CITY PLANNING COMMISSION

October 16, 2019 / Calendar No. 5 C 1900421 ZSK

IN THE MATTER OF an application submitted by the New York City Department of Housing Preservation and Development pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to the following Section 74-743(a) of the Zoning Resolution to allow the distribution of total allowable floor area without regard for zoning district lines in connection with a proposed mixed-use development, within a large-scale general development bounded by Sutter Avenue, Hinsdale Street, a line 50 feet northerly of Blake Avenue, a line midway between Snediker Avenue and Hinsdale Street, Blake Avenue, and Snediker Avenue (Block 3766, Lot 1), in R6A, R7D/C1-4, and R7D/C2-4 Districts, Borough of Brooklyn, Community District 5.

This application for a special permit pursuant to Section 74-743 of the Zoning Resolution (C 190421 ZSK) was filed by the NYC Department of Housing Preservation and Development (HPD) on May 17, 2019.

Approval of this application, in conjunction with related actions, would facilitate the redevelopment of an existing 192-unit family homeless shelter located at 515 Blake Avenue (Block 3766, Lot 1), with four new buildings providing 324 affordable units, a new homeless family shelter with 195 units, and commercial and community facility spaces located in 515 Blake Avenue in the East New York neighborhood of Brooklyn Community District 5.

RELATED ACTIONS

In addition to the special permit pursuant to Section 74-743 of the Zoning Resolution that is the subject of this report, implementation of the proposed project also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application.

C 190409 HAK UDAAP designation, project approval, and disposition of City-owned property (C 1900409 HAK) to dispose of the subject property.

C 190410 ZMK Zoning Map Amendment to change a C4-3 district, an R6 district and an R6/C2-3 district to an R6A district, an R7D/C1-4 district and R7D/C2-4 district on the entirety of Block 3766.

N 190411 ZRK Zoning Text Amendment to designate a Mandatory Inclusionary Housing Area for the entirety of Block 3766.

BACKGROUND

A description of this application, the surrounding area and the proposed project is included in the report for the related UDAAP action (C 190409 HAK).

ENVIRONMENTAL REVIEW

The application (C 190421 ZSK), in conjunction with the applications for the related actions (C 190409 HAK, C 190410 ZMK and N 190411 ZRK), was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA) and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 19HPD058K. The lead agency is HPD.

After a study of the potential impact of the proposed actions, a Negative Declaration was issued on May 16, 2019.

UNIFORM LAND USE REVIEW

The application (C 190421 ZSK), in conjunction with the applications for the related actions (C 190409 HAK and C 190410 ZMK), were certified as completed by the Department of City Planning on May 20, 2019 and duly referred to Brooklyn Community Board 5 and the Brooklyn Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b), along with the related application for a zoning text amendment (N 190411 ZRK), which was referred in accordance with the procedures for non-ULURP actions.

Community Board Public Hearing

Brooklyn Community Board 5 did not hold a public hearing on this application (C 190421 ZSK), and did not submit a recommendation.

Borough President Recommendation

The Brooklyn Borough President held a public hearing on the application (C 190421 ZSK), on July 2, 2019 and on September 11, 2019 issued a recommendation to approve with conditions. A summary of the Borough President's recommendation appears in the report for the related UDAAP action (C 190409 HAK).

City Planning Commission Public Hearing

On August 28, 2019 (Calendar No. 4), the City Planning Commission scheduled September 11, 2019 for a public hearing on this application (C 190421 ZSK). The hearing was duly held on September 11, 2019 (Calendar No. 30). There were a number of speakers as described in the report for the related UDAAP action (C 190409 HAK), and the hearing was closed.

CONSIDERATION

The Commission believes that this application (C 190421 ZSK) for the zoning map amendment, in conjunction with the applications for the related actions (C 190409 HAK, C 190410 ZMK and N 190411 ZRK), is appropriate. A full consideration and analysis of the issues and the reasons for approving the application appear in the report for the related UDAAP action (C 190409 HAK).

FINDINGS

The Commission hereby makes the following findings pursuant to ZR Section 74-903:

1. the distribution of floor area, open space, dwelling units, rooming units and the location of buildings, primary business entrances and show windows will result in a better site plan and a better relationship among buildings and open areas to adjacent streets, surrounding development, adjacent open areas and shorelines than would be possible without such distribution and will thus benefit both the occupants of the large-scale general development, the neighborhood and the City as a whole;

2. the distribution of floor area and location of buildings will not unduly increase the bulk of buildings in any one block or unduly obstruct access of light and air to the detriment of the occupants or users of buildings in the block or nearby blocks or of people using the public streets;
3. Not applicable;
4. considering the size of the proposed large-scale general development, the streets providing access to such large-scale general development will be adequate to handle traffic resulting therefrom;
5. when the Commission has determined that the large-scale general development requires significant addition to existing public facilities serving the area, the applicant has submitted to the Commission a plan and timetable to provide such required additional facilities. Proposed facilities that are incorporated into the City's capital budget may be included as part of such plan and timetable;
6. Not applicable;
7. Not applicable;
8. Not applicable;
9. Not applicable;
10. a declaration with regard to ownership requirements in paragraph (b) of the large-scale general development definition in Section 12-10 (DEFINITIONS) has been filed with the Commission; and
11. Not applicable.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant adverse impact on the environment,

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that submitted based on the environmental determination, and the consideration and findings described in this report, the application by the NYC Department of Housing Preservation & Development pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to the following Section 74-743(a) of the Zoning

Resolution to allow the distribution of total allowable floor area without regard for zoning district lines in connection with a proposed mixed-use development, within a large-scale general development bounded by Sutter Avenue, Hinsdale Street, a line 50 feet northerly of Blake Avenue, a line midway between Snediker Avenue and Hinsdale Street, Blake Avenue, and Snediker Avenue (Block 3766, Lot 1), in R6A, R7D/C1-4, and R7D/C2-4 Districts, Borough of Brooklyn, Community District 5, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 190421 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following approved drawings, prepared by Curtis + Ginsberg Architects LLP, filed with this application and incorporated in this resolution:

Dwg. No.	Title	Last Date Revised
U-001	Site Plan	05/15/2019
Z-001	Zoning Analysis	05/15/2019
U-004	Sections I	05/15/2019
U-005	Sections II	05/15/2019

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.

3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.

4. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached hereto as Exhibit A, with such administrative changes as are acceptable to Counsel to the Department of City Planning, has been executed and recorded in the office of the Register of the city of New York, County of Kings. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.

5. In the event that the property that is the subject of the application is developed as, sold as,

or converted to condominium units, a homeowner's association or cooperative ownership, a copy of this report and resolution and any subsequent modification shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowner's or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.

6. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sub-lessee or occupant.

7. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.

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

The above resolution (C 1900421 ZSK), duly adopted by the City Planning Commission on October 16, 2019 (Calendar No. 5), is filed with the Office of the Speaker, City Council and the Borough President, together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

MARISA LAGO, *Chair*
KENNETH J. KNUCKLES, Esq., *Vice Chairman*
DAVID J. BURNEY, ALLEN P. CAPPELLI, Esq., ALFRED C. CERULLO, III, MICHELLE de la UZ, JOSEPH I. DOUEK, RICHARD W. EADDY, HOPE KNIGHT, ANNA HAYES LEVIN, ORLANDO MARIN, LARISA ORTIZ, RAJ RAMPERSHAD,
Commissioners

DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT

KINGS COUNTY

BLOCK 3766, LOT 1

RECORD AND RETURN TO:

KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 AVENUE OF THE AMERICAS
NEW YORK, NY 10036
ATTENTION: EUGENE C. TRAVERS, ESQ.

DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT

THIS DECLARATION OF LARGE-SCALE GENERAL DEVELOPMENT (this "**Declaration**") is made as of the ____ day of _____, 2019, by **H.E.L.P. DEVELOPMENT CORP.**, a not-for-profit corporation established pursuant to the laws of the State of New York, having an address at c/o H.E.L.P. USA, Inc., 115 East 13th Street, New York, NY 10003 ("**Declarant**").

W I T N E S S E T H:

WHEREAS, the Declarant is the fee owner of certain real property located in the Borough of Brooklyn, County of Kings, City and State of New York, identified on the Tax Map of the City of New York, County of New York ("**Tax Map**") as Block 3766, Lot 1, which real property is more particularly described in **Exhibit A** annexed hereto and made a part hereof (the "**Subject Property**"); and

WHEREAS, the Declarant acquired the Subject Property from the City of New York pursuant to the Urban Development Action Area Project designation, project approval and disposition of City-owned property ("**UDAAP and Disposition**"); and

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

WHEREAS, in connection with the Proposed Development, the New York City Department of Housing Preservation and Development filed applications with the New York City Department of City Planning for approval by the New York City Planning Commission (the "**Commission**") of: (i) the UDAAP and Disposition (C 190409 HAK); (ii) a Zoning Map Amendment to change the Subject Property from a C4-3 district, an R6 district and an R6/C2-3 district to an R6A district at the midblock and R7D/C2-4 districts along the Avenues (C 190410 ZMK) (the "**Zoning Map Amendment**"); (iii) a Zoning Text Amendment to Appendix F of the Zoning Resolution to establish a Mandatory Inclusionary Housing Area (N 190411 ZRK) (the "**Zoning Text Amendment**"); and (iv) a Special Permit, pursuant to ZR Section 74-743(a)(1), to allow for distribution of floor area without regard for district boundary lines, contrary to the provisions set forth in ZR Section 77-22 (C 190421 ZSK) (the "**Large-Scale Special Permit**"); (collectively, 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 ZR 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 Land Services USA, Inc., as agent for First American Title Insurance Company National Commercial Services, dated _____, 2019, and attached hereto as **Exhibit B**, have joined in this Declaration or have waived their respective rights to execute this Declaration by written instrument annexed hereto as **Exhibit C** (which instruments are intended to be recorded in the Register's Office simultaneously with the recordation of this Declaration), or have previously waived their right to do so; and

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

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

1. Designation of Large-Scale General Development. Declarant hereby declares and agrees that, following the Effective Date (as defined in **Section 4** hereof), the Subject Property, if developed pursuant to the Large-Scale Special Permit, shall be treated and developed as a "large-scale general development", as such term is defined in the Zoning Resolution in effect on the Effective Date, and shall be developed and enlarged as a single unit.

2. Development of the Subject Property.

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

Drawing No.	Title	Last Revised Date
U-001	PROPOSED SITE PLAN	05/15/2019
Z-001	ZONING ANALYSIS	05/15/2019

U-004	SECTIONS I	05/15/2019
U-005	SECTIONS II	05/15/2019

(b) **Representation.** Declarant hereby represents and warrants that as of the Effective Date there will be no restriction of record on the development, enlargement, or use of the Subject Property, nor any then-existing estate or interest in the Subject Property, nor any lien, obligation, covenant, easement, limitation or encumbrance of any kind that shall preclude the restriction and obligation to develop and enlarge the Subject Property as a large-scale general development as set forth herein.

3. Binding Effect. The restrictions, covenants, rights and agreements set forth in this Declaration shall be binding upon Declarant and any successor or assign of Declarant, and any party acquiring an interest in any portion of the Subject Property (which party shall be deemed a Declarant for the purposes of this Declaration) only for the period during which such Declarant, or such Declarant's successor or assign, is the holder of a fee interest in the Subject Property and only to the extent of such Declarant's, or Declarant's successor's or assign's, 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.

4. Recordation.

(a) **Effective Date**. This Declaration and the provisions and covenants hereof shall become effective only upon the Effective Date (defined hereinafter), provided, that in the event that any administrative, judicial, or other action or enforcement proceeding is brought challenging the validity of 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 Land Use Applications, the conveyance of any portion of the Subject Property, or such related action(s), as the case may be.

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

(ii) "**Final Approval**" shall mean approval of the Land Use Applications by the Commission pursuant to New York City Charter Section 197-c, which shall be effective on the date that the City Council's period of review has expired, unless (a) pursuant to New York City

Charter Section 197-d(b), the City Council reviews the decision of the Commission approving the Land Use Applications and takes final action pursuant to New York City Charter Section 197-d approving the Land Use Applications, in which event Final Approval shall mean such approval of the Land Use Applications by the City Council or (b) the City Council disapproves the decision of the Commission and the Office of the Mayor files a written disapproval of the City Council's action pursuant to New York City Charter Section 197-d(e), and the City Council does not override the Office of the Mayor's disapproval, in which event Final Approval shall mean the Office of the Mayor's written disapproval pursuant to such New York City Charter Section 197-d(e). Notwithstanding anything to the contrary contained in this Declaration, Final Approval shall not be deemed to have occurred for any purpose of this Declaration if the final action taken pursuant to New York City Charter Section 197-d is disapproval of the Land Use Applications.

(b) **Recordation**. Declarant shall file and record this Declaration (together with all of the exhibits hereto) in the Office of the City Register of the City of New York (the "**Register's Office**"), indexing this Declaration against the Subject Property on or after the date of the disposition of the Subject Property pursuant to the UDAAP and Disposition. 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 paragraph), shall be borne by Declarant.

5. Limitation of Liability and Indemnification.

(a) **Limitation of Liability**. 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, as herein defined) 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's Individual Assessment Interest (defined hereinafter), and provided that such enforcement procedures shall be taken simultaneously against all the condominium units in the Proposed Development and not against selected individual units only. The "**Individual Assessment Interest**" shall mean each unit's percentage interest in the common elements of the condominium in which such condominium unit is located. ("**Affordable Housing Unit**" shall mean (i) an individual residential

apartment consisting solely of "Affordable Housing" as such term is defined in Section 23-911 of the Zoning Resolution, or (ii) a "Super's Unit" as such term is defined in Section 23-911 of the Zoning Resolution.) The City agrees that, prior to enforcing its rights against an individual unit owner, the City shall first attempt to enforce its rights under this Declaration against Declarant and the boards of managers of any condominium, as applicable. 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.

(b) **Indemnification.**

(i) Declarant shall indemnify and hold harmless the City and their respective officers, employees and agents from and against any and all claims, actions or judgments for loss, damage or injury, including death or personal or property damage of whatsoever kind or nature, arising from Declarant's default under this Agreement (including, without limitation, if Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Agreement and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed), or the negligence of Declarant, its agents, servants or employees in undertaking its obligations under this Agreement unless such claims, actions or judgments arose out of the negligence, recklessness or willful acts of the City, its agents or its employees; provided, however, that should any such claim be made or action brought, Declarant shall have the right to defend such claim or action with attorneys reasonably acceptable to the City. No such claim or action shall be settled without the written consent of City, unless (i) the City is indemnified fully pursuant to this Section, and (ii) the City has no obligation under the settlement, financial or otherwise.

(ii) 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. No such claim or action shall be settled without the written consent of Declarant, unless (i) Declarant is indemnified fully pursuant to this Section, and (ii) Declarant has no obligation under the settlement, financial or otherwise.

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

(a) if to Declarant:

H.E.L.P. Development Corp.
c/o H.E.L.P. USA, Inc.
115 East 13th Street
New York, New York 10003
Attn: David Cleghorn

with a copy to:

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Attn: Eugene C. Travers, Esq.

(b) 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

(c) if to a Party-in-Interest other than Declarant, including any mortgagee of all or any portion of the Subject Property (a "**Mortgagee**"):

at the address provided in writing to Commission in accordance with this **Section 6**.

Declarant, Commission, any Party-in-Interest, and any Mortgagee may, by notice provided in accordance with this **Section 6**, 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 he deemed delivered for all purposes hereunder five days after being

actually mailed; (ii) sent by overnight courier service, in which case the Notice shall be deemed delivered for all purposes hereunder on the date the Notice was actually received or was refused; or (iii) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received. All Notices from Commission to a Declarant shall also be sent to every Mortgagee of whom Commission has notice, and no Notice shall be deemed properly given to a Declarant without such notice to such Mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the City or the Commission shall be provided to all Declarants of whom Commission has notice.

7. 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 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 Permit.

(b) **No Enforcement by Third Parties.** Notwithstanding any provision of this Declaration to the contrary, only Declarant, Declarant's successors and assigns, and the City, acting through CPC, shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration. Nothing contained herein should be construed or deemed to allow any other person or entity to have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Land Use Applications. 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 the Large-Scale Special Permit, 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 occupany 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 Permit approved by the Land Use Applications or building permits or certificates of occupancy, or the imposition of any fine, lien or other penalty, with respect to other lot(s) or portion(s) of a lot comprising a portion of the Proposed Development for which no such failure to comply has occurred. This Declaration shall not create any enforceable interest or right in any person, other than Declarant and any Mortgagee, any of which shall be deemed to be a proper person to enforce the provisions of this Declaration, and nothing contained herein shall be deemed to allow any other person, any interest or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Land Use Applications.

(d) **Notice and Cure.**

(i) Prior to the City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, the City shall give Declarant, every Mortgagee and every Party-in-Interest thirty (30) business days written notice of such alleged violation, during which period the Declarant, any Party-in-Interest and any Mortgagee shall have the opportunity to effect a cure of such alleged violation or to demonstrate to City why the alleged violation has not occurred. If a Mortgagee or Party-in-Interest performs any obligation or effects any cure a Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including the Commission and City, as if performed by Declarant. If Declarant, any Party-in-Interest or Mortgagee commences to effect such cure within such thirty (30) day period (or if cure is not capable of being commenced within such thirty (30) day period, Declarant, any Party-in-Interest or Mortgagee commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid thirty (30) day period (as such may be extended or shortened in accordance with the preceding clause) shall be extended for so long as Declarant, any Party-in-Interest or Mortgagee continues to proceed diligently with the effectuation of such cure, as reasonably determined by the City. In the event ownership of any of the lots comrpising the Subject Property is held by multiple Declarants, notice as to those lots shall be provided to all Declarants of such lots from whom the City has received notice in accordance with **Section 6** 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) days written notice of such alleged violation by the City, during which period each Mortgagee and Party in Interest shall have the opportunity to effect such cure. If any Mortgagee or Party in Interest commences to effect a cure during such thirty (30) day period and thereafter proceeds diligently to complete the effectuation

of such cure, such cure period shall be extended for so long as any Mortgagee or Party in Interest continues to proceed diligently toward such cure. If a Mortgagee or Party in Interest performs any obligation or effects any cure Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including the Commission and the City, as if performed by Declarant.

(iii) If, after due notice and opportunity to cure as set forth in this Declaration, Declarant, Mortgagee or a Party-in-Interest shall fail to cure the alleged breach or other violation under this Declaration within the applicable grace period provided herein, the City may exercise any and all of its rights, including without limitation those delineated herein, and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that a Declarant is in default of a material obligation under this Declaration. The time period for curing any violation by a Declarant, Mortgagee, and/or Party-in-Interest shall be subject to extension for Uncontrollable Circumstances pursuant to **Section 7(f)** hereof. The time period for curing any violation by Declarant, Mortgagee, and/or Party-in-Interest shall be subject to extension for Uncontrollable Circumstances pursuant to the provisions of this Declaration.

(f) **Uncontrollable Circumstances**.

(i) In the event that, as the result of an Uncontrollable Circumstance, Declarant is unable to perform or complete any obligation (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 of the Commission (the "**Chair**") as soon as reasonably possible after the occurrence of such Uncontrollable Circumstance becomes apparent to Declarant, request that the Chair certify the existence of such Uncontrollable Circumstance (a "**Delay Notice**"). Any Delay Notice shall include a description of the Uncontrollable Circumstance and its probable duration and impact on the work in question (as reasonably determined by Declarant). In the exercise of his or her reasonable judgment, the Chair shall thereafter, within ten (10) days of its receipt of the Delay Notice, (x) certify in writing that the Uncontrollable Circumstance has occurred, or (y) notify Declarant that it does not reasonably believe that the Uncontrollable Circumstance has occurred, and set forth with reasonable specificity the reasons therefor. Failure to respond within such ten (10) day period shall be deemed to be a determination by the Chair that Uncontrollable Circumstance has occurred. If the Chair certifies that an Uncontrollable Circumstance exists, the Chair shall grant Declarant appropriate relief, including notifying the New York City Department of Buildings ("**DOB**") that a building permit, temporary certificate of occupancy or a permanent certificate of occupancy (as applicable) may be issued for any buildings, or portions thereof, located within the Subject Property. Upon cessation of the Uncontrollable Circumstance, Declarant shall promptly recommence its

obligations under this Declaration subject to the Uncontrollable Circumstance. As a condition to granting relief as aforesaid, the Chair may require that Declarant post a letter of credit or other security, in a form reasonably acceptable to the Chair and naming the City as beneficiary, to secure Declarant's obligation upon the cessation of the Uncontrollable Circumstance. Declarant shall be obligated to re-commence its obligations under this Declaration subject to the Uncontrollable Circumstance at the end of the Uncontrollable Circumstance specified in the Delay Notice, or such lesser period of time as the Chair reasonably determines the Uncontrollable Circumstances shall continue; provided, however, any delay arising by reason of a Uncontrollable Circumstance shall be deemed to continue so long as the Uncontrollable Circumstance continues. If Declarant fails to resume performance of its obligations under this Declaration subject to the Uncontrollable Circumstance within three (3) months after the cessation of the Uncontrollable Circumstance (as reasonably determined by the Chair), the City may undertake performance of any such obligation, and draw upon the aforesaid security, to the extent required to complete such obligations. Upon completion of such obligations by the City, the City shall return the aforesaid security (or the undrawn balance thereof) to Declarant. Declarant hereby grant the City a license to enter upon such portions of the Subject Property as shall be required to exercise the self-help rights conferred upon the City by this Section. The City hereby agrees to indemnify, defend and hold Declarant harmless from and against any claims arising by reason of its exercise of the self-help rights set forth in this Article, except to the extent such claim is caused by or contributed by the negligence of the indemnified party.

(ii) "Uncontrollable Circumstance" shall mean: an occurrence beyond the reasonable control of Declarant which delays the performance of Declarant's obligations hereunder, provided that Declarant has taken all reasonable steps reasonably necessary to control or to minimize such delay, and which occurrences shall include, but not be limited to: (i) a strike, lockout or labor dispute; (ii) the inability to obtain labor or materials or reasonable substitutes therefor; (iii) acts of God; (iv) restrictions, regulations, orders, controls or judgments of any Agency (as herein defined); (v) undue material delay in the issuance of approvals by any Agency, provided that such delay is not caused by any act or omission of Declarant; (vi) enemy or hostile government action, civil commotion, insurrection, terrorism, revolution or sabotage; (vii) fire or other casualty; (viii) a taking of the whole or any portion of the Subject Property by condemnation or eminent domain; (ix) inclement weather substantially delaying construction of any relevant portion of the Subject Property; (x) unforeseen underground or soil conditions, provided that Declarant did not and could not reasonably have anticipated the existence thereof as of the date hereof; (xi) the denial of access to adjoining real property, notwithstanding the existence of a right of access to such real property in favor of Declarant arising by contract, this Declaration; or applicable law, (xii) failure or inability of a public utility to provide adequate power, heat or light or any other utility service; or (xiii) orders of any court of competent jurisdiction, including, without limitation, any litigation which results in an injunction or restraining order prohibiting or otherwise delaying the construction of any portion of the Subject Property.

8. Applications.

(a) Declarant 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. Nothing in this Declaration, including but not limited to the declaration and covenant made in **Section 1** hereof to develop and enlarge the Subject Property as a single unit, shall be construed to prohibit or preclude Declarant from filing for, or DOB from issuing, any permit for all or any portion of the Proposed Development, in such phase or order as the Declarant sees fit in the Declarant's sole discretion.

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

9. 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 CPC's jurisdiction. No other approval by any other public body, private person, or legal entity of any kind shall be required for such modification, amendment or cancellation.

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

(c) Notwithstanding anything to the contrary contained in this Declaration, for so long as Declarant (including any successor to its interest as fee owner of all or any portion of the Subject Property, other than an individual unit owner) shall hold any fee interest in the Subject Property, or any portion thereof, (i) all individual unit owners, and (ii) all boards of managers of any condominium or cooperative 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 by Declarant. Prior to the recordation of such instrument, Declarant shall notify the Chair of Declarant's intent to discharge this Declaration and request the Chair's approval, which approval shall be limited to insuring that such discharge and termination is in proper form and provides the proper provisions which are not discharged survive such termination. Upon recordation of such instrument, Declarant shall provide a copy thereof to Commission so certified by the Register's Office. If some of the Land Use Applications are declared invalid, then Declarant may apply for modification, amendment or cancellation of this Declaration in accordance with this **Section 9**.

10. 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.

11. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law.

12. 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.

13. 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.

14. 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.

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

16. **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.

17. **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.

H.E.L.P. DEVELOPMENT CORP., a

New York not-for-profit corporation

By: _____

Name: David Cleghorn
Title: Vice President

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

On the ____ day of _____, 20__ before me, the undersigned, a Notary Public in and for said State, personally appeared David Cleghorn, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

_____

Notary Public

EXHIBIT A

SUBJECT PROPERTY DESCRIPTION

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, 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 WESTERLY SIDE OF HINSDALE STREET, DISTANT 50 FEET NORTHERLY FROM THE CORNER FORMED BY THE INTERSECTION OF THE WESTERLY SIDE OF HINSDALE STREET AND THE NORTHERLY SIDE OF BLAKE AVENUE;

RUNNING THENCE WESTERLY PARALLEL WITH BLAKE AVENUE AND PART OF THE DISTANCE THROUGH A PARTY WALL, 100 FEET;

THENCE SOUTHERLY PARALLEL WITH HINSDALE STREET, 50 FEET TO THE NORTHERLY SIDE OF BLAKE AVENUE;

THENCE WESTERLY AGAIN PARALLEL WITH BLAKE AVENUE, 100 FEET, TO THE CORNER FORMED BY THE INTERSECTION OF THE NORTHERLY SIDE OF BLAKE AVENUE AND THE EASTERLY SIDE OF SNEDIKER AVENUE;

THENCE NORTHERLY PARALLEL WITH SNEDIKER AVENUE, 500 FEET, TO THE CORNER FORMED BY THE INTERSECTION OF THE EASTERLY SIDE OF SNEDIKER AVENUE AND THE SOUTHERLY SIDE OF SUTTER AVENUE;

THENCE EASTERLY PARALLEL WITH SUTTER AVENUE, 200 FEET, TO THE CORNER FORMED BY THE INTERSECTION OF THE SOUTHERLY SIDE OF SUTTER AVENUE AND THE WESTERLY SIDE OF HINSDALE STREET;

THENCE SOUTHERLY PARALLEL TO HINSDALE STREET, 450 FEET, TO THE POINT OR PLACE OF BEGINNING.

EXHIBIT B

CERTIFICATION OF PARTIES-IN-INTEREST

(SEE ATTACHED)

EXHIBIT C

WAIVERS AND SUBORDINATION

(SEE ATTACHED)

EXHIBIT D

PLANS

(SEE ATTACHED)