RESTRICTIVE DECLARATION

**THIS RESTRICTIVE DECLARATION** (this “**Declaration**”), dated as of April \_\_\_\_\_\_\_\_\_\_\_\_, 2018 and effective as of the Effective Date (hereinafter defined), by **HEBREW HOME FOR THE AGED AT REVIERDALE, INC.**, a New York not-for-profit corporation having an address at c/o 5701–5961 Palisade Avenue, Bronx, New York 10471, **the Hebrew Home for the Aged at Riverdale Foundation, Inc**., a New York not-for-profit corporation having an address at c/o 5701–5961 Palisade Avenue, Bronx, New York 10471, and the **Hebrew Home Housing Development Fund Company, Inc**., a New York not-for-profit corporation having an address at c/o 5701–5961 Palisade Avenue, Bronx, New York 10471 (collectively, the “Declarant”)

WITNESSETH:

1. Declarant is the fee owner of certain real property located in the Borough of Bronx, County of Bronx, City of New York and State of New York, designated for real property tax purposes as Lots 55, 210, 224, 225, 230 of Block 5933 on the Tax Map of the City of New York, which real property is more particularly described on **Exhibit A** annexed hereto (collectively, the “**Subject Property**”);

**WHEREAS,** Declarant intends to develop the Subject Property by constructing three new building segments and additional site improvements, including the renovation of an existing building, demolition of existing structures, and accommodation of 90 additional parking spaces to facilitate the development of a 633,890-gross square foot (gsf) Continuing Care Retirement Community (CCRC)/ LTCF at the Subject Property (collectively, the “**Projected Development**”), as reflected in the EAS (hereinafter defined);

**WHEREAS,** in connection with the Projected Development, Declarant has filed with the City Planning Commission of the City of New York (the “**Commission**”) applications proposing: (a) a special permit pursuant to New York City Zoning Resolution (ZR) Section 74-901 (Long-term care facilities) for a Long Term Care Facility (LTCF) within an R1-1 zoning district, (b) authorizations pursuant to ZR §105-42 to alter natural features; (c) an authorization pursuant to ZR § 105-432 to modify height and setback regulations; and (d) a certification pursuant to ZR § 105-45 for a restoration plan (collectively, the “**Applications**”);

1. the Commission acting as lead agency for the City Environmental Quality Review Application No. 18DCP134X conducted environmental review of the Applications 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 (“**SEQRA**”), and issued a Conditional Negative Declaration for the Final Environmental Assessment Statement (the “**EAS**”) prepared in connection with environmental review of the Applications on April\_\_\_\_, 2018 (the “**CND**”);
2. at the time of the Commission’s Approval of the Applications the Commission found, as required pursuant to SEQRA, that the action will have no significant effect on the quality of the environment, once it is modified to include the Project Components Related to the Environment (“PCREs”) related to construction transportation that were identified in the EAS;

HF 8719629v.6

1. to insure that the development of the Subject Property pursuant to the Final Approval (as defined herein) is consistent with the analysis in the EAS upon which the Commission has made its findings, and that the development of the Subject Property incorporates the PCREs as conditions of the Commission’s decision on the Applications, Declarant has agreed to restrict the development, operation, use and maintenance of the Subject Property in certain respects, which restrictions are set forth in this Declaration, including but not limited to the agreement of Declarant (i) prohibit parking of construction workers’ private vehicles on the Subject Property during construction of the Proposed Development and (ii) provide off-site parking and a shuttle service for such construction workers to and from the Subject Property during construction of the Proposed Development;
2. Declarant desires, on the terms and conditions herein, to restrict the manner in which the Subject Property may be developed, redeveloped, maintained and operated now and in the future, and intends these restrictions to benefit the Subject Property; and
3. pursuant to the certificate annexed hereto as **Exhibit B**, Reliable Abstract has certified that, as of the date of this Declaration, Declarant and \_\_\_\_\_\_\_\_\_ are the Parties-in-Interest in the Subject Property;
4. all Parties in Interest have either executed this Declaration or waived their rights to execute this Declaration by written instrument, which instrument is intended to be recorded simultaneously with this Declaration;

**NOW, THEREFORE**, Declarant hereby declares that the Subject Property shall be held, sold, conveyed, developed, used, occupied, operated and maintained subject to the following restrictions, covenants, obligations and agreements, which shall run with the Subject Property and bind Declarant and their heirs, successors and assigns.

# CERTAIN DEFINITIONS

For purposes of this Declaration, the following terms shall have the following meanings.

“**Applications**” shall have the meaning set forth in the Recitals to this Declaration.

“**Approval**” shall mean approval of the Applications by the Commission relating to the Projected Development or otherwise with respect to the Subject Property.

“**Building Permit**” shall mean the issuance of any permit by DOB whether in the form of (i) an excavation permit, authorizing excavations, including those made for the purposes of removing earth, sand, gravel, or other material from the Subject Property; (ii) a foundation permit, authorizing foundation work at the Subject Property; (iii) a demolition permit, authorizing the dismantling, razing or removal of a building or structure, including the removal of structural members, floors, interior bearing walls and/or exterior walls or portions thereof; (iv) a New Building Permit (as herein defined) or (v) any other permit normally associated with the development of a building.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which banks in the State of New York are authorized or required by Legal Requirements to be closed.

“**CEQR**” shall have the meaning given in the Recitals to this Declaration.

“**Chair**” shall mean the Chair of the Commission from time to time or any successor to the jurisdiction thereof.

“**City**” shall mean the City of New York.

“**City Council**” shall mean the City Council of the City of New York or any successor to the jurisdiction thereof.

“**CND**” shall have the meaning set forth in the Recitals to this Declaration.

“**Commission**” shall have the meaning given in the Recitals to this Declaration.

“**Construction Commencement”** shall mean the issuance of the first Building Permit by DOB to Declarant for the commencement of work to develop the Subject Property, in whole or in part, with the Projected Development, or any portion thereof.

“**DCP**” shall mean the New York City Department of City Planning or any successor to the jurisdiction thereof.

“**Declarant**” shall have the meaning given in the Preamble to this Declaration.

“**Declaration**” shall have the meaning given in the Preamble to this Declaration.

“**Delay Notice**” shall have the meaning set forth in Section 4.01 of this Declaration.

“**DOB**” shall mean the Department of Buildings of the City of New York, or any successor to its jurisdiction.

**“EAS”** shall have the meaning set forth in the Recitals to this Declaration.

“**Effective Date**” shall mean the date upon which the Final Approval becomes effective.

“**Entity**” means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, or association.

“**EAS Requirement**” shall mean any measure set forth in the EAS that is required in order for the Commission to find in the Commission’s Approval of the Applications that the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that the adverse impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions of the Approval PCREs that were identified in the EAS as practicable.

“**Final Approval**” shall mean approval of the 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 Applications and takes final action pursuant to New York City Charter Section 197-d approving the Applications, in which event “Final Approval” shall mean such approval of the 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 Applications.

“**Force Majeure Event**” shall mean occurrences beyond the reasonable control of Declarant which delay the performance of Declarant’s obligations hereunder, provided that Declarant has taken all reasonable steps reasonably necessary to control or to minimize such delay, and which occurrences shall include, but not be limited to: (i) a strike, lockout or labor dispute; (ii) the inability to obtain labor or materials or reasonable substitutes therefor; (iii) acts of God; (iv) restrictions, regulations, orders, controls or judgments of any Governmental Authority; (v) undue material delay in the issuance of approvals by any Governmental Authority, provided that such delay is not caused by any act or omission of Declarant; (vi) enemy or hostile government action, civil commotion, insurrection, terrorism, revolution or sabotage; (vii) fire or other casualty; (viii) a taking of the whole or any portion of the Subject Property by condemnation or eminent domain; (ix) inclement weather substantially delaying construction of any relevant portion of the Subject Property; (x) unforeseen underground or soil conditions, provided that Declarant did not and could not reasonably have anticipated the existence thereof as of the date hereof; (xi) the denial of access to adjoining real property, notwithstanding the existence of a right of access to such real property in favor of Declarant arising by contract, this Declaration; or Legal Requirements, (xii) failure or inability of a public utility to provide adequate power, heat or light or any other utility service; or (xiii) orders of any court of competent jurisdiction, including, without limitation, any litigation which results in an injunction or restraining order prohibiting or otherwise delaying the construction of any portion of the Subject Property. No event shall constitute a Force Majeure Event unless Declarant, the holder of a Mortgage that has succeeded to Declarant’s interest in the Subject Property, or any other applicable party complies with the procedures set forth in 4.01

“**Governmental Authority**” shall mean any governmental authority (including any Federal, State, City or County governmental authority or quasi-governmental authority, or any political subdivision of any thereof, or any agency, department, commission, board or instrumentality of any thereof) having jurisdiction over the matter in question.

“**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.

“**Mayor**” shall mean the Mayor of The City of New York.

“**Mortgage**” shall mean a mortgage given as security for a loan in respect of all or any portion of the Subject Property, other than a mortgage secured by any condominium unit or other individual residential unit located within the Subject Property.

“**Mortgagee**” shall mean the holder of a Mortgage.

“**New York City Charter**” shall mean the Charter of the City of New York, effective as of January 1, 1990, as the same may be amended from time to time.

“**Party-in-Interest**” shall have the meaning set forth in subdivision (d) of the definition of the term “zoning lot” in Section 12-10 of the Zoning Resolution.

“**PCO**” shall mean a Permanent Certificate of Occupancy issued by DOB.

“**Person**” shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person as the context may require.

“**Possessory Interest**” shall have the meaning set forth in Section 9.09(d) of this Declaration.

“**Project Components Related to the Environment”**, or “**PCRE**”, shall mean the measures set forth in Article III of this Declaration that are identified in the EAS as components of the Projected Development that are required to avoid impacts to the environment.

“**Projected Development**” shall have the meaning set forth in the Recitals to this Declaration.

“**Register’s Office**” shall mean the Register’s Office of the City of New York, Kings County.

“**Required Elements**” shall have the meaning set forth in Section 3.01(a)(iii) of this Declaration.

“**SEQRA**” shall have the meaning given in the Recitals to this Declaration.

“**State**” shall mean the State of New York, its agencies and instrumentalities.

“**Subject Property**” shall have the meaning set forth in the Recitals to this Declaration.

“**TCO**” shall mean a Temporary Certificate of Occupancy issued by DOB.

“**Zoning Resolution**” shall mean the Zoning Resolution of the City of New York, effective December 15, 1961, as amended from time to time.

# DEVELOPMENT AND USE OF THE SUBJECT PROPERTY

## **Development of the Subject Property.** If the Subject Property is developed, in whole or in part, with the Projected Development, or portion thereof, Declarant covenants and agree that the PCREs set forth in Article III shall be implemented in accordance with the provisions of this Declaration.

# ENVIRONMENTAL PROTECTION MEASURES

Declarant shall implement the following Project Components Related to the Environment (“**PCREs**”) in accordance with the EAS and as further set forth in this Article III for any development pursuant to Section 2.01 of the Subject Property, as such PCREs may be modified in accordance with the provisions of Section 3.03.

## **Project Component Related to the Environment –Construction.** Declarant shall neither request nor accept a Building Permit from DOB until declarant has submitted a letter to the Chair certifying that: (i) Declarant has entered into an agreement with a parking facility operator in Yonkers, NY to provide parking for construction workers during construction of the Proposed Development, (ii) construction workers will not be permitted to park their vehicles on the Subject Property for the duration of construction of the Proposed Development, and (iii) Declarant will provide shuttle service for construction workers to and from such parking facilities and the Subject Property during construction of the Proposed Development, and the Chair has confirmed receipt of such certification letter to the Buildings Department.

## **Force Majeure Involving a PCRE or Mitigation Measure**. Notwithstanding any provision of this Declaration to the contrary, if Declarant is unable to perform a PCRE required by the EAS by reason of the occurrence of a Force Majeure Event, as determined by the Chair, pursuant to the procedures set forth in Section 4.01, then Declarant shall not be excused from performing such PCRE that is affected by Force Majeure Event unless and until the Chair has made a determination in his or her reasonable discretion that the failure to implement the PCRE during the period of the Force Majeure Event, or implementing an alternative proposed by Declarant, would not result in any new or different significant environmental impact not addressed in the EAS.

## **Incorporation of EAS Requirements in PCREs**

. If this Declaration inadvertently fails to incorporate a PCRE, such PCRE shall be deemed incorporated herein by reference. If there is any inconsistency between a PCRE as set forth in the EAS and as incorporated in this Declaration as a PCRE, the PCRE as set forth in the EAS shall be applicable.

## **Innovation; Alternatives; Modifications Based on Further Assessments**.

### **Innovation and Alternatives**. In complying with any PCRE set forth in Article III of this Declaration or by incorporation by inclusion in the EAS, Declarant may, at its election, implement innovations, technologies or alternatives that are or hereafter become available, which Declarant demonstrates to the reasonable satisfaction of DCP would result in equal or better methods of achieving the relevant PCRE, than those set forth in this Declaration, (such measures, “**Alternative PCRE Measures**”) in each case subject to approval by DCP in accordance with the provisions of Section 7.03.

### **Elimination or Reduction Based on Further Assessments**. Where Declarant believes, in good faith, based on changed conditions, that a PCRE required under this Declaration could be reduced or eliminated without diminishment of the environmental standards that would be achieved by implementation of the PCRE (“**Elimination of PCRE**”), Declarant may, at its election, seek to reduce or eliminate the PCRE, where Declarant demonstrates to the reasonable satisfaction of DCP that the reduction of elimination of the PCRE would not result in the diminishment of the environmental standards that would be achieved by implementation of the PCRE, in each case subject to approval by DCP in accordance with the provisions of Section 7.03.

# FORCE MAJEURE

## **Force Majeure**. If Declarant is unable to perform a PCRE required by the EAS by reason of a Force Majeure Event, Declarant may, upon notice to the Chair (a “**Delay Notice**”), request that the Chair, certify the existence of such Force Majeure Event. Any Delay Notice shall include a description of the Force Majeure Event and its probable duration and impact on the work in question (as reasonably determined by Declarant). The Chair shall thereafter determine whether a Force Majeure Event exists, and in all events shall, upon notice to Declarant no later than ten (10) days after its receipt of the Delay Notice, certify that a Force Majeure Event either exists or does not exist. If the Chair certifies that a Force Majeure Event does not exist, the Chair shall set forth with reasonable specificity, in the certification, the reasons therefor. If the Chair certifies that a Force Majeure Event exists, the Chair shall grant Declarant appropriate relief, including notifying DOB that a Building Permit, TCO or a PCO (as applicable) may be issued for any buildings, or portions thereof, located within the Subject Property. Failure to respond within such thirty (30) day period shall be deemed to be a certification by the City that Force Majeure Events have occurred. Any delay arising by reason of a Force Majeure Event shall be deemed to continue only so long as the Force Majeure Event continues. Upon cessation of the Force Majeure Event, Declarant shall promptly recommence the PCRE, as applicable. Upon a certification or deemed certification that Force Majeure Events have occurred, the City may grant such Declarant appropriate relief. As a condition of granting such relief, the City may require that such Declarant post a bond, letter of credit or other security in a form reasonably acceptable to the City in order to ensure that the Obligation will be completed in accordance with the provisions of this Declaration. Declarant shall re-commence the Obligation at the end of the probable duration of the Force Majeure Event specified in the Delay Notice, or such lesser period of time as the Chair reasonably determined the Force Majeure Event shall continue; provided, however, that if the Force Majeure Event has a longer duration than as set forth in the Delay Notice, or as reasonably determined by the Chair, the Chair shall grant additional time to re-commence the Obligation.

# ENFORCEMENT; DEFAULTS AND REMEDIES

## 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 Article V hereof. 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 TCO or PCO, for any portion of the Projected Development on the Subject Property subject to the Applications; provided, however, that such right of revocation shall not permit or be construed to permit the revocation of any TCO or PCO for any use or improvement that exists on the Subject Property as of the date of this Declaration.

## **No Enforcement by Third Parties**. Notwithstanding any provision of this Declaration to the contrary, only Declarant, and Declarant’s successors and assigns, and the City shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration. Nothing contained herein should be construed or deemed to allow any other person or entity to have any interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Applications. In any proceedings brought by the City against Declarant seeking to deny or revoke a Building Permit, TCO or PCO, with respect to the Projected Development on the Subject Property, 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 Declarant is associated with a particular Projected Development Site or portion(s) of a Projected Development Site developed on the Subject Property, then the City shall only deny or seek the revocation of Building Permits, TCOs, or PCOs for such Site(s) or portion(s) of a Site, and only seek to impose a fine, lien or other penalty on such Projected Development Site(s) or portion(s) of a Projected Development Site, and any such event or occurrence shall not provide the basis for denial or revocation of the Building Permits, TCOs or PCOs, or the imposition of any fine, lien or other penalty, with respect to other Projected Development Site(s) or portion(s) of a Projected Development Site comprising a portion of the Subject Property for which no such failure to comply has occurred. No Person other than Declarant, any Mortgagee, shall have any right to enforce the provisions of this Declaration. This Declaration shall not create any enforceable interest or right in any Person, other than Declarant or 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 Applications.

## **Notice and Cure**.

### Prior to the City instituting any proceeding or proceedings to enforce any of the terms or conditions of this Declaration by reason of the existence of an alleged breach or other violation hereunder, the City shall give Declarant, every Mortgagee and every Party-in-Interest thirty (30) days written notice of such alleged breach or other violation, during which period Declarant shall have the opportunity to effect a cure of such alleged breach or other violation or to demonstrate to City why the alleged violation has not occurred. If a Mortgagee or Party-in-Interest performs any obligation or effects any cure Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including CPC and City, as if performed by Declarant. If Declarant, any Party-in-Interest or Mortgagee commences to effect a cure during 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 towards 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

### 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 in this Section 5 and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Declarant is in default of a material obligation under this Declaration. The time period for curing any violation by Declarant, Mortgagee, and/or Party-in-Interest shall be subject to extension for a Force Majeure Event pursuant to Section 4.01 hereof.

# MISCELLANEOUS

Effective Date; Recordation; Binding Nature; Liability; Governing Law; Severability; Applications; Offering Plan; Indemnification; Acknowledgements; Representations; Estoppel

## **Effective Date; Recordation**.

### **Effective Date**. This Declaration and the provisions and covenants hereof shall become effective only upon the Effective Date.

### **Recordation**. Promptly, and within ten (10) business days after the Effective Date, 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 Subject Property, and deliver to the Commission within ten (10) calendar days from any such submission for recording, a copy of such documents as submitted for recording, together with an affidavit of submission for recordation. Declarant shall deliver to the Commission a copy of all such documents, as recorded, certified by the Register, promptly upon receipt of such documents from the register. If Declarant fails to so record such documents, then the City may record duplicate originals of such documents. However, all fees paid or payable for the purpose of recording such documents, whether undertaken by Declarant, or by the City (as permitted in accordance with this paragraph), shall be borne by Declarant.

## **Binding Nature; Successors**.

### The restrictions, covenants, rights and agreements set forth in this Declaration shall run with the land and shall inure to the benefit of, and be binding upon any respective heirs, successors, legal representatives and assigns of Declarant, including Mortgagee (provided that no Mortgagee shall have any performance or payment obligations under this Declaration unless and until such Mortgagee succeeds to a Possessory Interest), provided that the Declaration shall be binding on any Declarant only for the period during which such Declarant, or any successor, legal representatives or assign thereof, is the holder of an interest in the Subject Property and only to the extent of such Declarant’s interest in the Subject Property, and references to Declarant shall be deemed to include such heirs, successors, legal representatives and assigns as well as the successors to their interests in the Subject Property subject to the further provisions of this Section 6.02. At such time as a Declarant or any successor to a Declarant no longer holds an interest in the Subject Property, such Declarant or such Declarant’s successor’s obligations and liability under this Declaration shall wholly cease and terminate and the party succeeding such Declarant or such Declarant’s successor shall assume the obligations and liability of Declarant pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party assumes an interest in the Subject Property to the extent of such party’s interest in the Subject Property. For purposes of this Declaration, any successor to a Declarant shall be deemed a Declarant for such time as such successor holds all or any portion of any interest in the Subject Property.

### Reference in this Declaration to agencies or instrumentalities of the City shall be deemed to include agencies or instrumentalities succeeding to jurisdiction thereof pursuant to the laws of the State of New York and the New York City Charter.

## **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.

### 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.

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

## **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.

## **Applications**. Declarant shall reference this Declaration in any application pertaining to the Subject Property submitted to DOB or any other interested City agency or department having jurisdiction over the Subject Property.

## **Indemnification**.

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

### 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.

### 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.

## **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.

## **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.

## **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.

## **Acknowledgement of Covenants**

## . Declarant acknowledges that the restrictions, covenants, easements, obligations and agreements in this Declaration will protect the value and desirability of the Subject Property as well as benefit the City of New York and all property owners within a one-half mile radius of the Subject Property.

## **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.

## **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.

## **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.

## **Representations**. Declarant represents and warrants that there are no restriction of record on the use of the Subject Property, nor any present or presently existing future estates or interest in the Subject Property, nor any liens, obligation, covenants, easements, limitations or encumbrances of any kind, the requirements of which have not been waived or subordinated, which would prevent or preclude, presently, or potentially, the imposition of the restrictions, covenants, obligations and agreements of this Declaration.

# AMENDMENT, MODIFICATION & CANCELLATION

## This Declaration may be modified, amended or canceled only upon application by Declarant and subject to the approval and upon express written consent of the Commission or an agency succeeding to the Commission’s jurisdiction, and no other approval or consent by any other public body shall be required for such modification, amendment or cancellation.

## Notwithstanding anything to the contrary contained in Section 7.01 hereof, 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.

## The requirements set forth in Article III of this Declaration may only be modified pursuant to Section 3.05 of this Declaration and in accordance with this Section provided a determination has been made that the Alternative PCRE or Elimination of a PCRE will not result in any greater adverse environmental impacts than have been identified in the EAS. In the event that Declarant seeks to implement an Alternative PCRE or Elimination of PCRE, it shall set forth the basis for its determination that the Alternative PCRE or Elimination of PCRE will not result in any greater adverse environmental impacts than have been identified in the EAS in a Technical Memorandum submitted to City Planning. Upon the acceptance of a Technical Memorandum by City Planning demonstrating that the Alternative PCRE or Elimination of PCRE will not result in any greater adverse environmental impacts than have been identified in the EAS, the requirements of this Declaration with respect to the PCREs discussed in such Technical Memorandum may be modified to reflect the Alternative PCRE or Elimination of PCRE. If Declarant implements an approved Alternative PCRE or Elimination of PCRE, a notice indicating of such change shall be recorded against the Subject Property in the Register’s Office, in lieu of modification to this Declaration. Declarant shall not apply for or accept Building Permits for Projected Development that does not implement the required PCREs set forth in Article III until the Chair certifies to DOB that a Technical Memorandum has been submitted to City Planning demonstrating that the proposed Alternative PCRE or Elimination of PCRE will not result in any greater adverse environmental impacts than have been identified in the EAS, and a notice indicating of such change has been recorded against the Subject Property in the Register’s Office.

## Notwithstanding anything to the contrary contained in this Declaration, if all Approvals given in connection with the Applications 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 which are not discharged survive such termination. Upon recordation of such instrument, Declarant shall provide a copy thereof to the Chair so certified by the Register’s Office. If some of the Approvals given in connection with the Applications are declared invalid, then Declarant may apply for modification, amendment or cancellation of this Declaration.

# NOTICES

## **Notices**.

### All notices, demands, requests, consents, waivers, approvals and other communications which may be or are permitted, desirable or required to be given, served or deemed to have been given or sent hereunder shall be in writing and shall be sent as follows:

If intended for Declarant, to: HEBREW HOME FOR THE AGED, INC.

Hebrew Home for the Aged at Riverdale Foundation, Inc., or

Hebrew Home Housing Development Fund Company

c/o

With a copy to: Kramer Levin Naftalis & Frankel LLP

1177 Avenue of the Americas

New York, New York 10036

Attn: Gary Tarnoff, Esq.

If intended for the City, to: Director,  
 Department of City Planning   
 120 Broadway, 31st Floor  
 New York, New York 10271

With a copy to: Office of the General Counsel

New York City Department of City Planning

120 Broadway, 31st Floor  
 New York, New York 10271

If intended for DCP, to: Director,

Department of City Planning

120 Broadway, 31st Floor  
 New York, New York 10271

With a copy to: Office of the General Counsel

New York City Department of City Planning

120 Broadway, 31st Floor  
 New York, New York 10271

#### If intended for a Mortgagee, by mailing or delivery to such Mortgagee at the address given in its notice to DCP.

#### From and after the Association Obligation Date, a copy of all notices to Declarant shall include a copy to the Association, and the Association shall give notice to the City and DPR of its address for notice.

### Declarant, DCP or their respective representatives, by notice given as provided in this paragraph, may change any address for the purposes of this Declaration. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, overnight courier or delivered by hand, and shall be deemed sufficiently given, served or sent for all purposes hereunder five (5) business days after it shall be mailed, or, if delivered by hand, when actually received.

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IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first above written.

**HEBREW HOME FOR THE AGED AT REVIERDALE, INC.**, a New York not-for-profit corporation

**the Hebrew Home for the Aged at Riverdale Foundation, Inc**., a New York not-for-profit corporation

**Hebrew Home Housing Development Fund Company, Inc**., a New York not-for-profit corporation

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

Name: Daniel Reingold

Title: President and CEO

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| --- | --- |
| STATE OF NEW YORK | ) |
|  | ) SS.: |
| COUNTY OF NEW YORK | ) |
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On the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2018, before me, the undersigned, a Notary Public in and for said State, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

EXHIBIT A

**LEGAL DESCRIPTION**

EXHIBIT B

**PARTIES-IN-INTEREST CERTIFICATION**

(attached)