a proposed mixed-use development;
- C 230189 ZSK** Special permit pursuant to Section 74-61 of the ZR to allow development over portions of a railroad or transit right-of-way which has been permanently discontinued or terminated to be included in the lot area;
- C 230190 ZSK** Special permit pursuant to Section 74-61 of the ZR to allow development over portions of a railroad or transit right-of-way which has been permanently discontinued or terminated to be included in the lot area;

- C 230191 ZSK** Special permit pursuant to Section 74-52 of the ZR to reduce the number of required accessory off-street parking spaces;
- N 230192 ZAK** Authorization by the City Planning Commission pursuant to Section 36-72 of the ZR to waive required enclosed bicycle parking spaces accessory to the commercial uses;
- N 230193 ZAK** Authorization by the City Planning Commission pursuant to Section 25-82 of the ZR to waive required enclosed bicycle parking spaces accessory to the residential use;
- C 230196 ZSK** Special permit pursuant to sections 74-743(a)(1), 74-743(a)(2), and 74-743(a)(6) to establish a LSGD and modify bulk, yard, window, walls and lot line regulations.

BACKGROUND

The applicant is requesting a zoning map amendment to change M1-1 and R5 districts to C4-5, R6, and R6/C2-4 districts, as well as a series of other actions, to facilitate the development of fourteen new buildings that would contain approximately 335,100 square feet of floor area, including approximately 272,000 square feet of residential space with 270 dwelling units (81 of which would be income-restricted) and 66,000 square feet of commercial uses in the Borough Park neighborhood of Brooklyn.

The project area is located on portions of four blocks (Blocks 5727, 5523, 5516, and 5509) generally bounded by New Utrecht Avenue to the west, 59th Street to the north, 16th Avenue to the east, and 62nd Street to the south. The project area is traversed by the 16-mile Long Island Rail Road right-of-way (LIRR ROW), a freight line operated by the New York and Atlantic Railway that runs from 4th to 17th avenues roughly between 59th and 63rd streets in an uncovered trench, approximately 18 feet below-grade at the project area. 60th Street is a local east-west arterial street that is 80 feet wide, 61st, and 62nd streets are 60 feet wide. Both 15th and 16th avenues are 80-foot-wide local north-south arterial streets.

The project area includes the rezoning area (part of Blocks 5727, 5516, and 5509), which contains the development site and adjacent lots, and the Transit Zone expansion area (Blocks 5523, 5516, and 5509). Block 5523 is not within the proposed rezoning area or development site. Existing uses in the project area include commercial, auto repair, industrial, and community facilities, in addition to vacant lots.

Block 5727

Block 5727 is bounded by 61st Street to the north, New Utrecht Avenue to the west, 62nd Street to the south, and 15th Avenue to the east. Lots 14 and 19 are included within the rezoning area and development site. Lot 14 is the LIRR ROW, and Lot 19 is a two-story auto-repair shop. The southern portion of the block contains a public school, a vacant lot under construction, and a small warehouse, and are outside of the project area.

Block 5516

Block 5516, bounded by 60th Street to the north, 15th Avenue to the west, 61st Street to the south, and 16th Avenue to the east. The entire block is located with the Transit Zone expansion, and Lots 1 and 33 are located within the rezoning area and development site. Lots 1 and 33 are traversed by the LIRR ROW. The western portion of the block is improved with six buildings constructed in the 1930s, including residential walk ups and mixed-use buildings along with a one-story automotive repair shop and a large parcel that was recently redeveloped into an eight-story mixed-use building. East of the LIRR ROW are two irregular lots (67 and 133) that are currently vacant. The remaining eastern portion of the block is improved with 13 six-story condominium buildings, developed as part of the Maple Lane Views rezoning (C 090154 ZMK).

Block 5509

Block 5509 is bounded by 59th Street to the north, 15th Avenue to the west, 60th Street to the south, and 16th Avenue to the east. The entire block is located with the Transit Zone expansion, Lots 36, 41, 48, 57, and 35 are wholly or partially within the rezoning area and Lots 41 and 57 are part of the development site. The northern half of the block consists of two-story one- and two-family dwellings and two- to three-story walkup buildings. The southern half of the block is improved with one- to three-story commercial, automotive, and industrial buildings as well as

three two-story non-conforming residential walk-ups. Lot 48 is a two-story office building built in 1931. The LIRR ROW cuts diagonally through the eastern edge of the block (Lot 41).

Block 5523

Block 5523 is bounded by 61st Street to the north, 15th Avenue to the west, 62nd Street to the south, and 16th Avenue. The entire block is located with the Transit Zone expansion and is not included in the rezoning area or development site. The block consists primarily of one-story light industrial and automotive uses, as well as open parking and storage uses, and a number of non-conforming two-story residential and mixed-use buildings.

In all, the rezoning area includes all or portions of nine lots, while the development site is comprised by five lots across three sites. These development sites have a combined lot area of 105,278 square feet, and with the exception of Block 5509, Lot 57 (the only piece of terra firma), the development site is entirely within the LIRR ROW.

The surrounding area is defined by the presence of the LIRR ROW and a mix of industrial, automotive, commercial, and various residential uses. The open rail cut containing tracks for the LIRR Bay Ridge Branch is used by freight trains and is currently being studied for future public transit use. The blocks surrounding the LIRR ROW contain concentrations of industrial uses, reflecting adjacency to the freight line and the underlying M1-1 zoning, which has been in place since 1961. The surrounding area is characterized by one-story buildings with manufacturing, warehousing and auto related uses, two- to three-story community facilities, and some non-conforming residential buildings. Two- to three-story residential and community facility buildings are found to the north, east, and west of these areas.

The project area has been mapped M1-1 and R5 since 1961. Prior land use actions in the surrounding area include the Dyker Heights/Fort Hamilton rezoning (C 070387 ZMK), the Maple Lane Views rezoning (C 090154 ZMK), the 1501-1555 60th Street rezoning (C 200086 ZMK), and a number of Board of Standards and Appeals (BSA) variances.

In 2007, a 160-block area approximately one block to the west of the project area bordered by 60th Street to the north and 14th Avenue to the east was rezoned in the Dyker Heights/Fort Hamilton rezoning (C 070387 ZMK). The rezoning mapped lower density and contextual zoning districts to preserve the existing scale and character of Dyker Heights and Fort Hamilton's low-rise blocks. The Maple Lane Views Rezoning (C 090154 ZMK), adopted in 2013, rezoned an M1-1 district to an R6A district to facilitate a mixed-use development with residential buildings and a community facility on a site bounded by 60th Street to the north, 16th Avenue to the east, 61st Street to the south, and the LIRR ROW to the west. In 2020, the CPC approved the 1501-1555 60th Street rezoning (C 200086 ZMK), which rezoned an M1-1 district to an R7A/C2-4 district and designated the rezoning area as an MIH area. The application was adopted with a modified rezoning boundary by the City Council. In 2021, the CPC approved the 16th Avenue Rezoning (C 200062 ZMK), which sought to rezone an R5/C2-2 district to a C4-4A district and designate the proposed rezoning area (generally bounded by 58th Street to the north, 16th Avenue to the east, 59th Street to the south, and a line 100 feet westerly of 16th Avenue) as an MIH area to facilitate a five-story commercial office building. However, this application was subsequently disapproved by the City Council.

M1-1 zoning districts allow a wide range of commercial and industrial uses at a maximum floor area ratio (FAR) of 1.0 and select community facility uses up to a maximum FAR of 2.4. The maximum base height in an M1-1 district is 30 feet or two stories, with a sky exposure plane governing maximum building height. One parking space is required per 2,000 square feet of floor area or per every three employees, whichever is less.

To the north and east of the project area is an extensive R5 zoning district. R5 zoning districts permit residential buildings with a maximum FAR of 1.25 and community facility buildings with a maximum FAR of 2.0. Buildings have a maximum base height of 30 feet, and a maximum building height of 40 feet above a 15-foot required setback. There is a small C8-1 district on the east side of 16th Avenue between 58th and 59th streets. C8-1 districts permit up to 1.0 FAR for commercial uses and up to 2.4 FAR for certain community facilities. As in M1-1 districts, no residential uses are permitted. There is a C2-2 commercial overlay mapped on the west side of 16th Avenue opposite the C8-1 district.

South of the project area is an R6A district established by the 2013 Maple Lane Views rezoning. R6A districts permit a maximum FAR of 3.0 for residential uses. Buildings have a maximum base height of 65 feet and a maximum building height of 75 feet above a required setback.

Notable community facilities in the surrounding area include the New York Police Department (NYPD) 66th precinct on the northwest corner of 16th Avenue and 59th Street, the Brooklyn Public Library (BPL) Mapleton branch on the southeast corner of 17th Avenue and 60th Street, and P.S. K231 on the east side of 16th Avenue between 56th and 57th streets. The neighborhood is also home to numerous houses of worship, parochial schools, and medical offices. Commercial uses are clustered primarily along 60th and 62nd streets and the east side of 16th Avenue.

The area is well served by mass transit, with the New Utrecht Avenue N/W train and the 62nd Street D train stations directly adjacent to the project area. The B9 bus connects Bay Ridge to Kings Plaza and runs along 60th Street in the project area, making stops at 15th and 16th avenues. The Transit Zone encompasses a large portion of community districts 11 and 12 and is generally bounded by 15th Avenue to the east, 54th Street to the north, and 62nd Street to the south. Open space resources in the surrounding area are limited, with the closest being Gravesend Park, on 18th Avenue near 58th Street and Lt. Joseph Petrosino Playground on New Utrecht Avenue and 70th Street.

The applicant proposes to develop 14 new buildings totaling 335,103 square feet of floor area (3.18 FAR), with approximately 63,582 square feet (0.60 FAR) of commercial uses, and 271,520 square feet (2.58 FAR) of residential uses on three sites (Sites A, B, and C). The proposed development would contain a total of 270 dwelling units, of which 81 would be income-restricted pursuant to MIH. The development would provide 40 accessory off-street parking spaces.

The proposed development would consist primarily of four-to-six story walk-up and elevator buildings and one ten-story office building and include a private landscaped pathway to create a pedestrian network that would link the three sites. The proposed development would also include

3,684 square feet (0.08 acres) of publicly accessible area (PAA).

Site A

Site A encompasses a 43,594 square-foot portion of Block 5727, Lot 14 and would contain seven residential and mixed-use buildings (Buildings 1-7) with a combined floor area of 163,427 square feet (3.75 FAR) including 58,978 square feet of commercial floor area and a total of 95 dwelling units of which 29 would be permanently income-restricted.

Building 1 would contain 58,978 square feet of commercial uses and 44,964 square feet of residential space across three portions of the building. Commercial office uses would be located in a 10-story, 176-foot-tall portion of Building 1, which would set back 27 feet from New Utrecht Avenue to accommodate a PAA. A two-story, 30-foot-tall portion of Building 1 would contain retail use located at the New Utrecht Avenue street line. A six-story, 65-foot-tall portion of Building 1 would contain 44,694 residential square feet and 41 dwelling units. The residential entrance would front on 61st Street.

The remaining buildings on Site A would be attached five-story residential walk-up buildings located along 61st Street. Buildings 2 through 7 would each contain nine units with a total floor area of 9,041 to 10,368 square feet. No required accessory off-street parking spaces or required enclosed bicycle parking spaces would be provided on Site A. The proposed development would include covered bicycle parking in the arched openings of Building 1 and Building 7, and within the PAA fronting on New Utrecht Avenue, for a total of 40 unenclosed bicycle spaces.

Site B

Site B encompasses a 34,738 square-foot portion of Block 5516, Lots 1 and 33, and would contain five buildings with a combined floor area of 112,506 square feet of residential use (3.24 FAR), with a total of 117 dwelling units, of which 35 would be permanently income-restricted. Four of the five buildings (Buildings 8, 9, 10, and 12) would be developed as five-story attached residential walk-up buildings located along 60th and 61st streets and would rise to a maximum height of 55 feet. Buildings 8, 9, 10, and 12 would each contain eight or nine units with total floor area of 9,190 to 10,750 square feet. Building 11 would be a six-story, 65-foot-tall elevator

building with 71,514 square feet of floor area and 82 dwelling units. An approximately 1,135-square-foot PAA, including the 805 square foot public playground area, would be adjacent to Building 12. No required accessory off-street parking spaces or required enclosed bicycle parking are proposed for Site B. Twelve covered accessory bicycle parking would be provided in the arched opening of Building 12.

Site C

Site C encompasses a 26,946 square-foot portion of Block 5509, Lots 57 and 41, and would contain two buildings (Buildings 13 and 14) with a total floor area of 59,169 square feet (2.19 FAR) of residential floor area with a total of 58 dwelling units, of which 17 would be permanently income-restricted. 4,604 square feet of commercial retail space would also be provided.

Building 13 would be a six-story, 65-foot-tall elevator building with 54,565 square feet of residential floor area and 58 dwelling units located along 60th Street. Building 14 would be a two-story, 30-foot-tall retail building with 4,604 square feet of commercial floor area located at the corner of 16th Avenue and 59th Street. Site C would be constructed partially on a permanent platform and partially on terra firma.

An open parking area with 40 attended accessory off-street parking spaces would be provided on Site C. Nineteen of these spaces would be accessory to the residential uses on Site B and 21 would be accessory to the residential use on Site C. The entrance to the open parking area would be located along 16th Avenue and accessed by a proposed 12-foot-wide curb cut. Of the 30 required enclosed bicycle parking spaces (29 residential and one commercial), 21 would be provided on the ground floor of Building 13 with an additional 21 spaces provided in the building's arched opening.

The proposed development would include 3,684 square feet (0.08 acres) of public open space, consisting of a 2,038 square foot publicly accessible area (PAA) at Site A, with landscaping and seating adjacent to New Utrecht Avenue, a 512-square-foot PAA providing landscaping and seating along the Site B 61st Street frontage, and a 1,135-square foot PAA with an 805-square

foot play area adjacent to Building 14 along the Site B 60th Street frontage. Construction phasing of the PAAs is detailed in the restrictive declaration.

The New Utrecht PAA (Site A) would be accessible to the public at all hours from the sidewalk along New Utrecht Avenue, and contain movable cafe tables and chairs, and a 327 square foot planting area with small trees. The Site B 61st Street PAA would feature circulation paths, a 120 square foot planting area, and benches for public use. The Site B 60th Street PAA would offer playground elements such as creative climbing, sliding, and spinning areas. The hours of operation and maintenance standards of all PAAs would be memorialized in a restrictive declaration, and clear, visible signage would be provided in compliance with standards and specifications outlined in the Zoning Resolution.

To facilitate the proposed development, the applicant proposes a zoning map amendment, a zoning text amendment, special permits, and authorizations.

Zoning Map Amendment

The applicant proposes a zoning map amendment to change an M1-1 zoning district to a C4-5 zoning district on Block 5727, Lots 1, 14, and 19 (Site A); an M1-1 zoning district to an R6 zoning district on Block 5516, Lots 1 and 33 (Site B); an M1-1 zoning district to an R6 zoning district on Block 5509, Lot 57, p/o Lot 41, and Lot 48 (Site C); an R5 zoning district to an R6 zoning district on Block 5509, Lot 36, p/o Lot 35, and p/o Lot 41 (Site C); and to establish a C2-4 commercial overlay on Block 5509, Lots 36, 48, p/o Lot 35, and p/o Lot 41 (Site C).

C4-5 zoning districts are typically mapped along local commercial corridors and have a residential equivalent of R7-2, a non-contextual zoning district where mixed-use or residential developments may utilize Quality Housing or Height Factor regulations. The maximum permitted FAR is 4.6 for residential uses incorporating MIH, 3.4 for commercial uses and 6.5 for community facilities. Accessory off-street parking must be provided for 50 percent of market-rate residential units with no parking requirement for income-restricted units within the Transit Zone.

R6 is a medium density, height-factor district with a maximum FAR of 3.6 for residential development including MIH. Parking is required for 50 percent of market-rate dwelling units with no parking requirement for income-restricted units within the Transit Zone. The C2-4 commercial overlay permits commercial uses at 2.0 FAR when mapped within a residential district.

Zoning Text Amendment (N 230183 ZRK)

The applicant proposes a zoning text amendment to Appendix F of the Zoning Resolution to designate an MIH area coterminous with the project area. The proposed text amendment would map MIH Options 1, 2, and the Workforce Option. Option 1 requires that 25 percent of residential floor area be set aside as permanently affordable units for residents with incomes averaging 60 percent of the area median income (AMI), with 10 percent of the residential floor area set aside for residents with incomes averaging to 40 percent AMI. Option 2 requires that 30 percent of residential floor area be set aside for permanently affordable housing units for residents with incomes averaging to 80 percent AMI. No more than three income bands can be used to average out to 80 percent, and no income band can exceed 130 percent AMI. The Workforce Option requires that 30 percent of new residential floor area on a zoning lot be as permanently income-restricted for households earning an average of 115 percent AMI. No public funding is available under this MIH option.

The applicant is also proposing to amend Appendix I of the Zoning Resolution to establish Blocks 5509, 5516, and 5523 as part of the Transit Zone. Within the Transit Zone, parking for new income-restricted housing (at 80 percent AMI or less) is optional.

Zoning Special Permits

Large Scale General Development (Z 230196 ZSK)

The applicant requests a zoning special permit pursuant to ZR Section ZR 74-743(a)(1) to establish a Large Scale General Development (LSGD) to modify bulk modifications and distribute floor area and lot coverage without regard for zoning lot lines or district boundaries; (a)(2) for bulk modifications to permit the location of buildings within the LSGD without regard for applicable yard and court regulations; (a)(6) for modification of distance between legal

window and lot line requirements.

Floor Area

The applicant proposes a waiver to permit the transfer of approximately 29,308 square feet of unused floor area generated by the portion of Site B beyond 100 feet of a wide street to the portion of Site B within 100 feet of a wide street, and to transfer 20,463 square feet of unused floor area generated by Site C for use on Site B.

Lot Coverage

Pursuant to ZR 23-153, the maximum permitted residential lot coverage on interior lot portions of a zoning lot within 100 feet of a wide street in a C4-5 (R7-2 equivalent) zoning district is 65 percent. The proposed development on interior lot portions of Site A would have a maximum lot coverage of 66 percent and the corner lot portions, which are permitted 100 percent residential lot coverage, would have a maximum 58 percent lot coverage.

Yards

Sites A and B each contain corner lot and interior lot portions, including deep interior lot portions at the midblock, resulting in required 30-foot rear yards on portions of the north and south of the interior lot, pursuant to ZR 23-47. The applicant proposes a waiver of and modifications to rear yard requirements. On the north side of Site A, a waiver of the 30-foot residential rear yard requirement is requested and a waiver of a portion of the 30-foot residential rear yard requirement is requested for the south side of the site. On the north and south side of Site B, a waiver of a portion of the of the 30-foot residential rear yard requirement is requested.

Legal Windows

Where yard modifications are being sought on Sites A and B, the applicant is seeking a modification of the requirement pursuant to ZR 23-86 that requires 30 feet of open area between a legal window and a lot line. The applicant would record light and air easements over the remaining open rail cut in order to ensure all legal windows in the proposed development front on a 30-foot open area.

Parking Location (C 230188 ZSK)

The applicant requests to allow required accessory off-street parking spaces to be located anywhere within the proposed LSGD without regard for zoning lot lines pursuant to ZR 74-745(a).

Railroad Right-of-Way (C 230185 ZSK) (C 230189 ZSK) (C 230190 ZSK)

The applicant requests three special permits pursuant to ZR 74-681(a)(2) to allow development over portions of a railroad or transit right-of-way.

Special Permit to Reduce Off-Street Parking Spaces (C 230191 ZSK) (C 230184 ZSK)

The applicant requests two special permits pursuant to ZR 74-533 to reduce the number of required parking spaces to facilitate income-restricted housing. These two special permits within the existing and proposed Transit Zone pursuant to ZR 74-533 would waive the accessory off-street parking requirements of ZR 25-23 for the market-rate dwelling units on Sites A and B.

Authorizations

(N 230186 ZAK) (N 230187 ZAK) (N 230192 ZAK)

The applicant requests three authorization pursuant to ZR 25-82 to waive required enclosed accessory residential bicycle parking spaces on all three development sites along with an authorization pursuant to 36-72 to waive required enclosed accessory commercial bicycle parking spaces. On Site A, all eight required enclosed bicycle parking spaces accessory to the commercial uses within Building 1 would be waived and 21 required enclosed bicycle parking spaces accessory to the residential use would be waived. On Site B, all 41 required enclosed bicycle parking spaces accessory to the residential use. On Site C, nine of the 29 required enclosed bicycle parking spaces accessory to the residential use would be waived.

ENVIRONMENTAL REVIEW

This application (C 230182 ZMK), in conjunction with the application for the related actions were 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 lead is the City Planning Commission. The designated CEQR number is 23DCP039K.

After a study of the potential environmental impact of the proposed actions, a Negative Declaration was issued on June 7, 2024. The Negative Declaration includes an (E) designation (E-749) related to hazardous materials, air quality, and noise to avoid the potential for significant adverse impacts. The requirements of the (E) designation are described in the Environmental Assessment Statement and Negative Declaration. The application, as analyzed in the Environmental Assessment Statement, contained Project Components Related to the Environment (PCREs), including a commitment to conduct a Transportation Monitoring Program (TMP) to determine if an enhanced midblock crossing for 6Street between 15th Avenue and 16th Avenue is warranted based on actual future traffic conditions. The PCREs are described in detail in the Environmental Assessment Statement Attachment A, “Project Description” and Attachment H, “Transportation.” To ensure the implementation of the PCREs, the applicant will enter into a Restrictive Declaration at the time of the approval of land use-related actions and prior to issuance of any permits. With these measures in place, the Proposed Actions would not result in significant adverse impacts.

UNIFORM LAND USE REVIEW

This application (C 230182 ZMK) was certified as complete by the Department of City Planning on June 10, 2024, and along with the related actions was duly referred to Brooklyn community boards 11 and 12, as well as the Brooklyn Borough President on June 19, 2024 in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b), along with the related applications which were referred in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Community boards 11 and 12 held a public hearing on this application (N 230183 ZRK) and the related actions on June 18th, 2024. On June 25th Community Board 11, by a vote of 37 in favor and three against, adopted a resolution recommending approval of the application. On June 20th

Community Board 12, by a vote of 28 in favor and one against, adopted a resolution recommending approval of the application.

Borough President Recommendation

This application (C 230182 ZMK) was considered by the Brooklyn Borough President, who on July 16th, 2024, held a hearing and issued a recommendation on August 12th to approve with the following conditions:

- 1) The applicant provides no more than 40 parking spaces, as originally proposed.
- 2) The applicant adequately demonstrates to the City Planning Commission that they have consulted with the relevant partners, including but not limited to the Economic Development Corporation (EDC) and Department of Transportation (DOT), to determine that the proposed development would not interfere with the potential for transload facilities along the Bay Ridge branch rail line, as called for in the Delivering Green freight plan.

Be it further resolved that all future ULURP applications that include parcels within or adjacent to the Bay Ridge branch rail line demonstrate that they will not interfere with expanded freight operations as planned for in the Cross Harbor Freight Program and the potential for new transload facilities as called for in the Delivering Green freight plan. Be it further resolved that the Long Island Railroad only grant final approval for development work at this site if the proposed plans allow for both expanded freight operations and future IBX service along the Bay Ridge branch.”

CITY PLANNING COMMISSION PUBLIC HEARING

On August 7, 2024 (Calendar Nos. 2 - 11), the City Planning Commission scheduled August 21, 2024 for a public hearing on this application (C 230182 ZMK) and the applications for the related actions. The hearing was duly held on August 21, 2024 (Calendar Nos. 16 - 25). There were eight speakers in favor of the application and two speakers in opposition.

An applicant representative stated that the proposed actions would facilitate twelve residential buildings, one mixed-use building, and one commercial building with approximately 270

dwelling units, including 82 permanently income-restricted housing units. These buildings would be located above the LIRR ROW, establishing a local model for future development of this underutilized rail network with prime access to public transit. The applicant's architect spoke to the challenge in designing buildings on irregular lots, and how the density of the residential buildings was a cost-effective decision due to the structural engineering analysis of the proposed platform. The applicant's architect further described the design of the residential buildings, noting a preference for four-story walkup row homes and six-story elevator buildings in order to relate better to the surrounding context. He also described the three PAAs, including a playground, and how they are woven into the site plan. The development will include a private pathway connecting all three sites, which do not all have adequate street frontage for entrances, that will allow future residents access to the proposed units. An applicant representative stated that the project area was an appropriate location for ground floor commercial space along with commercial office space along New Utrecht Avenue and noted the demand for local office spaces in Borough Park.

Applicant representatives also shared that their deed restrictions require coordination with the Metropolitan Transit Authority (MTA) and LIRR, and that they have agreed on platform column placements to permit existing and future rail uses. In response to comments received during public review, the applicant said they withdrew the workforce MIH option and proposed to double the number of off-street parking spaces from 40 to 80. The applicant refiled their land use application with the workforce option removed on August 28th, 2024. The Commission asked to see examples of the various housing typologies proposed and their accessibility, along with details on any public financing programs to facilitate income-restricted housing. The Commission also asked about coordination with DOT, along with how the applicant team is working with MTA to ensure the proposed development and construction of the platform would not interfere with future public transit uses of the LIRR ROW. The applicant team responded that the application drawings that will be submitted to DOB when construction permits are sought include a note stating the applicant must first coordinate with DOT and MTA.

Four speakers noted their endorsement of the application, stating there is a strong need for housing in the neighborhood, specifically affordable housing, along with large bedroom mixes

given the large family sizes of the growing surrounding community. Two other speakers shared concerns around the potential for increased congestion, traffic, and loss of on-street parking spaces. Lastly, one speaker noted challenges with the existing conditions in the project area including safety concerns and noted that the proposed project would enhance the community by adding much needed housing, office space, and improve conditions around the 62nd Street subway station. There were no other speakers, and the hearing was closed.

CONSIDERATION

The Commission believes that the proposed zoning map amendment (C 230182 ZMK), in conjunction with the related actions, as modified by the applicant, is appropriate.

The proposed actions will facilitate an approximately 335,100 square-foot development including 272,000 square feet of residential space with 270 dwelling units, 81 of which will be income-restricted, 64,000 square feet of commercial uses, and three PAAs totaling 3,684 square feet.

This zoning map amendment will allow increased density in a location that can accommodate more mixed-use development with direct access to public transit, local commercial corridors, and newly created open space resources. The zoning text amendment will map an extensive MIH area and permit the reduction of required off-street parking in an area with excellent public transit options. The special permits and authorizations introduce flexibility on an irregular project site that would have severely limited as-of-right opportunities due to the unique condition of a railroad decking and limited street frontages.

Zoning Map Amendment

The Commission believes the proposed zoning map amendment to change the existing M1-1 and R5 districts to C4-5, R6, and R6/C2-4 districts is appropriate. The three subject blocks in the rezoning area are presently underutilized despite their adjacency to public transit and unmet need for housing and retail in the area. The proposed C4-5 zoning district would facilitate new commercial uses, including retail and office space along a key local corridor. The R6 height-factor district would provide flexibility to construct the proposed development on multiple

irregular lots. The proposed C2-4 commercial overlay, paired with the medium-density R6 would activate and enliven this section of 16th Avenue. In all, the proposed districts will facilitate a mix of uses at densities that are not permitted by the underlying zoning and allow the development of 14 new buildings with public open areas and other amenities.

The Commission notes this is a relatively complex and unique platform development, and that the applicant has balanced their proposed density and housing production with engineering and construction costs. While the hope is that this proposal spurs future partnerships in developing decking or air rights projects between the State, City, and private entities, given the ongoing housing crisis and limited opportunities for this scale of infill housing development, the Commission encourages future proposals to maximize the allowable density to further increase housing production in the neighborhood.

Zoning Text Amendments

The Commission believes that the proposed zoning text amendments are appropriate. The amendments will map an MIH area and allow for a reduction of required off-street parking in an area with excellent transit options.

The Commission confirms the establishment of an MIH area through the proposed zoning text amendment is consistent with the City's policy of requiring income-restricted housing in areas being rezoned to allow for a substantial increase in residential capacity. Community districts 11 and 12 have seen only a limited number of MIH districts mapped to date, and the Commission welcomes an application that creates income-restricted housing directly adjacent to transit. Furthermore, the Commission is pleased the applicant withdrew the MIH workforce option from the application, thereby reducing the target AMI level for the income-restricted dwelling units.

The Commission believes that the text amendment to extend the boundary of the Transit Zone is appropriate. The project area is directly adjacent to two subway lines and multiple bus lines. Moreover, the project area contains limited frontage for parking, which cannot be provided below the proposed rail deck. The Commission finds that the project area's inclusion in the Transit Zone will support utilization of available transit options, promote walkability throughout

the affected blocks, and allow the developer to right-size the amount of parking based on need. The inclusion of the project area in the Transit Zone will reduce the required residential parking from 114 to 40 spaces.

Zoning Special Permit (C 230196 ZSK) ZR 74-743 Large-Scale General Development

The proposed large-scale general development will contain 14 buildings, accessory residential parking, private open space and publicly accessible areas across three zoning lots totaling approximately 2.42 acres. Waiver of ZR 23-154(b) distribution of floor area and lot coverage without regards for zoning lot lines or district boundaries, distributing residential floor area throughout the proposed development, between C4-5 and R6 zoning districts.

Waivers and modifications of ZR 23-47 rear yard requirements on portions of zoning lots one and two modifications of the requirements of ZR 23-86 minimum required distance between legally required windows and lot lines on portions of zoning lots one and two.

The Commission affirms the special permit pursuant to ZR sections 74-743(a)(1), 74-743(a)(2), and 74-743(a)(6) that would allow floor area and lot coverage to be distributed across the site without regard for the zoning lot lines or district boundaries, modify the rear yard regulations, and modify the minimum distance between legally required windows and walls or lot lines, respectively, in connection with a proposed mixed-use development within a LSGD, are appropriate and crucial to facilitating mixed use, increased density, and income-restricted housing on irregularly shaped lots that would otherwise be unable to accommodate a similar scale of development. The Commission finds that the application meets the relevant requirements in order to grant the special permit.

Zoning Special Permits (C 230185 ZSK) (C 230189 ZSK) (C 230190 ZSK)

ZR 74-681 Development within or over a railroad or transit right-of-way or yard

(a)(1) Zoning Lots One and Two will consist of a permanent platform, covering the railroad right-of-way below

(b)(1) Zoning Lots One and Two are not proposing any curb cuts and therefore there would be

no vehicles entering or exiting the development, all parking is consolidated into one parking lot, and the area is extremely well-served by public transit

(2) development does not adversely affect the character of the surrounding area as zoning lot one consists primarily of 104,449 square feet of residential development and zoning lot two consists primarily of 112,507 square feet of residential development, spread across multiple five- to seven-story buildings over three blocks

(3) + (4) the development, platform, and active railway would not adversely affect one another as the above-grade development, including the platform and below-grade structural elements, have been carefully engineered to adhere to clearances provided to the applicant by the MTA. The platform has also been designed to insulate residential uses from the noise and activity of the existing railroad and any future additional transportation below-grade.

The Commission understands that the applicant has faced unique architectural and engineering challenges in designing the project and platform decking over an active LIRR ROW, and undertaken years of research and coordination with City and State entities. However, the Commission notes that the applicant must continue to coordinate with DOT and MTA to ensure that placement of the platform columns do not interfere with existing freight, restrict access for maintenance, and in no way preclude future use of, or improvements to, the right-of-way for such transportation uses, such as the Interborough Express (IBX).

(d) provision of adequate accessory off-street parking spaces and loading berths and is providing 40 off-street parking spaces, located on zoning lot three. The existence of numerous forms of transit and neighborhood walkability result in a transit-rich and pedestrian-friendly environment that reduces the demand for private vehicle ownership and parking.

Furthermore, the City streets that traverse the development site are bridges maintained by DOT, and as such, need access for future maintenance and improvements.

The Commission believes that the zoning special permits pursuant to ZR Section 74-61 to allow a development over a railroad or transit right right-of-way is appropriate, as the existing LIRR ROW is entrenched and uncovered. This action will facilitate the construction of a platform and transit-oriented development and does not interfere with existing freight conveyance or preclude future public transit uses along the corridor.

Zoning Special Permit (C 230184 ZSK)

ZR 74-533 Reduction of parking spaces to facilitate affordable housing

A portion of the development site is currently located within the Transit Zone, and as part of the proposed actions, the applicant is proposing a text amendment to extend the Transit Zone to cover three additional blocks, and then apply for the ZR 74-533 Special Permit to waive between 33 and 45 accessory off-street parking spaces for zoning lot one, and waive between 22 and 44 of the required accessory off-street parking spaces for zoning lot two. The remaining required spaces for zoning lot two, between 12 and 19 spaces, would be provided on zoning lot three pursuant to the requested ZR 74-745 Special Permit. The entirety of zoning lot one and the majority of zoning lot two is located within the right-of-way of the LIRR ROW and the proposed development would be located on a platform constructed over the rail cut, prohibiting below-grade development, making it infeasible to locate required accessory parking spaces below grade. Additionally, the complicated and expensive nature of constructing a new development on a platform above active railroad, and on an irregular site with limited street frontage, also precludes at-grade or first-floor parking without greatly increasing weight and costs, reducing housing capacity, or diminishing the ground floor and pedestrian experience. The developments on zoning lots one and two consist primarily of walk-up residential buildings and small apartment buildings have been carefully positioned to utilize the mid-block area of zoning lot two, while also ensuring that each building has adequate street frontage and without establishing any curb cuts or reducing the already limited available street frontage for the residential units.

The Commission believes that the zoning special permit pursuant to ZR Section 74-52 to reduce the number of required accessory off-street parking spaces for dwelling units in a development within a Transit Zone that includes at least 20 percent of all dwelling units as income-restricted housing units is appropriate. The development site is in a transit rich area and has limitations on below-grade structures due to its location above an active rail cut, making below grade parking infeasible. The applicant is proposing to reduce the required off-street parking from 114 to zero to allow for maximum flexibility in how and where the parking could be distributed across the site. Though the applicant was requesting a full waiver, it should be noted that the applicant was still proposing to include 40 spaces in a surface parking lot, and in response to comments

received during the public review process, proposed to voluntarily further increase the number of parking spaces to 80 via stackers.

In response to the Brooklyn Borough President's recommendation that the applicant reduce the number of parking spaces back to 40, the Commission reiterates its support for fully waiving the number of required off-street parking spaces and encourages the applicant to provide the minimum necessary based on what is feasible and aligned with their building program.

Zoning Special Permit (C 230188 ZSK)

ZR 74-745(a) Modification of parking and loading location requirements

(1) will be conveniently located in relation to the use (2) will result in a better site plan

The proposed development would include 14 buildings located over three separate zoning lots, and of the parking spaces proposed on zoning lot three, between 12 and 19 would be required accessory parking spaces for residential units located on zoning lot two. Zoning lot three is located directly north of zoning lot two, separated only by 60th Street, and the buildings would include a private landscaped pathway creating a pedestrian network that links the three zoning lots to one another and to the adjacent streets.

The Commission believes that the zoning special permit pursuant to ZR Section 74-745 to allow required or permitted accessory off-street parking spaces to be located anywhere within a large-scale general development without regard for zoning lot lines, in connection with a proposed mixed-use development, is appropriate. Almost the entirety of the development site will be constructed on a platform over an active railroad cut, rendering below-grade parking infeasible. This waiver, in conjunction with the special permit to reduce required parking (C 230184 ZSK), allows for the relocation of the 40 proposed off-street parking spaces to be located on the terra firma portion of Site C. The applicant notes that while below-grade parking would be infeasible, and the project site is extremely well-served by public transit, there is still a programmatic need to provide some off-street parking spaces for residents, and is therefore consolidating the parking into one small portion of the project area finds it is appropriate to consolidate the parking into one location within the greater site plan.

ZR 25-82 and ZR 36-72 Authorization for the Reduction of Bicycle Parking Spaces

The Commission supports the reduction in required bicycle parking spaces. The applicant is proposing to waive 79 of the required enclosed bicycle parking spaces: 21 spaces for residential uses in building one on zoning lot one, 41 spaces for residential uses in building 11 on zoning lot two, nine spaces for residential uses located in building 13 on zoning lot three, and eight spaces for the retail and office uses located in building one on zoning lot one, due to the platform decking limiting below-grade spaces and location of mechanicals and circulation spaces on the ground floors. Building 13 on zoning lot three would include 21 enclosed bicycle parking spaces on the ground floor. The proposed development would include a total of 73 unenclosed bicycle spaces distributed across the three zoning lots, including 20 covered spaces located in the arched passageway of building one, another 20 spaces within the publicly accessible area on zoning lot one, and 21 covered but unenclosed spaces within an arched passageway through building 13. These unenclosed bicycle spaces would be memorialized as part of the LSGD site plan.

RESOLUTION

RESOLVED, that having considered the Environmental Assessment Statement (EAS), for which a Negative Declaration was issued on June 7, 2024, with respect to this application (CEQR No. 23DCP039K), the City Planning Commission finds that the action described herein will have no significant impact on the environment; 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 Zoning Resolution of the City of New York, effective a of December 15, 1961 and as subsequently amended, is further amended by changing the Zoning Map, Sections No. 22c & 22d:

1. changing from an R5 District to an R6 District property bounded by 59th Street, 16th Avenue, a line midway between 59th Street and 60th Street, a line 100 feet northwesterly of 16th Avenue;

2. changing from an M1-1 District to an R6 District property bounded by a line midway between 59th Street and 60th Street, 16th Avenue, 60th Street, the southerly boundary line of Long Island Railroad right-of-way (Bay Ridge Division), 15th Avenue, the northerly boundary line of Long Island Railroad right-of-way (Bay Ridge Division), and a line 460 feet southeasterly of 15th Avenue;
3. changing from an M1-1 District to a C4-5 District property bounded by the 61st Street, 15th Avenue, the southerly boundary line of Long Island Railroad right-of-way (Bay Ridge Division), and New Utrecht Avenue; and
4. establishing within the proposed R6 District a C2-4 District bounded by the 59th Street, 16th Avenue, 60th Street, and a line 100 feet northwesterly of 16th Avenue;

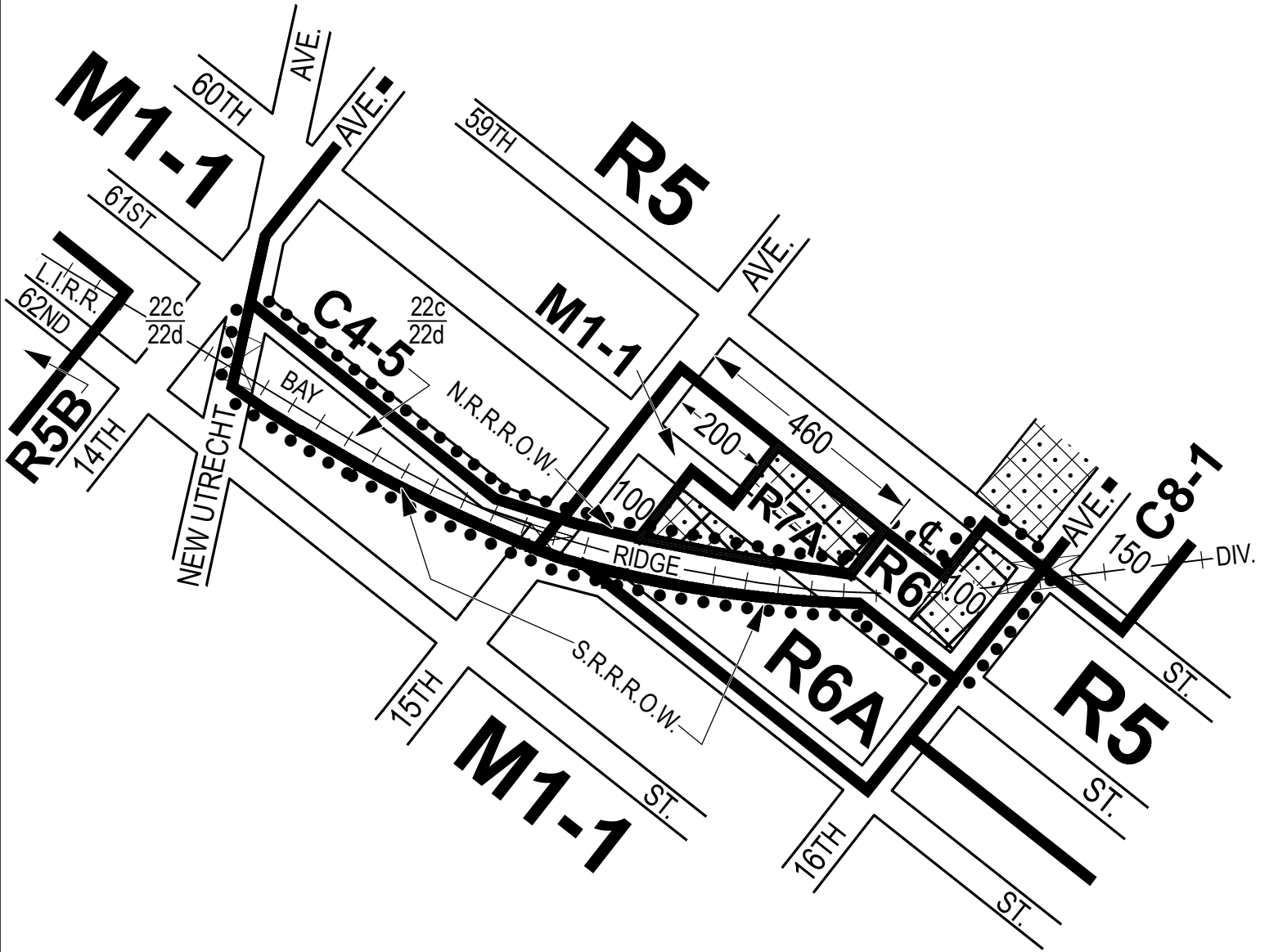
Borough of Brooklyn, Community Districts 11 & 12, as shown on a diagram (for illustrative purposes only) dated June 10, 2024, and subject to the conditions of CEQR Declaration E-749.

The above resolution (C 230182 ZMK) duly adopted by the City Planning Commission on September 25, 2024 (Calendar No. 3), 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.

DAN GARODNICK, *Chair*

GAIL BENJAMIN, RAJU MANN, ALFRED C. CERULLO, III, Esq, ANTHONY CROWELL, JOSEPH DOUEK, DAVID GOLD, Esq, LEAH GOODRIDGE, Esq, RASMIA KIRMANI-FRYE, ORLANDO MARÍN, JUAN CAMILO OSORIO, RAJ RAMPERSHAD,

Commissioners



CITY PLANNING COMMISSION
 CITY OF NEW YORK
 DIAGRAM SHOWING PROPOSED

ZONING CHANGE

ON SECTIONAL MAPS

22c & 22d

BOROUGH OF
BROOKLYN





New York, Certification Date:
 June 10, 2024

S. Lenard
 S. Lenard, Director
 Technical Review Division

SCALE IN FEET



NOTE:

-  Indicates Zoning District Boundary
-  The area enclosed by the dotted line is proposed to be rezoned by changing R5 and M1-1 Districts to R6 and C4-5 Districts and by establishing a C2-4 District within the proposed R6 District.

 Indicates a C2-2 District

 Indicates a C2-4 District



COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Brooklyn Yards	
Applicant: Brooklyn Yards Development, LLC	Applicant's Primary Contact: Ken Fisher
Application # N230192ZAK	Borough: Brooklyn
CEQR Number: 23DCP039K	Validated Community Districts: K11,K12

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Conditional Favorable			
# In Favor: 28	# Against: 1	# Abstaining: 0	Total members appointed to the board: 47
Date of Vote: 6/20/2024 12:00 AM		Vote Location: 1740 84th Street, Brooklyn, NY	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 6/18/2024 7:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	5901 13 Avenue, Brooklyn NY

CONSIDERATION: The majority of this project falls within the boundaries of Community Board 12, and we support their need for additional housing. We further support their concerns for additional parking and recommend that efforts are made to increase parking spaces to prevent unintended impacts in our district.

Recommendation submitted by	BK CB11	Date: 7/2/2024 11:21 AM
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COMMUNITY/BOROUGH BOARD RECOMMENDATION

Project Name: Brooklyn Yards	
Applicant: Brooklyn Yards Development, LLC	Applicant's Primary Contact: Ken Fisher
Application # N230192ZAK	Borough: Brooklyn
CEQR Number: 23DCP039K	Validated Community Districts: K11,K12

Docket Description:

Please use the above application number on all correspondence concerning this application

RECOMMENDATION: Favorable			
# In Favor: 37	# Against: 3	# Abstaining: 0	Total members appointed to the board: 40
Date of Vote: 6/25/2024 12:00 AM		Vote Location: 5901 13th Avenue	

Please attach any further explanation of the recommendation on additional sheets as necessary

Date of Public Hearing: 6/18/2024 7:00 PM	
Was a quorum present? Yes	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
Public Hearing Location:	5901 13th Avenue, Brooklyn NY 11219

CONSIDERATION: The developers agreed to increase parking to a total of 80 spaces.

Recommendation submitted by	BK CB12	Date: 7/12/2024 4:30 PM
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Brooklyn Borough President Antonio Reynoso
Brooklyn Borough Hall
209 Joralemon Street, Brooklyn, NY 11201

City Planning Commission
120 Broadway, 31st Floor, New York, NY 10271
calendaroffice@planning.nyc.gov

Uniform Land Use Review Procedure (ULURP) Application

BROOKLYN YARDS – C230182ZMK | N230183ZRK | C230184ZSK | C230185ZSK | C230188ZSK | C230189ZSK | C230190ZSK | C230191ZSK | C230195ZSK | C230196ZSK | N230192ZAK | N230193ZAK | N230186ZAK | N230187ZAK

IN THE MATTER OF a private application by Brooklyn Yards Development LLC requesting a zoning map amendment from M1-1 and R5 to C4-5, R6, and R6/C2-4, a zoning text amendment to map an MIH area, and various zoning special permits and authorizations to facilitate a new 335,000 sf development including 272,000 sf of residential development (270 DUs), and 64,000 sf of commercial development over railroad tracks in an area roughly bounded by 14th and 15th Avenues and 59th and 61st Streets in Borough Park in Community Districts 11 and 12, Brooklyn.

BROOKLYN COMMUNITY DISTRICTS 11 AND 12

RECOMMENDATION

APPROVE
 APPROVE WITH
MODIFICATIONS/CONDITIONS

DISAPPROVE
 DISAPPROVE WITH
MODIFICATIONS/CONDITIONS

RECOMMENDATION FOR: BROOKLYN YARDS – C230182ZMK | N230183ZRK | C230184ZSK | C230185ZSK | C230188ZSK | C230189ZSK | C230190ZSK | C230191ZSK | C230195ZSK | C230196ZSK | N230192ZAK | N230193ZAK | N230186ZAK | N230187ZAK

The Project Area is a complicated site located directly above railroad tracks that form the boundary between Community Districts 11 and 12. The Project Area is predominantly mapped as M1-1, allowing for low density, light industrial uses with substantial parking requirements. Almost the entirety of the M1-1 district is occupied by the Bay Ridge branch, a rail line owned

by the Long Island Rail Road (LIRR) that runs from Sunset Park, Brooklyn to Glendale, Queens. A small corner of the Project Area is an R5 district, a low-density residential district mapped throughout Southern Brooklyn.

In addition to a zoning map amendment, the applicant is proposing a variety of special permits and authorizations, including Large Scale General Development permits, that would facilitate construction in a complicated site directly above railroad tracks. The proposed development would include 270 dwelling units, 81 of which would be income-restricted under MIH Option 4 (also known as the “Workforce” option). The development would also include a 10-story office tower at the western end of the Development Site, directly adjacent to the elevated transit line that carries the D train along New Utrecht Avenue.

Borough President Reynoso held a public hearing on this application on July 16, 2024. One member of the public testified.

Community Board Position

Community Board 12 voted to approve this application on June 25, 2024, noting that the applicant had agreed to increase the proposed parking to 80 spaces.

Community Board 11 voted to approve this application on 20, 2024, with the condition that the applicant heed Community Board 12’s concerns for additional parking.

Approval Rationale

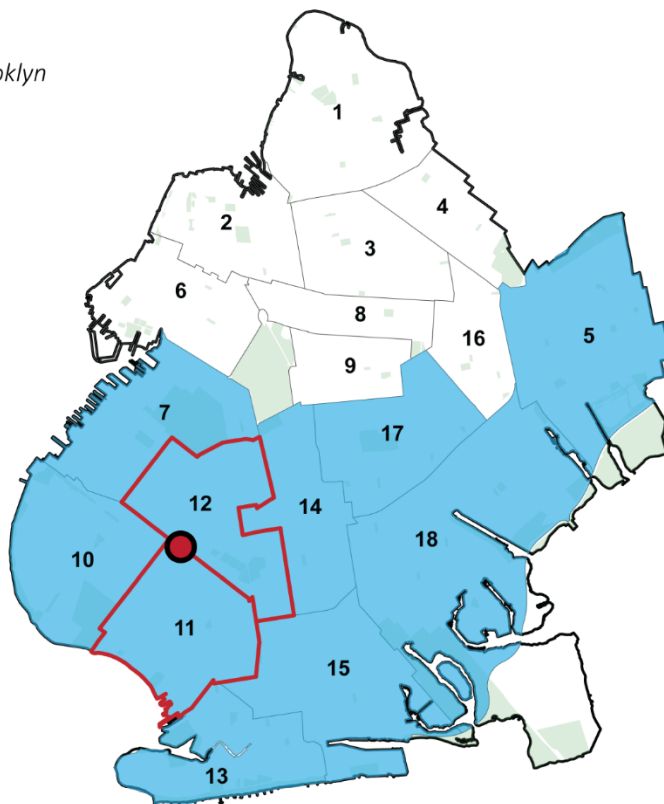
Housing Priority Areas

As identified in the Comprehensive Plan for Brooklyn

Housing Priority Areas

Community Districts with fewer than 55 residential units per acre of buildable land.

Brooklyn Yards



Borough President Reynoso believes the proposed actions are appropriate. Both Community Districts 11 and 12 are identified as Housing Priority Areas in the Borough President’s *Comprehensive Plan for Brooklyn*.

As such, this application is partially in alignment with the Housing Growth and Parking Demand Management framework of the *Comprehensive Plan for Brooklyn*, particularly Recommendation 2.1.1(b), which supports proposed increases in residential density in areas where housing production has been lagging.

The Development Site is adjacent to the 62 St and New Utrecht Avenue subway stations and is located within the Transit Zone. Under City of Yes for Housing Opportunity, the Development Site would be located within the “Inner Transit Zone” where large lots in low density residential districts would qualify for a series of potential modest zoning bonuses. In his recommendation for City of Yes for Housing Opportunity, Borough President Reynoso proposed an expanded version of the Inner Transit Zone, with larger density bonuses that establish a new baseline for transit-oriented development around subway stations.

This application satisfies the densities called for in both DCP and the Borough President’s versions of the Inner Transit Zone. This application proposes to map a C4-5 commercial district and an R6 residential district. C4-5 districts have a residential equivalent of R7-2 zoning, which exceeds the baseline densities for the Inner Transit Zone proposed by both DCP and Borough President Reynoso. The proposed R6 district exceeds the R5-equivalent density proposed by DCP, and matches the density proposed by Borough President Reynoso.

In addition to being adjacent to existing transit, the Development Site is near the proposed Interborough Express (IBX) service. The proposed development would be built on a deck structure directly above the tracks for the new service. The MTA’s Planning and Environmental Linkages (PEL) study envisions a new station just west of New Utrecht Avenue. This station would be to the west of the proposed Development Site and provide future residents with a new connection to Queens as well as other subway lines within Brooklyn. The *Comprehensive Plan for Brooklyn* calls for proactively planning for higher residential and manufacturing densities around the IBX (Rec. 2.2.2).

By providing more residential density directly next to a subway station and future IBX station, this application is partially aligned with the Housing Growth and Parking Demand Management framework of the *Comprehensive Plan for Brooklyn*.

However, Borough President Reynoso believes the proposed parking at the Development Site is not appropriate. While the Borough President is encouraged that the applicant is pursuing parking special permits to reduce their minimum parking requirement (aligned with Rec. 2.2.4), he is discouraged that the proposed parking spaces have doubled over the course of public review.

While car ownership is slightly higher in this part of the borough, this is still not a car-dependent area and new development should not push it in that direction. Community District 12 boasts one of the highest rates of commutes by walking in the entire city, with 21.3% of all residents reporting they walk to work. More than half of CD 12 households do not have a vehicle available. In Community District 11, an outright majority of residents (50.2%) commute by public transportation, and only 22.2% commute by driving alone. These figures are especially notable given that CD 11 includes portions of Bensonhurst and Bath Beach that are more than half a mile from a subway station.

Borough President Reynoso is committed to the preservation of industrial land and jobs throughout the borough. In the *Comprehensive Plan for Brooklyn*, the Borough President committed to never supporting a manufacturing-to-residential rezoning within Industrial Business Zones (IBZs) and

their Ombudsman areas (Recommendation 6.1.1). The Project Area is not located within an IBZ, and the M1-1 district proposed to be re-mapped is unlikely to be developed as-of-right. The site is almost entirely occupied by the railroad right-of-way itself, meaning that any as-of-right industrial development would likely only occur in a scenario where the railroad is inactive or removed. As such, the proposed actions are not in conflict with the Comprehensive Plan.

But while the Project Area is not formally within an IBZ, it does have a nexus with the borough's industrial future due to its location directly above the Bay Ridge branch rail line. In addition to new passenger service through the IBX, the Bay Ridge branch is planned to receive expanded freight operations, including an additional freight track, through the Port Authority's Cross Harbor Freight Program (CHFP). Building on this expanded freight capacity, the NYC Economic Development Corporation (EDC) and NYC Department of Transportation (DOT) have published the *Delivering Green* freight plan, which calls for new "transload" facilities along the Bay Ridge branch to reduce the amount of large delivery vehicles on New York City streets. The *Comprehensive Plan for Brooklyn* unites these plans together under one framework: Resilient Infrastructure & Jobs.

Borough President Reynoso believes that any future development along the Bay Ridge branch should adhere with this framework by proactively protecting the rail right-of-way against any encroachments and adequately vetting potential sites for new transload facilities. The applicant has worked with the MTA on a design that allows for expanded freight operations, including an additional freight track and two new IBX passenger tracks. During ULURP, the MTA sent a letter to the City Planning Commission stating that LIRR will review final design plans before certain work can proceed at the Development Site.

Borough President Reynoso encourages the LIRR to only provide final design approval if the proposed design allows for both expanded passenger and freight operations. Even in the event that CHFP or the IBX is postponed, cancelled, or indefinitely paused, construction at this site should be future proofed so that both expanded freight and passenger operations are not interfered.

During public review, the applicant stated that they have been in communication with EDC and DOT prior to the publication of *Delivering Green*. Borough President Reynoso recommends that this applicant and all future applicants developing near the Bay Ridge branch provide documentation affirming that the proposed actions will not interfere with potential locations for new transload facilities.

Recommendation

Be it resolved that the Brooklyn Borough President, pursuant to Sections 197-c and 201 of the New York City Charter, recommends that the City Planning Commission and City Council approve this application with the conditions that:

- 1) The applicant provides no more than 40 parking spaces, as originally proposed.
- 2) The applicant adequately demonstrates to the City Planning Commission that they have consulted with the relevant partners, including but not limited to the Economic Development Corporation (EDC) and Department of Transportation (DOT), to determine that the proposed development would not interfere with the potential for transload facilities along the Bay Ridge branch rail line, as called for in the *Delivering Green* freight plan.

Be it further resolved that all future ULURP applications that include parcels within or adjacent to the Bay Ridge branch rail line demonstrate that they will not interfere with expanded freight operations as planned for in the Cross Harbor Freight Program and the potential for new transload facilities as called for in the *Delivering Green* freight plan.

Be it further resolved that the Long Island Railroad only grant final approval for development work at this site if the proposed plans allow for both expanded freight operations and future IBX service along the Bay Ridge branch.



August 12, 2024

BROOKLYN BOROUGH PRESIDENT

DATE

DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT

KINGS COUNTY

Dated as of [____], 2024

Block 5727, Lot [upper part of Lot 14]
Block 5516, [upper parts of Lots 1 and 33]
Block 5509, Lots [upper part of Lot 41] and 57¹

RECORD AND RETURN TO:

Cozen O'Connor P.C.
3 WTC, 175 Greenwich Street, 55th Floor
New York, New York 10007
Attention: Rachel Scall, Esq.

¹ These tax lots will be subdivided before this RD is executed. Tax lot numbers to be updated accordingly.

DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT

THIS DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT (“Declaration”), is made as of the [] day of [], 2024, by **BROOKLYN YARDS DEVELOPMENT LLC (“BKY”)**, a New York limited liability company, having an address at 543 Bedford Avenue, Unit 264, Brooklyn, New York 11211; **JOSHUA DEMBITZBER (“Dembitzer”)** an individual residing at 1834 49th Street, Brooklyn, New York 11234; and **SOLOMON WULLIGER (“Wulliger”)**, a deceased individual with an address of 1864 52nd Street, Brooklyn, New York 11204 (BKY, Dembitzer, and Wulliger, collectively, “Declarant”).

W I T N E S S E T H:

WHEREAS, BKY is the fee owner of certain real property located in the Borough of Brooklyn, Kings County, City and State of New York, identified on the Tax Map of the City of New York, Kings County (“Tax Map”) as Block 5727, Lot [upper part of Lot 14] (“Parcel 1”), which real property is more particularly described in Exhibit A-1 annexed hereto and made a part hereof; Block 5516, Lot [upper part of Lots 1 and 33] (“Parcel 2”), which real property is more particularly described in Exhibit A-2 annexed hereto and made a part hereof; and Block 5509, Lot [upper part of Lot 41] (“Lot upper part of Lot 41”); and together with Parcel 1 and Parcel 2, the “Existing BKY Parcels”,² which real property is more particularly described in Exhibit A-3 annexed hereto and made a part hereof; and

WHEREAS, The Long Island Rail Road Company (“LIRR”), a subsidiary of the Metropolitan Transportation Authority (“MTA”; together with LIRR, the “MTA Parties” and, individually, an “MTA Party”), is the fee owner of certain real property located in the Borough of Brooklyn, Kings County, City and State of New York, located below Parcel 1, Parcel 2 and Lot [upper part of Lot 41] and identified on the Tax Map as Block 5727, Lot [lower part of Lot 14]; Block 5516, Lot [lower parts of Lots 1 and 33]; and Block 5509, Lot [lower part of Lot 41];³ which real property (collectively, the “LIRR Parcels”) is more particularly described in Exhibit B annexed hereto and made a part hereof; and

WHEREAS, the Existing BKY Parcels are subject to certain rights, restrictions, rights-of-way and interests in favor of LIRR (including without limitation in connection with the installation, maintenance, repair and operation of ventilation, lighting and other utility facilities and equipment for the benefit of the LIRR Parcels, the attachment of appurtenances, the operation of

² These tax lots will be subdivided before this RD is executed. Tax lot numbers to be updated accordingly.

³ These tax lots will be subdivided before this RD is executed. Tax lot numbers to be updated accordingly.

transportation corridors in the LIRR Parcels, the installation, restoration and maintenance of fencing, the proper construction, removal, maintenance, repair, renewal, operation and use of structures and improvements, LIRR's approval of work, plans and specifications, the stationing of protective forces, and the protection of LIRR and its facilities, traffic and operations from losses, damage and interference), which may be modified, supplemented, amended and/or restated from time to time (such rights, restrictions, rights-of-way and interests, as the same may be so modified, supplemented, amended and/or restated, the "**LIRR Rights**"); and

WHEREAS, Dembitzer and Wulliger are the fee owners, as tenants in common, of certain real property located in the Borough of Brooklyn, Kings County, City and State of New York, identified on the Tax Map as Block 5509, Lot 57 ("**Lot 57**"), which real property is more particularly described in Exhibit A-4 annexed hereto and made a part hereof (Lot 57 and the Lot [upper part of Lot 41], together, "**Parcel 3**"; Parcel 1, Parcel 2 and Parcel 3, collectively, the "**BKY Parcels**"; the BKY Parcels, excluding the LIRR Rights, any and all Future LIRR Portions (defined herein), and (for the avoidance of doubt) the LIRR Parcels, the "**Subject Property**"); and

WHEREAS, each of the BKY Parcels is part of a single zoning lot with the portion of the LIRR Parcels located in the same respective Block on the Tax Map; and

WHEREAS, 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 an M1-1 district and an R5 district to a mix of C4-5, R6 and R6/C2-4 districts (ULURP No. 230182ZMK) (the "**Zoning Map Amendment**"); (ii) a Zoning Text Amendment to Appendix F of the Zoning Resolution to establish a Mandatory Inclusionary Housing Area and to Appendix I of the Zoning Resolution to establish Brooklyn Blocks 5509, 5516, and 5523 as part of the Transit Zone (ULURP No. N230183ZRK) (the "**Text Amendment**"); (iii) a Special Permit, pursuant to ZR Section 74-743, to modify certain bulk regulations applicable to the development of the Subject Property (ULURP No. 230196ZSK) (the "**Large-Scale Bulk Special Permit**"); (iv) a Special Permit, pursuant to ZR Section 74-745(a), to modify parking location requirements within the Proposed Development (ULURP No. 230188ZSK) (the "**Large-Scale Parking Special Permit**," together with the Large-Scale Bulk Special Permit and the Large-Scale Use Special Permit, the "**Large-Scale Special Permits**"); (v) two Special Permits, pursuant to ZR Section 74-533, to reduce the number of required off-street accessory parking spaces to facilitate affordable housing (ULURP Nos. 230191ZSK and

230184ZSK) (the “**Parking Reduction Special Permits**”); (vi) three Special Permits, pursuant to ZR Section 74-681, to permit development over a railroad right-of-way (ULURP Nos. 230189ZSK, 230190ZSK and 230185ZSK) (the “**Railroad Special Permits**”); (vii) three authorizations, pursuant to ZR Section 25-82, to waive required enclosed accessory residential bicycle parking spaces (ULURP Nos. N230193ZAK, N230186ZAK and N230187ZAK) (the “**Residential Bicycle Authorizations**”); and (viii) an authorization, pursuant to ZR Section 36-72, to waive required enclosed accessory commercial bicycle parking spaces (ULURP No. N230192ZAK) (the “**Commercial Bicycle Authorization**”) (items (i) through (viii), collectively, the “**Land Use Applications**”); and

WHEREAS the development of the Subject Property is consistent with the analyses set forth in the Environmental Assessment Statement for City Environmental Quality Review Application No. 23DCP039K (the “**EAS**”), 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 project components related to the environment which were materials to the analysis of environmental impacts in the EAS (“**PCREs**”); and

WHEREAS, such PCREs have been memorialized in that certain CEQR Restrictive Declaration, made by Declarant as of July 23, 2024 and recorded in the Office of the City Register (the “**Register’s Office**”) on August 9, 2024 at City Register File Number (“**CRFN**”) 2024000207079; and

WHEREAS, by letter dated June 6, 2024, attached hereto as Exhibit C, the MTA Parties determined that the Proposed Development would not interfere with current or future rail operations;⁴ and

WHEREAS, as of the date hereof, BKY is the contract vendee with respect to Lot 57 and intends to purchase from Dembitzer, and Dembitzer intends to sell to BKY, Lot 57 upon Final Approval (defined herein) 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 [TITLE COMPANY], dated [_____], 2024, and attached hereto

⁴This language to mirror the language in the MTA’s letter, including any conditions agreed to by Declarant.

as Exhibit D, have joined in this Declaration or have waived their respective rights to execute this Declaration by written instrument, a form of which is annexed hereto as Exhibit E (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, 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, 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. Definitions.

(a) **"Affordable Housing Unit"** shall mean (i) any residential unit of housing within any building at the Proposed Development that is rented to **"low income households"** (as such term is defined in Section 23-911 of the Zoning Resolution) or **"middle income households"** (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.

(b) **"AG"** shall mean the Attorney General of the State of New York.

(c) **"Board"** shall mean the duly elected or appointed Board of Directors or Board of Managers of a Coop/Condominium (defined herein).

(d) **"Business Day"** shall mean any day other than (i) a Saturday and a Sunday and (ii) a day on which federally insured depository institutions in the State of New York are authorized or obligated by law, governmental decree or executive order to be closed.

(e) **"Coop/Condominium"** shall mean any part of the Proposed Development subject to a condominium declaration or owned or otherwise held by a cooperative corporation in accordance with the provisions of the laws of the State of New York.

(f) **"Effective Date"** shall mean the date upon which the Final Approval (defined herein) becomes effective.

(g) **"Final Approval"** shall mean approval of those Land Use Applications by the Commission which are 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.

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

(i) “**Future LIRR Portions**” shall mean any portion of the Existing BKY Parcels located below the limiting plane(s) separating the Existing BKY Parcels from the LIRR Parcels (as any such limiting planes may be modified so that such limiting plans are located at or below the lower face of a platform to be constructed within the Existing BKY Parcels and above the LIRR Parcels (after giving effect to such modification)), that is conveyed to an MTA Party.

(j) “**Governmental Authority**” shall mean the United States of America, the State of New York, the City of New York, and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having jurisdiction over the Subject Property.

(k) “**Individual Assessment Interest**” shall mean the Unit Interested Party’s (defined herein) percentage interest in the common elements of the condominium in which such condominium unit is located, applied to the assessment imposed by the Association (defined herein) on the condominium in which such condominium unit is located.

(l) “**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.

(m) “**LIRR Property**” shall mean Future LIRR Portions, together with the LIRR Parcels and the LIRR Rights.

(n) “**Offering Plan**” shall mean an offering plan or “red herring” issued in connection with the marketing and sale of securities appurtenant to units in a Coop/Condominium constructed or otherwise included in the Proposed Development.

(o) “**PCO**” shall mean a permanent certificate of occupancy.

(p) “**Publicly Accessible Areas**” shall mean those areas labeled “Publicly Accessible Area” or “PAA” on the Plans (defined herein).

(q) “**Substantial Completion**,” or “**Substantially Complete**,” with respect to the Publicly Accessible Areas, shall be mean that the Publicly Accessible Areas have been constructed substantially in conformance with the Plans, as same may be amended from time to time in accordance herewith, and have been completed to such an extent that all portions of the improvements may be operated and made available for public use. The Publicly Accessible Areas 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.

(r) “**Successor Declarant**” shall mean any successor entity to the balance and entirety of Declarant’s fee interest in the Subject Property.

(s) “**TCO**” shall mean a temporary certificate of occupancy.

(t) “**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 below-grade, 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 Proposed Development.

(u) “**Unit Interested Party**” shall mean all owners (other than a fee owner), lessees, or 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 on the Subject Property.

2. Designation of Large-Scale General Development. Declarant hereby declares and agrees that, following the Effective Date, 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.

3. 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 conformance with the following plans prepared by STUDIO V Architecture, and annexed hereto as Exhibit F and made a part hereof (collectively, the “**Plans**”):

Drawing No.	Title	Date
Z-010.00	Zoning Analysis	07/09/2024
Z-011.00	Zoning Diagrams	07/09/2024
Z-012.00	LSGD Site Plan	07/09/2024
Z-110.00	Zoning Site Plan Lot 1	07/09/2024
Z-111.00	Platform Diagram Lot 1	07/09/2024
Z-114.00	Waiver Plan Lot 1	07/09/2024
Z-115.00	Waiver Sections Lot 1	07/09/2024
Z-116.00	Waiver Sections Lot 1	07/09/2024
Z-210.00	Zoning Site Plan Lot 2	07/09/2024
Z-211.00	Platform Diagram Lot 2	07/09/2024
Z-214.00	Waiver Plan Lot 2	07/09/2024
Z-215.00	Waiver Sections Lot 2	07/09/2024
Z-216.00	Waiver Sections Lot 2	07/09/2024
Z-310.00	Zoning Site Plan Lot 3	07/09/2024

Z-311.00	Platform Diagram Lot 3	07/09/2024
Z-314.00	Waiver Plan Lot 3	07/09/2024
Z-315.00	Waiver Sections Lot 3	07/09/2024
L-100.00	Landscape Zoning Lot Site Plan	12/22/2023
L-110.00	Layout Plans PAA – 1 & 2	12/22/2023
L-111.00	Layout Plan – PAA 3	12/22/2023
L-120.00	Furniture & Amenities Plans – PAA 1 & 2	12/22/2023
L-121.00	Furniture & Amenities Plans – PAA 3	12/22/2023
L-130.00	Planting Plans PAA 1 & 2	12/22/2023
L-200.00	Sections and Elevations	12/22/2023
L-201.00	Sections and Elevations	12/22/2023
L-300.00	PAA Paving and Furnishing Details	12/22/2023
L-301.00	PAA Signage Details	12/22/2023
LC-100	Arch 1 Lighting Plan	12/22/2023
LC-101	Arch 2 Lighting Plan	12/22/2023
LC-102	Arch 3 Lighting Plan	12/22/2023

(b) **Representation.** Declarant hereby represents and warrants that as of the Effective Date, except for the LIRR Rights, 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.

(c) **LIRR Property; Limitations.**

(i) In no event shall any MTA Party or any agency or affiliate thereof have, whether by virtue of any right, title or interest in the LIRR Property or otherwise, any liability whatsoever for the obligations or agreements of, or the restrictions on, Declarant hereunder or be subject to levy, execution or other enforcement procedure in connection with any exercise of remedies by the City of New York (the “**City**”) or any other party under or with respect to this Declaration.

(ii) In the event that any MTA Party acquires any Future LIRR Portion(s), Declarant shall amend the Declaration to reflect said acquisition. Such amendment shall be considered an amendment of this Declaration and must comply with all provisions of this Declaration, including Section 10. No failure by Declarant to effect, or delay by Declarant in effecting, such amendment shall derogate from the provisions of Section 3(d)(iii), which shall be self-operative and shall apply to any Future LIRR Portion automatically upon the acquisition of such Future LIRR Portion.

(iii) The MTA Parties shall have all rights in and to the LIRR Property (including without limitation LIRR’s right to use, enjoy, develop and occupy the LIRR Property), and this Declaration shall in no way encumber or restrict the LIRR Property or any interest therein, or be binding upon the holder of any interest in the LIRR Property.

4. Publicly Accessible Areas. Declarant shall construct and complete the Publicly Accessible Areas, as delineated on the Plans, of the Proposed Development, in accordance with the provisions set forth in this Section 4.

(a) **Construction of the Publicly Accessible Areas.** Declarant shall construct the Publicly Accessible Areas in substantial conformance with the Plans.

(b) **Completion of the Publicly Accessible Areas.**

(i) Substantial Completion. Declarant (i) shall not accept a TCO from the DOB for the seventh and final building of the Proposed Development on Parcel 1 until the Chair of the Commission (the “**Chair**”) certifies to Declarant and DOB that the Publicly Accessible Area labeled “PAA 1” on the Plans is Substantially Complete, and (ii) shall not accept a TCO from DOB for the fifth and final building of the Proposed Development on Parcel 2 until the Chair certifies to Declarant and DOB that the Publicly Accessible Areas labeled “PAA 2” and “PAA 3” on the Plans are Substantially Complete, each in accordance with the following provisions:

a. *Notification.* Declarant shall notify the Chair at such time as it believes that one or more of the Publicly Accessible Areas are Substantially

Complete and shall request that the Chair issue a certification, in the form of Exhibit G annexed hereto (the “**Notice of Substantial Completion**”), to Declarant and DOB certifying the Substantial Completion of the subject Publicly Accessible Area(s) in accordance with the Plans.

b. *Initial Review.* Not later than twenty (20) business days of its receipt of the notification set forth in Section 4(b)(i)(a) hereof (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 subject Publicly Accessible Area(s) are not Substantially Complete and the items which need to be completed in order to determine that the Publicly Accessible Area(s) are Substantially Complete. If the Chair notifies the Declarant that the subject Publicly Accessible Area(s) are not Substantially Complete in accordance with the Plans, 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, 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) business 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 satisfactorily performed. This process shall continue until the Chair has issued a Notice of Substantial Completion for each Publicly Accessible Area.

d. Notwithstanding anything to the contrary set forth in Section 4 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 that have not been completed or satisfactorily performed, then the Chair shall be deemed to have issued the Notice of Substantial Completion for the subject Publicly Accessible Area(s), and Declarant may accept a TCO from DOB for the seventh and final building on Parcel 1 or the fifth and final building on Parcel 2, as applicable.

(ii) Final Completion. Declarant shall not accept a PCO from DOB for the fourteenth 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 Areas are Finally Complete, in accordance with the following provisions:

a. *Notification.* Declarant shall notify the Chair at such time as it believes that the Publicly Accessible Areas are Finally Complete and shall request that the Chair issue a certification, in the form of Exhibit H annexed hereto (the “**Notice of Final Completion**”), to Declarant and DOB certifying the Final Completion of the Publicly Accessible Areas in accordance with the Plans.

b. *Initial Review.* Not later than twenty (20) business days of its receipt of the notification set forth in Section 4(b)(ii)(a) hereof (the “**Final Completion Initial Review Period**”), the Chair shall either (A) issue the Notice of Final Completion, or (B) deliver to Declarant written notice setting forth in detail the reasons why the Publicly Accessible Areas are not Finally Complete and the items which need to be completed in order to determine that the Publicly Accessible Areas are Finally Complete. If the Chair notifies the Declarant that the Publicly Accessible Areas are not Finally Complete in accordance with the Plans, 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) business 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 4 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 PCO from DOB for the fourteenth and final building.

(c) **Publicly Accessible 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, for the benefit of the general public (as the benefited party), a permanent, perpetual,

non-exclusive public access easement over and encompassing the Publicly Accessible Areas, unobstructed from the surface thereof to the sky, except where portions of a building are located above the Publicly Accessible Areas in accordance with the Plans, in which case the public access easement shall terminate at a height of 10 feet above base plane, as established on the Plans (the “**Publicly Accessible Easement**”). The Publicly Accessible Easement shall be for the purpose of (A) passive recreational use by the general public and (B) access for fire, police and other emergency services. Such easement (x) shall be effectuated without the necessity for recording a separate instrument and (y) 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 Areas 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 Publicly Accessible Areas shall be open to the public between the hours of 6AM to 1AM, daily.

(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 Areas, 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 Areas 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 Areas.

(v) Declarant may close the Publicly Accessible Areas 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 or maintenance of buildings surrounding the Publicly Accessible Areas, (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 Areas one day in each calendar year for private events to avoid public dedication.

(d) **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 Areas, and any paving, landscaping, equipment or furniture provided therein, as and when reasonably needed to preserve the Publicly Accessible Areas and the amenities contained therein in neat, clean and 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 Areas shall occur as needed to maintain the Publicly Accessible Areas in a state of good repair. All repairs and replacements shall occur promptly and in substantial conformance with the Plans. 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 Areas 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.

(e) **Property Owners' Association.**

(i) *Applicability.* The provisions of this Section 4(e) shall only apply if Declarant forms an Association (defined herein) with respect to the Subject Property.

(ii) Declarant shall cause a property owner's association to be organized, pursuant to the provisions of 13 NYCRR Article 22 (the "**Association**") or join a previously created Association, created for the purposes set forth in Section 4(e) herein, upon the earliest to occur of the following occurrences: (I) the issuance of a TCO 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 subdivision and conveyance of the Subject Property to multiple fee owners and/or ground lessees.

(ii) The obligations of the Association under this Declaration shall commence on the date that a Declaration of Covenants, Restrictions, and Easements establishing the Association (the "**DCRE**") is recorded in the Register's Office (the "**Association Obligation Date**"), at which time the Association shall be deemed a Declarant. There may be only one Association for the Subject Property.

(iii) *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, 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.

(ii) *Obligations.* The Association shall be established for, among other things, the purposes of assuming the Declarant's performance of the maintenance and operations obligations set forth in Section 4(d) hereof. The initial Declarant or any Successor Declarant, along with the Association and any party that constitutes a Declarant under this Section 4(e), shall be jointly and severally responsible for the construction and Final Completion of the Publicly Accessible Areas.

(iii) *Members.* The members of the Association (the "**Association Members**") shall consist of (A) the fee owners and/or ground lessees of any portion of the Subject Property that has not been developed as or converted to a Coop/Condominium, and (B) the Boards of any portion of the Subject Property which is developed as or converted to a Coop/Condominium. In no event shall the Association Members include a Unit Interested Party.

a. Each Association Member 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 and Exhibits hereto.

b. Each Association Member, by acceptance of a deed or lease for a portion of the Subject Property shall, whether or not the covenant is expressed in such deed or lease (or, if the Association Member is the Board of a Coop/Condominium, in the declaration, bylaws and/or proprietary leases of such Coop/Condominium) be deemed to have consented to pay all assessments which may be imposed by the Association on the parcel owned or leased by such Association Member, as set forth herein.

(iv) *Powers.* Declarant shall cause the Association to be established with the power and authority to:

a. Maintain repair, and operate the Publicly Accessible Areas to the extent required by this Declaration;

b. Impose fees or assessments against the Association Members, for the purpose of collecting funds necessary to satisfy the obligations of the Association pursuant to this Declaration;

c. Collect, receive, administer, protect, invest and dispose of funds related to the subject matter hereof;

d. Bring and defend actions and negotiate and settle claims to recover fees or assessments owed to the Association pursuant to this Section 4(e);

e. Exercise any of its duties or obligations pursuant to this Declaration without seeking the consent of any Unit Interested Parties; and

f. 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 or New York State Business Corporation Law, or the rules and regulations promulgated by the Department of Law for the regulation of homeowners' (property owner's) associations, as the case may be.

(v) *Assessments; Association Member Obligations.*

a. The Association shall assess real property constituting each Coop/Condominium or fee parcel within the Subject Property, other than Affordable Housing Units, (the "**Assessment Property**") for its proportionate share of the obligations contained in Section 4(d) as provided in the DCRE, in order to obtain funds for the performance of the obligations of Declarant pursuant to this Declaration. The Assessment Property shall be assessed on a reasonable prorated basis as initially determined by Declarant, in compliance with Legal Requirements. For Association Members who are Boards, a reasonable basis for such proration shall be conclusively established if the AG accepts for filing an offering plan for the sale of interests in such Association and the Coop/Condominium, as applicable, which plan describes such proration. The Boards of each Coop/Condominium shall collect such assessments from the owners of individual residential or commercial units, other than the Affordable Housing Units, for delivery to

the Association in accordance with the DCRE and the governing documents of each Coop/Condominium.

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) calendar 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, except that if the Association Member is a Board, such lien shall be subordinate to the lien of any prior recorded mortgage in respect of such property given to a bank or other institutional lender (including but not limited to a Governmental Agency), the lien of any real property taxes, and the lien of the Board for unpaid maintenance or common charges. The periodic assessments charged to an Association Member that is a Board 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 Subject Property, thereby agrees to the provisions of this Section 5(e). Any unit owner may eliminate the Association's lien described above on his or her unit by payment to the Coop/Condominium 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 may waive or otherwise escape liability for the assessments provided for herein by non-use of the Publicly Accessible Areas or abandonment of the Association's property, or by renunciation of membership in the Association, provided, however, that an Association Member's liability with respect to future assessments shall end upon the valid sale or transfer of such Association Member's interest in the Subject Property.

d. Notwithstanding any contrary term set forth in this Declaration, the Association Members who may be assessed for obligations hereunder shall not include the holder of a mortgage or other lien encumbering (i) the fee estate in the Subject

Property or any portion thereof, (ii) the lessee's estate in a ground lease of all or substantially all of the Subject Property or all or substantially all of any parcel or portion thereof, or (iii) any single building to be built on the Subject Property, unless and until any such mortgagee succeeds to either (x) a fee interest in the Subject Property or any portion thereof or (y) the lessee's estate in a ground Lease of all or substantially all the Subject 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 a Possessory Interest in any such fee or ground leasehold estate in the Subject Property or by other means permitted under Legal Requirements from time to time and no such mortgagee or lien holder shall be liable for any assessment imposed by the Association pursuant to this Section 4(e) until the mortgagee or lien holder succeeds to such Possessory Interest.

e. Upon acceptance for filing of an Offering Plan by the AG allowing the sale or transfer of membership interests in the Association, the Association shall certify in writing to the Chairperson and the Commission, or to any individual succeeding to their positions, that all governing documents of the Association are in full compliance with the requirements of this Declaration and shall provide the Chairperson with a copy of such governing documents. If Declarant fails to comply with the provisions of this Section 4(e), the City may proceed with any available enforcement measures.

f. Association Members shall be considered Declarants. Notwithstanding the foregoing, upon Final Completion of the Publicly Accessible Areas, the liability of any Association Member shall be limited to such Association Member's proportionate share of the obligations hereunder assessed by the Association pursuant to Section 4(e)(v). In the event of a default by the Association, the City shall, prior to enforcing any rights against any Association Members, seek enforcement against the Association and, if applicable, the initial Declarant or a Successor Declarant, pursuant to the notice and cure provisions of Section 9(d).

5. 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, no longer holds an interest in the Subject Property, such Declarant's, or Declarant's successor's or assign's,

obligations and liability under this Declaration shall wholly cease and terminate and the party succeeding such Declarant, or Declarant's successor or assign, shall assume the obligations and liability of Declarant, or Declarant's successor or assign, 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. The provisions of this Section 5 are subject to the provisions of Section 3(c).

6. Recordation.

(a) **Effective Date.** This Declaration and the provisions and covenants hereof shall become effective only upon the Effective Date, 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 or 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 and/or 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.

(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 Register's Office, indexing this Declaration against the BKY Parcels. Declarant shall deliver to the Commission a copy of all such documents, as recorded, certified by the Register's Office, promptly upon receipt of such documents from the Register's Office. 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 Section), shall be borne by Declarant.

7. 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 Projected Development and not against selected individual units only. 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, the lien of the Board 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 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 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 said judgment and 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 its 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 Declaration (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 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 Declarant, its agents 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.

8. 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 BKY:
Brooklyn Yards Development LLC
543 Bedford Avenue, Unit 263
Brooklyn, New York 11211
Attention: David Tabak

With a copy to:
Cozen O’Connor
175 Greenwich Street
3 WTC, 55th Floor
New York, New York 10007
Attention: Rachel Scall

- (b) if to Dembitzer:
Joshua Dembitzer
1834 49th Street
Brooklyn, New York 11234

With a copy to:
[_____]

If to Wulliger:
[_____]

With a copy to:
[_____]

- (c) if to the Commission:

New York City Planning Commission
120 Broadway, 31st Floor
New York, New York 10271
Attention: Chairperson

with a copy to:
The general counsel of Commission at the same address.

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

at the address provided in writing to the Commission in accordance with this Section 8.

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

at the address provided in writing to the Commission in accordance with this Section 8.

Declarant or the Commission may, by notice provided in accordance with this Section 8, 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 (5) calendar 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 the Commission to the 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.

9. 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 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 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 Proposed Development 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 Areas 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, Mortgagees 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 as part of 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 Large-Scale Special Permits approved as part of 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.

(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 the 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 the Commission and City, as if performed by Declarant. If Declarant, any party in interest or mortgagee commences to effect such cure within a thirty (30) Business Day period of the City's written notice of the alleged violation (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 shall be provided to all Declarants holding such lots from of the City has received notice in accordance with Section 8 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 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) Business 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 within thirty (30) Business Days of receipt of such notice 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 Section 9, 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 Declarant is in default of a material obligation hereunder. 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 9(f) hereof.

(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 Completing or Finally Completing the Publicly Accessible Areas) (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, within ten (10) business days of receipt of the Delay Notice, (x) certify in writing that the Uncontrollable Circumstance has occurred, or (y) notify Declarant that he or she 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) business day period shall be deemed a determination by the Chair that an 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 portion of the Proposed Development. Upon cessation of the Uncontrollable Circumstance, Declarant shall promptly recommence its obligations under this Declaration subject to the Uncontrollable Circumstance.

(ii) As a condition to granting relief pursuant to this Section 9(f), 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 Areas 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 Areas, as certified by Declarant’s architect or landscape architect.

(iii) Declarant shall be obligated to re-commence construction of the Publicly Accessible Areas 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 Circumstance shall continue; provided, however, that any delay arising by reason of an Uncontrollable Circumstance shall be deemed to continue so long as the Uncontrollable Circumstance continues. If Declarant fails to resume performance of the Publicly Accessible Areas work within ninety

(90) calendar days after the cessation of the Uncontrollable Circumstance (as reasonably determined by the Chair), the City may undertake performance of the Publicly Accessible Areas work, and draw upon the aforesaid security, to the extent required to Finally Complete the Publicly Accessible Areas. Upon Final Completion of the Publicly Accessible Areas (either by Declarant or the City), the City shall return the aforesaid security (or the undrawn balance thereof) to Declarant.

(iv) Declarant hereby grants to 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 9(f). The City hereby agrees to indemnify, defend and hold Declarant, its officers, agents, employees, successors, and assigns (the “**Indemnified Parties**”) harmless from and against any claims arising by reason of its exercise of the self-help rights set forth in this Section 9(f), except to the extent such claim is caused by or contributed to by the negligence of the Indemnified Parties.

10. 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 2 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 11 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 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 10(b) shall be construed as superseding the requirements, restrictions, or approvals that may be required under agreements with any other Governmental Agency or the City.

11. Amendment, Modification and Cancellation.

(a) This Declaration may be amended, cancelled, or modified upon application by Declarant and upon the express written approval of the Commission or an agency succeeding to the Commission’s jurisdiction. Without limiting Section 11(f), 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 (but without limiting Section 11(f)), 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 Declarant, 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, 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 that the proper provisions that are not discharged survive such termination. Upon recordation of such instrument, Declarant shall provide a copy thereof to the Commission so certified by the Register's Office. If one or more 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 11.

(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 (as the sole Declarant) be the sole party with any right to amend, modify, cancel, revise or otherwise change this Declaration for such portion, 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.

(f) Prior to submission of any amendment, modification or change to this Declaration pursuant to this Section 11, Declarant shall obtain written confirmation from LIRR that such proposed amendment, modification or change would not adversely affect any MTA Party or any agency or affiliate thereof, or, in the event LIRR determines such proposed amendment, modification or change would adversely affect any MTA Party or any agency or affiliate thereof, that LIRR nevertheless finds such amendment, modification or change to be acceptable. Any purported amendment, modification or change to this Declaration in violation of the foregoing provisions of this Section 11(f) shall be null and void ab initio.

12. 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.

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

14. 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.

15. 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.

16. 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.

17. Estoppel Certificates. Whenever requested by a party, the Chair shall within ten (10) Business 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.

18. 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.

19. 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.

BROOKLYN YARDS DEVELOPMENT LLC,
a New York limited liability company

By: _____

Name:

Title:

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

JOSHUA DEMBITZBER

By: _____

Name:

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

SOLOMON WULLIGER

By: _____
Name: Beverley Wulliger, as nominated executor of
the Estate of Solomon Wulliger

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-1

DESCRIPTION OF PARCEL 1

DESCRIPTION OF A PARCEL HAVING A LOWER VERTICAL LIMIT OF 18.50 FEET ABOVE THE EXISTING TOP OF RAIL ELEVATION, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF 15TH AVENUE (80.00 FEET WIDE RIGHT OF WAY), WHERE IT IS INTERSECTED BY THE SOUTHERLY LINE OF 61ST STREET (60.00 FEET WIDE RIGHT OF WAY) SAID POINT BEING AT AN ELEVATION RESTRICTION OF 43.91 FEET (NORTH AMERICAN VERTICAL DATUM, 1988 (NAVD88)), AND RUNNING THENCE;

1. ALONG SAID NORTHERLY LINE OF 15TH AVENUE, SOUTH 38 DEGREES 23 MINUTES 49 SECONDS WEST, A DISTANCE OF 95.25 FEET TO A POINT IN THE NORTHERLY LINE OF LOT 46, BLOCK 5727 (NOW OR FORMERLY LANDS OF 1453 62ND STREET REALTY LLC) SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 43.78 FEET (NAVD88), THENCE;

ALONG SAID NORTHERLY LIN OF LOT 46, THE FOLLOWING FIVE (5) COURSES:

2. NORTH 51 DEGREES 36 MINUTES 11 SECONDS WEST, A DISTANCE OF 100.00 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 43.42 FEET (NAVD88), THENCE;
3. SOUTH 38 DEGREES 23 MINUTES 49 SECONDS WEST, A DISTANCE OF 10.00 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 43.41 FEET (NAVD88), THENCE;
4. NORTH 61 DEGREES 51 MINUTES 20 SECONDS WEST, A DISTANCE OF 121.88 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.92 FEET (NAVD88), THENCE;
5. NORTH 62 DEGREES 40 MINUTES 10 SECONDS WEST, A DISTANCE OF 20.40 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.83 FEET (NAVD88), THENCE;
6. NORTH 59 DEGREES 22 MINUTES 50 SECONDS WEST, A DISTANCE OF 40.44 FEET TO A POINT IN THE NORTHERLY LINE OF LOT 10, BLOCK 5727 (NOW OR FORMERLY LANDS OF M W R R ASSOCIATES) SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.68 FEET (NAVD88), THENCE;

ALONG SAID NORTHERLY LIN OF LOT 10, THE FOLLOWING FIVE (5) COURSES:

7. NORTH 51 DEGREES 36 MINUTES 11 SECONDS WEST, A DISTANCE OF 20.02 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.60 FEET (NAVD88), THENCE;
8. NORTH 54 DEGREES 45 MINUTES 20 SECONDS WEST, A DISTANCE OF 40.31 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.43 FEET (NAVD88), THENCE;
9. NORTH 38 DEGREES 23 MINUTES 49 SECONDS EAST, A DISTANCE OF 16.54 FEET TO A POINT OF CURVATURE SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.44 FEET (NAVD88), THENCE;
10. ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1435.36 FEET, A CENTRAL ANGLE OF 01 DEGREES 37 MINUTES 10 SECONDS, AN ARC LENGTH OF 40.57 FEET, A CHORD BEARING OF NORTH 59 DEGREES 16 MINUTES 15 SECONDS WEST, AND A CHORD DISTANCE OF 40.57 FEET TO A POINT OF CURVATURE SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.23 FEET (NAVD88), THENCE;
11. ALONG A COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 4384.78 FEET, A CENTRAL ANGLE OF 02 DEGREES 27 MINUTES 28 SECONDS, AN ARC LENGTH OF 188.08 FEET, A CHORD BEARING OF NORTH 57 DEGREES 22 MINUTES 51 SECONDS WEST, AND A CHORD DISTANCE OF 188.07 FEET TO A POINT IN THE EASTERLY LINE OF NEW UTRECHT AVENUE (80.00 FEET RIGHT OF WAY) SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 41.90 FEET (NAVD88), THENCE;

[continued on following page]

12. ALONG SAID NORTHERLY LINE, 12 DEGREES 18 MINUTES 03 SECONDS EAST, A DISTANCE OF 101.35 FEET TO A POINT IN THE SAID SOUTHERLY LINE OF 61ST STREET SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.07 FEET (NAVD88), THENCE;

ALONG SOUTHERLY LINE OF 61ST STREET, THE FOLLOWING FOUR (4) COURSES:

13. SOUTH 51 DEGREES 36 MINUTES 11 SECONDS EAST, A DISTANCE OF 287.75 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.54 FEET (NAVD88), THENCE;
14. NORTH 38 DEGREES 23 MINUTES 49 SECONDS EAST, A DISTANCE OF 25.00 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.56 FEET (NAVD88), THENCE;
15. SOUTH 51 DEGREES 36 MINUTES 11 SECONDS EAST, A DISTANCE OF 232.88 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.52 FEET (NAVD88), THENCE;
16. SOUTH 69 DEGREES 55 MINUTES 54 SECONDS EAST, A DISTANCE OF 96.45 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 50,524 SQUARE FEET OR 1.160 ACRES

EXHIBIT A-2

DESCRIPTION OF PARCEL 2

DESCRIPTION OF A PARCEL HAVING A LOWER VERTICAL LIMIT OF 18.50 FEET ABOVE THE EXISTING TOP OF RAIL ELEVATION, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF 15TH AVENUE (80.00 FEET WIDE RIGHT OF WAY), WHERE IT IS INTERSECTED BY THE NORTHERLY LINE OF 61ST STREET (60.00 FEET WIDE RIGHT OF WAY) SAID POINT BEING AT AN ELEVATION RESTRICTION OF 44.06 FEET (NORTH AMERICAN VERTICAL DATUM, 1988 (NAVD88)), AND RUNNING THENCE;

1. ALONG SAID SOUTHERLY LINE OF 15TH AVENUE, NORTH 38 DEGREES 23 MINUTES 49 SECONDS EAST, A DISTANCE OF 82.04 FEET TO A POINT IN THE SOUTHERLY LINE OF LOT 4, BLOCK 5516 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.10 FEET (NAVD88), THENCE;
2. ALONG SAID SOUTHERLY LINE OF LOT 4, SOUTH 77 DEGREES 48 MINUTES 18 SECONDS EAST, A DISTANCE OF 111.45 FEET TO A POINT IN THE SOUTHERLY LINE OF LOT 14, BLOCK 5516 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.14 FEET (NAVD88), THENCE;
3. ALONG SAID SOUTHERLY LINE OF LOT 14, SOUTH 78 DEGREES 16 MINUTES 58 SECONDS EAST, A DISTANCE OF 67.15 FEET TO A POINT IN THE SOUTHERLY LINE OF LOT 17, BLOCK 5516 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.31 FEET (NAVD88), THENCE;
4. ALONG SAID SOUTHERLY LINE OF LOT 17, SOUTH 78 DEGREES 51 MINUTES 06 SECONDS EAST, A DISTANCE OF 56.24 FEET TO A POINT IN THE SOUTHERLY LINE OF LOT 20, BLOCK 5516 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.47 FEET (NAVD88), THENCE;
5. ALONG SAID SOUTHERLY LINE OF LOT 20, SOUTH 78 DEGREES 52 MINUTES 14 SECONDS EAST, A DISTANCE OF 21.89 FEET TO A POINT IN THE SOUTHERLY LINE OF LOT 21, BLOCK 5516 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.53 FEET (NAVD88), THENCE;
6. ALONG SAID SOUTHERLY LINE OF LOT 21, SOUTH 82 DEGREES 34 MINUTES 35 SECONDS EAST, A DISTANCE OF 103.80 FEET TO A POINT IN THE SOUTHERLY LINE OF 60TH STREET (80.00 FEET WIDE RIGHT OF WAY) SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.59 FEET (NAVD88), THENCE;
7. ALONG SAID SOUTHERLY LINE OF 60TH STREET, SOUTH 51 DEGREES 36 MINUTES 11 SECONDS EAST, A DISTANCE OF 185.26 FEET TO A POINT OF CURVATURE IN THE NORTHWESTERLY LINE OF LOT 34, BLOCK 5516 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.93 FEET (NAVD88), THENCE;
8. ALONG SAID NORTHWESTERLY LINE OF LOT 34, A CURVE TO THE RIGHT HAVING A RADIUS OF 1960.08 FEET, A CENTRAL ANGLE OF 11 DEGREES 24 MINUTES 38 SECONDS, AN ARC LENGTH OF 390.36 FEET, A CHORD BEARING OF NORTH 82 DEGREES 28 MINUTES 50 SECONDS WEST, AND A CHORD DISTANCE OF 389.71 FEET TO A POINT IN THE NORTHERLY LINE OF SAID 61ST STREET SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.19 FEET (NAVD88), THENCE;

ALONG SAID NORTHERLY LINE OF 61ST STREET, THE FOLLOWING TOW (2) COURSES:

9. NORTH 51 DEGREES 36 MINUTES 11 SECONDS WEST, A DISTANCE OF 51.17 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.10 FEET (NAVD88), THENCE;
10. NORTH 74 DEGREES 48 MINUTES 04 SECONDS WEST, A DISTANCE OF 128.46 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 44,824 SQUARE FEET OR 1.029 ACRES

EXHIBIT A-3

DESCRIPTION OF LOT [UPPER PART OF LOT 41]⁵

DESCRIPTION OF A PARCEL HAVING A LOWER VERTICAL LIMIT OF 18.50 FEET ABOVE THE EXISTING TOP OF RAIL ELEVATION, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF 59TH STREET (60.00 FEET WIDE RIGHT OF WAY), WHERE IT IS INTERSECTED BY THE NORTHERLY LINE OF 16TH AVENUE (80.00 FEET WIDE RIGHT OF WAY) SAID POINT BEING AT AN ELEVATION RESTRICTION OF 45.83 FEET (NORTH AMERICAN VERTICAL DATUM, 1988 (NAVD88)), AND RUNNING THENCE;

1. ALONG SAID NORTHERLY LINE OF 16TH AVENUE, SOUTH 38 DEGREES 23 MINUTES 49 SECONDS WEST, A DISTANCE OF 115.36 FEET TO A POINT IN THE NORTHERLY LINE OF LOT 48, BLOCK 5509 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 45.53 FEET (NAVD88), THENCE;
2. ALONG SAID NORTHERLY LINE OF LOT 48, SOUTH 85 DEGREES 02 MINUTES 00 SECONDS WEST, A DISTANCE OF 123.79 FEET TO A POINT IN THE NORTHERLY LINE OF 60TH STREET (80.00 FEET WIDE RIGHT OF WAY SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 45.07 FEET (NAVD88), THENCE;
3. ALONG SAID NORTHERLY LINE OF 60TH STREET, NORTH 51 DEGREES 36 MINUTES 11 SECONDS WEST, A DISTANCE OF 141.58 FEET TO A POINT IN THE SOUTHERLY LINE OF LOT 57, BLOCK 5509 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.91 FEET (NAVD88), THENCE;
4. ALONG SAID SOUTHERLY LINE OF LOT 57, NORTH 87 DEGREES 04 MINUTES 22 SECONDS EAST, A DISTANCE OF 151.73 FEET TO A POINT IN THE SOUTHERLY LINE OF LOT 36, BLOCK 5509 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 45.23 FEET (NAVD88), THENCE;
5. ALONG SAID SOUTHERLY LINE OF LOT 36, NORTH 83 DEGREES 30 MINUTES 01 SECONDS EAST, A DISTANCE OF 141.92 FEET TO A POINT IN THE SOUTHERLY LINE OF 59TH STREET SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 45.76 FEET (NAVD88), THENCE;
6. ALONG SAID SOUTHERLY LINE OF 59TH STREET, SOUTH 51 DEGREES 36 MINUTES 11 SECONDS EAST, A DISTANCE OF 17.10 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 20,417 SQUARE FEET OR 0.469 ACRES

⁵ These tax lots will be subdivided before this Memorandum is executed. Tax lot numbers to be updated accordingly.

EXHIBIT A-4

DESCRIPTION OF BLOCK 5509, LOT 57

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of 60th Street distant 460 feet easterly from the corner formed by the intersection of the northerly side of 60th Street with the easterly side of 15th Avenue:

RUNNING THENCE northerly parallel with 15th Avenue, 100 feet 2 inches to the center line of the block;

THENCE easterly along the center line of the block and parallel with 60th Street, 122 feet 3 3/4 inches to land of New York and Manhattan Beach Railroad, 151 feet 9 inches to a point on the northerly side of 60th Street distant 8 feet 4 1/4 inches easterly from the point of BEGINNING.

THENCE westerly along the northerly side of 60th Street, 8 feet 4 1/4 inches to the point or place of BEGINNING.

SAID PREMISES known as 1557 60th Street, Brooklyn, New York

EXHIBIT B

DESCRIPTION OF THE LIRR PROPERTY

**METES AND BOUNDS DESCRIPTION
ACROSS BLOCK 5509, LOT 41
BOROUGH OF BROOKLYN, COUNTY OF KINGS
CITY AND STATE OF NEW YORK**

DESCRIPTION OF A PARCEL HAVING AN UPPER VERTICAL LIMIT OF 18.55 FEET ABOVE THE EXISTING TOP OF RAIL ELEVATION, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF 59TH STREET (60.00 FEET WIDE RIGHT OF WAY), WHERE IT IS INTERSECTED BY THE NORTHERLY LINE OF 16TH AVENUE (80.00 FEET WIDE RIGHT OF WAY) SAID POINT BEING AT AN ELEVATION RESTRICTION OF 45.90 FEET (NORTH AMERICAN VERTICAL DATUM, 1988 (NAVD88)), AND RUNNING THENCE;

1. ALONG SAID NORTHERLY LINE OF 16TH AVENUE, SOUTH 38 DEGREES 23 MINUTES 49 SECONDS WEST, A DISTANCE OF 115.36 FEET TO A POINT IN THE NORTHERLY LINE OF LOT 48, BLOCK 5509 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 45.58 FEET (NAVD88), THENCE;
2. ALONG SAID NORTHERLY LINE OF LOT 48, SOUTH 85 DEGREES 02 MINUTES 00 SECONDS WEST, A DISTANCE OF 123.79 FEET TO A POINT IN THE NORTHERLY LINE OF 60TH STREET (80.00 FEET WIDE RIGHT OF WAY SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 45.15 FEET (NAVD88), THENCE;
3. ALONG SAID NORTHERLY LINE OF 60TH STREET, NORTH 51 DEGREES 36 MINUTES 11 SECONDS WEST, A DISTANCE OF 141.58 FEET TO A POINT IN THE SOUTHERLY LINE OF LOT 57, BLOCK 5509 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.97 FEET (NAVD88), THENCE;
4. ALONG SAID SOUTHERLY LINE OF LOT 57, NORTH 87 DEGREES 04 MINUTES 22 SECONDS EAST, A DISTANCE OF 151.73 FEET TO A POINT IN THE SOUTHERLY LINE OF LOT 36, BLOCK 5509 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 45.27 FEET (NAVD88), THENCE;
5. ALONG SAID SOUTHERLY LINE OF LOT 36, NORTH 83 DEGREES 30 MINUTES 01 SECONDS EAST, A DISTANCE OF 141.92 FEET TO A POINT IN THE SOUTHERLY LINE OF 59TH STREET SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 45.80 FEET (NAVD88), THENCE;
6. ALONG SAID SOUTHERLY LINE OF 59TH STREET, SOUTH 51 DEGREES 36 MINUTES 11 SECONDS EAST, A DISTANCE OF 17.10 FEET TO THE POINT AND PLACE OF BEGINNING.

[continued on following page]

METES AND BOUNDS DESCRIPTION
ACROSS BLOCK 5727, LOT 14
BOROUGH OF BROOKLYN, COUNTY OF KINGS
CITY AND STATE OF NEW YORK

DESCRIPTION OF A PARCEL HAVING AN UPPER VERTICAL LIMIT OF 18.55 FEET ABOVE THE EXISTING TOP OF RAIL ELEVATION, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF 15TH AVENUE (80.00 FEET WIDE RIGHT OF WAY), WHERE IT IS INTERSECTED BY THE SOUTHERLY LINE OF 61ST STREET (60.00 FEET WIDE RIGHT OF WAY) SAID POINT BEING AT AN ELEVATION RESTRICTION OF 43.97 FEET (NORTH AMERICAN VERTICAL DATUM, 1988 (NAVD88)), AND RUNNING THENCE;

1. ALONG SAID NORTHERLY LINE OF 15TH AVENUE, SOUTH 38 DEGREES 23 MINUTES 49 SECONDS WEST, A DISTANCE OF 95.25 FEET TO A POINT IN THE NORTHERLY LINE OF LOT 46, BLOCK 5727 (NOW OR FORMERLY LANDS OF 1453 62ND STREET REALTY LLC) SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 43.85 FEET (NAVD88), THENCE;

ALONG SAID NORTHERLY LIN OF LOT 46, THE FOLLOWING FIVE (5) COURSES:

2. NORTH 51 DEGREES 36 MINUTES 11 SECONDS WEST, A DISTANCE OF 100.00 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 43.47 FEET (NAVD88), THENCE;
3. SOUTH 38 DEGREES 23 MINUTES 49 SECONDS WEST, A DISTANCE OF 10.00 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 43.47 FEET (NAVD88), THENCE;
4. NORTH 61 DEGREES 51 MINUTES 20 SECONDS WEST, A DISTANCE OF 121.88 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 43.00 FEET (NAVD88), THENCE;
5. NORTH 62 DEGREES 40 MINUTES 10 SECONDS WEST, A DISTANCE OF 20.40 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.88 FEET (NAVD88), THENCE;
6. NORTH 59 DEGREES 22 MINUTES 50 SECONDS WEST, A DISTANCE OF 40.44 FEET TO A POINT IN THE NORTHERLY LINE OF LOT 10, BLOCK 5727 (NOW OR FORMERLY LANDS OF M W R R ASSOCIATES) SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.79 FEET (NAVD88), THENCE;

ALONG SAID NORTHERLY LIN OF LOT 10, THE FOLLOWING FIVE (5) COURSES:

7. NORTH 51 DEGREES 36 MINUTES 11 SECONDS WEST, A DISTANCE OF 20.02 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.65 FEET (NAVD88), THENCE;
8. NORTH 54 DEGREES 45 MINUTES 20 SECONDS WEST, A DISTANCE OF 40.31 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.52 FEET (NAVD88), THENCE;
9. NORTH 38 DEGREES 23 MINUTES 49 SECONDS EAST, A DISTANCE OF 16.54 FEET TO A POINT OF CURVATURE SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.52 FEET (NAVD88), THENCE;
10. ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1435.36 FEET, A CENTRAL ANGLE OF 01 DEGREES 37 MINUTES 10 SECONDS, AN ARC LENGTH OF 40.57 FEET, A CHORD BEARING OF NORTH 59 DEGREES 16 MINUTES 15 SECONDS WEST, AND A CHORD DISTANCE OF 40.57 FEET TO A POINT OF CURVATURE SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.30 FEET (NAVD88), THENCE;
11. ALONG A COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 4384.78 FEET, A CENTRAL ANGLE OF 02 DEGREES 27 MINUTES 28 SECONDS, AN ARC LENGTH OF 188.08 FEET, A CHORD BEARING OF NORTH 57 DEGREES 22 MINUTES 51 SECONDS WEST, AND A CHORD DISTANCE OF 188.07 FEET TO A POINT IN THE EASTERLY LINE OF NEW UTRECHT AVENUE (80.00 FEET RIGHT OF WAY) SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 41.95 FEET (NAVD88), THENCE;

12. ALONG SAID NORTHERLY LINE, 12 DEGREES 18 MINUTES 03 SECONDS EAST, A DISTANCE OF 101.35 FEET TO A POINT IN THE SAID SOUTHERLY LINE OF 61ST STREET SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.10 FEET (NAVD88), THENCE;

ALONG SOUTHERLY LINE OF 61ST STREET, THE FOLLOWING FOUR (4) COURSES:

13. SOUTH 51 DEGREES 36 MINUTES 11 SECONDS EAST, A DISTANCE OF 287.75 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.62 FEET (NAVD88), THENCE;
14. NORTH 38 DEGREES 23 MINUTES 49 SECONDS EAST, A DISTANCE OF 25.00 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 42.64 FEET (NAVD88), THENCE;
15. SOUTH 51 DEGREES 36 MINUTES 11 SECONDS EAST, A DISTANCE OF 232.88 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 43.60 FEET (NAVD88), THENCE;
16. SOUTH 69 DEGREES 55 MINUTES 54 SECONDS EAST, A DISTANCE OF 96.45 FEET TO THE POINT AND PLACE OF BEGINNING.

[continued on following page]

METES AND BOUNDS DESCRIPTION
ACROSS BLOCK 5516, LOTS 1 & 33
BOROUGH OF BROOKLYN, COUNTY OF KINGS
CITY AND STATE OF NEW YORK

DESCRIPTION OF A PARCEL HAVING AN UPPER VERTICAL LIMIT OF 18.55 FEET ABOVE THE EXISTING TOP OF RAIL ELEVATION, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERLY LINE OF 15TH AVENUE (80.00 FEET WIDE RIGHT OF WAY), WHERE IT IS INTERSECTED BY THE NORTHERLY LINE OF 61ST STREET (60.00 FEET WIDE RIGHT OF WAY) SAID POINT BEING AT AN ELEVATION RESTRICTION OF 44.11 FEET (NORTH AMERICAN VERTICAL DATUM, 1988 (NAVD88)), AND RUNNING THENCE;

1. ALONG SAID SOUTHERLY LINE OF 15TH AVENUE, NORTH 38 DEGREES 23 MINUTES 49 SECONDS EAST, A DISTANCE OF 82.04 FEET TO A POINT IN THE SOUTHERLY LINE OF LOT 4, BLOCK 5516 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.14 FEET (NAVD88), THENCE;
2. ALONG SAID SOUTHERLY LINE OF LOT 4, SOUTH 77 DEGREES 48 MINUTES 18 SECONDS EAST, A DISTANCE OF 111.45 FEET TO A POINT IN THE SOUTHERLY LINE OF LOT 14, BLOCK 5516 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.19 FEET (NAVD88), THENCE;
3. ALONG SAID SOUTHERLY LINE OF LOT 14, SOUTH 78 DEGREES 16 MINUTES 58 SECONDS EAST, A DISTANCE OF 67.15 FEET TO A POINT IN THE SOUTHERLY LINE OF LOT 17, BLOCK 5516 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.35 FEET (NAVD88), THENCE;
4. ALONG SAID SOUTHERLY LINE OF LOT 17, SOUTH 78 DEGREES 51 MINUTES 06 SECONDS EAST, A DISTANCE OF 56.24 FEET TO A POINT IN THE SOUTHERLY LINE OF LOT 20, BLOCK 5516 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.52 FEET (NAVD88), THENCE;
5. ALONG SAID SOUTHERLY LINE OF LOT 20, SOUTH 78 DEGREES 52 MINUTES 14 SECONDS EAST, A DISTANCE OF 21.89 FEET TO A POINT IN THE SOUTHERLY LINE OF LOT 21, BLOCK 5516 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.55 FEET (NAVD88), THENCE;
6. ALONG SAID SOUTHERLY LINE OF LOT 21, SOUTH 82 DEGREES 34 MINUTES 35 SECONDS EAST, A DISTANCE OF 103.80 FEET TO A POINT IN THE SOUTHERLY LINE OF 60TH STREET (80.00 FEET WIDE RIGHT OF WAY) SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.63 FEET (NAVD88), THENCE;
7. ALONG SAID SOUTHERLY LINE OF 60TH STREET, SOUTH 51 DEGREES 36 MINUTES 11 SECONDS EAST, A DISTANCE OF 185.26 FEET TO A POINT OF CURVATURE IN THE NORTHWESTERLY LINE OF LOT 34, BLOCK 5516 SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.99 FEET (NAVD88), THENCE;
8. ALONG SAID NORTHWESTERLY LINE OF LOT 34, A CURVE TO THE RIGHT HAVING A RADIUS OF 1960.08 FEET, A CENTRAL ANGLE OF 11 DEGREES 24 MINUTES 38 SECONDS, AN ARC LENGTH OF 390.36 FEET, A CHORD BEARING OF NORTH 82 DEGREES 28 MINUTES 50 SECONDS WEST, AND A CHORD DISTANCE OF 389.71 FEET TO A POINT IN THE NORTHERLY LINE OF SAID 61ST STREET SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.25 FEET (NAVD88), THENCE;

ALONG SAID NORTHERLY LINE OF 61ST STREET, THE FOLLOWING TOW (2) COURSES:

9. NORTH 51 DEGREES 36 MINUTES 11 SECONDS WEST, A DISTANCE OF 51.17 FEET TO A POINT SAID POINT HAVING A LOWER VERTICAL LIMIT ELEVATION OF 44.15 FEET (NAVD88), THENCE;
10. NORTH 74 DEGREES 48 MINUTES 04 SECONDS WEST, A DISTANCE OF 128.46 FEET TO THE POINT AND PLACE OF BEGINNING.

EXHIBIT C

MTA LETTER

[Attached behind]

2 Broadway
New York, NY 10004
212 878-7000 Tel



State of New York

June 6, 2024

Chair Garodnick and Commissioners
New York City Planning Commission
120 Broadway, 31st Floor
New York, NY 10271

Re: Brooklyn Yards
Brooklyn, Community Districts 11 and 12
CEQR No. 23DCP039K
ULURP Nos. 230182ZMK, 230183ZRK, 230196ZSK, 230195ZSK, 230188ZSK,
230191ZSK, 230184ZSK, 230189ZSK, 230190ZSK, 230185ZSK, 230193ZAK,
230186ZAK, 230187ZAK, 230192ZAK

Dear Chair Garodnick and Commissioners:

Pursuant to the above-referenced private applications, Brooklyn Yards Development LLC (the "Applicant") intends to construct a platform and overbuild (the "Development") within Applicant's Property (as described in the next paragraph) above a certain segment of the Long Island Rail Road ("LIRR") Bay Ridge branch line right-of-way (such segment, the "LIRR ROW"). The LIRR ROW extends from the 65th Street Terminal in Brooklyn to the Fresh Pond Junction in Queens. The Metropolitan Transportation Authority ("MTA") is planning to construct a new light rail passenger service along the LIRR ROW to be known as the Interborough Express, or "IBX" in addition to other uses, including, without limitation, continued use for freight rail service.

By deed dated March 21, 1985 (the "Indenture"), Applicant (as successor-in-interest) holds title to certain airspace at and above a lower limiting plane of 18.5 feet above the LIRR's existing top of rail (such limiting plane, the "Lower Limiting Plane") between New Utrecht Avenue to the west and 16th Avenue to the east (the "Applicant's Property"). The Indenture contains certain conditions, restrictions and requirements with respect to the development of the Applicant's Property (collectively, the "Transportation Requirements"), including, without limitation, that: (1) Applicant's final plans and specifications must be approved by LIRR prior to the commencement of any construction in Applicant's Property, (2) except upon the approval of LIRR, Developer is not permitted to build within the 3.5 feet above the Lower Limiting Plane (the "No-Build Zone"), (3) Applicant's right to install improvements in the area(s) below the Lower Limiting Plane are subject to certain approval rights of LIRR and the maintenance of certain clearances, corridors and facilities, and (4) LIRR may require the installation of certain improvements for its benefit, and may attach appurtenances, in Applicant's Property.

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Metro-North Railroad
MTA Bridges and Tunnels

MTA Capital Construction
MTA Bus Company

While Applicant has shared its proposed Development plans¹ with MTA and LIRR, Applicant has not yet submitted to LIRR any design plans addressing the Transportation Requirements and must submit such plans to LIRR for review and approval prior to the commencement of any Development work. Additionally, LIRR will need to review any proposed modifications to, and/or waivers of, the Transportation Requirements, which cannot be assessed without further information. By way of example, Applicant will need approval from LIRR (which, to date, has not been granted) in order to build the platform deck within the No-Build Zone, as shown in the Development plans. In addition to, and without limitation of any of, the foregoing, please note that the MTA is working to develop, but has not yet finalized, the precise requirements of the IBX project.

Any approval by MTA and LIRR of Applicant's plans remains subject to Applicant's satisfaction of the foregoing matters, including but not limited to the Transportation Requirements, and coordination (and non-interference) with the IBX project requirements.

If you have any questions, please do not hesitate to contact me via email at jcoyne@mtahq.org or via telephone at 212-878-7158.

Sincerely,



John Coyne
Transit Oriented Development

¹ Note that the MTA/LIRR did not review the Development plan design above the Lower Limiting Plane or the interaction of the Development with adjacent streets and sidewalks.

EXHIBIT D

CERTIFICATION OF PARTIES-IN-INTEREST⁶

(Attached behind.)

⁶ When this certification is prepared prior to recordation, it should cover the “Subject Property” only, and not the “LIRR Property”

EXHIBIT E

FORM OF WAIVER AND SUBORDINATION

(Attached behind.)

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

**WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION, CONSENT AND
SUBORDINATION OF MORTGAGE**, made as of this [] day of [], 2024 by
[], a [] company, having an address at [] (the
“**Mortgagee**”).⁷

WITNESSETH:

WHEREAS, the Mortgagee is the lawful holder of that certain [mortgage], dated [] made by and between [] (the “**Mortgagor**”), and Mortgagee, recorded in the Office of the City Register of the City of New York, Kings County (the “**Register’s Office**”), on [] at CRFN [] and more particularly described on Schedule A attached hereto (as amended, modified, extended, renewed or restated from time to time, the “**Mortgage**”); and

WHEREAS, the Mortgage encumbers the property (the “**Premises**”) known as Block [], Lot[s] [] on the Tax Map of the City of New York, Kings County, and more particularly described in Schedule B attached hereto and made a part hereof, and any improvements thereon (such improvements and the Premises are collectively referred to herein as the “**Subject Property**”), which Subject Property is the subject of a Declaration of Restrictions dated as of even date herewith (the “**Declaration**”) made by Mortgagor; and

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

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

⁷ Form to be adapted for other parties in interest, as applicable.

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

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

[Signature Page Follows]

Schedule A

Mortgage Schedule

Schedule B

Legal Description of the Premises

EXHIBIT F

PLANS

(Attached behind.)

EXHIBIT G

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 Publicly Accessible Areas pursuant to Section 4 of the Restrictive Declaration made by Brooklyn Yards Development LLC dated as of _____, 2024 (the “Declaration”).

By this notice, the undersigned, for the City Planning Commission, confirms that the Publicly Accessible Areas (as defined in the Declaration) have 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 H

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 Publicly Accessible Areas pursuant to Section 4 of the Restrictive Declaration made by Brooklyn Yards Development LLC dated as of _____, 2024 (the “Declaration”).

By this notice, the undersigned, for the City Planning Commission, confirms that the Publicly Accessible Areas (as defined in the Declaration) have been Finally 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]