



CITY PLANNING COMMISSION

August 19, 2009/Calendar No. 27

C 090443 ZSK

IN THE MATTER OF an application submitted by Atara Vanderbilt, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-743 (a) of the Zoning Resolution to modify the requirements of Section 23-145 (For residential buildings developed or enlarged pursuant to the Quality Housing Program), Section 23-852 (Inner court recess), and Section 35-24 (Special Street Wall Location and Height and Setback Regulations in Certain Districts) to facilitate a mixed-use development on property located at 470 Vanderbilt Avenue (Block 2009, Lots 1, 19, 20, 23, 26, 31-44), in a C6-3A District, within a General Large-Scale Development, Borough of Brooklyn, Community District 2.

This application for a Special Permit pursuant to Section 74-743 of the Zoning Resolution was submitted by Atara Vanderbilt, LLC on May 15, 2009, to facilitate the development of a new mixed-use building containing 376 dwelling units, 32,358 square feet of ground floor retail space, and the reuse and expansion of an existing 565,700 square foot loft building for commercial uses on Block 2009, bounded by Fulton Street, Vanderbilt Avenue, Clermont Avenue, and Atlantic Avenue in the Fort Greene neighborhood of Community District 2, Brooklyn.

RELATED ACTIONS

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

C 090441 ZMK Zoning map amendment changing an M1-1 district and an R6/C2-3 district to a C6-3A district.

N 090442 ZRK Zoning text amendment to apply the Inclusionary Housing Program to R9A districts in Brooklyn Community District 2.

BACKGROUND

Atara Vanderbilt, LLC is seeking several actions to facilitate development of an approximately 376-unit residential building with ground floor retail and to allow the conversion and expansion of an existing 565,700 loft building on the block bounded by Vanderbilt Avenue, Atlantic Avenue, Clermont Avenue, and Fulton Street in the Fort Greene neighborhood of Community District 2, Brooklyn.

Site Description

The project site comprises a full city block, Block 2009, approximately 2.9 acres in size. The site contains a large loft building and an accessory surface parking lot. It is in an M1-1 zoning district and, within 100 feet of Fulton Street, an R6/C2-3 zoning district. The mostly vacant, seven to 10-story (94 feet to 135 feet,) 565,700 square-foot existing loft building is located on the southern portion of the block. The building was renovated to be used as a “server farm” to house computer network servers several years ago. However, it is currently mostly vacant, containing only limited telecommunications uses. The surface parking lot is at the north end of the block fronting Fulton Street.

The project site is surrounded by residential, institutional, commercial retail and transportation-related uses. Gateway Triangle, a 0.07-acre Department of Parks and Recreation community garden is located across Fulton Street from the site, North of Fulton Street are continuous blocks, zoned R6B, of well-maintained, four- and five-story brownstones, many of which are within the Fort Greene Historic District, as well as taller six- and seven-story apartment buildings. East of the project site, between Fulton Street and Atlantic Avenue, a mix of low- to mid-rise residential buildings are interspersed with institutional uses, zoned R7A. Along Fulton Street and Atlantic Avenue retail and auto-oriented uses predominate. All four streets bounding the site are two-way roadways and all four intersections at the corners of the project site are signalized. The Clinton-Washington Avenue stop for the C train is one block east of the project site on Fulton Street.

The area north and east of the site was rezoned in 2007 as part of the Fort Greene/Clinton Hill contextual rezoning, and the R7A district is an Inclusionary Housing-designated area, where inclusionary zoning provisions provide floor area incentives for the provision of affordable housing.

West of the site along Fulton Street, zoned R7-2/C2-3, are Public School 753, the Brooklyn School of Career Development and an athletic field related to Brooklyn Technical High School. One block further west are four residential towers, including the 31-story, 300-unit Housing Authority Atlantic Terminal development, and three 15-story residential buildings. South of the project site is the Long Island Rail Road's (LIRR) Vanderbilt Rail Yard, zoned M1-1, which is part of the planned site of the Empire State Development Corporation's (ESDC) mixed-use Atlantic Yards project.

Proposed Development

The applicant proposes to renovate and expand the existing building for commercial uses and to develop the surface parking lot with a new residential building with affordable housing, accessory parking and ground-floor retail. Renovation of the existing building would include converting much of the ground floor to retail use and the upper stories to office use. Existing inner courtyards on lower floors would be filled in to create efficient office floor plates, adding up to 18,500 square feet of commercial floor area to the building, for a total of approximately 584,000 square feet of commercial floor area.

On the surface parking lot at the north end of the block, the applicant proposes to develop a new mixed-use building with ground floor retail, below-grade accessory parking and up to 376 units of market-rate and affordable housing. The new building would contain approximately 328,000 square feet of floor area, of which up to 32,400 square feet is expected to be used for retail uses on the ground floor, and the balance of which would be used for the 376 residential units. Incentives for the development of affordable housing would be provided through the extension

of an already existing, adjacent Inclusionary Housing-designated area to the project site, being requested in the related application for a zoning text amendment (N 090442 ZRK).

The existing and new buildings combined would include 912,235 square feet or 7.13 FAR. The site would include 616,555 square feet of commercial floor area (4.82 FAR) and 295,680 square feet of residential floor area (2.31 FAR).

The new building would be designed to step down in height and scale toward the Fort Greene neighborhood to the north. Along Fulton Street, the new building would have a base height of six stories (69 feet 6 inches). After a ten-foot setback, the building's height would rise to 8 stories (91 feet) after a ten-foot setback. At the mid-block, adjacent to the existing building, the new building would have a base height of nine stories (102 feet) and, after setting back ten feet, would rise to 12 stories (133 feet). A north-south oriented inner court is proposed through the middle of the block above the first floor. Up to 397 accessory parking spaces would be located in a fully attended parking garage on two floors below the new building. The below-grade accessory parking would be accessed from Clermont and Vanderbilt avenues, both two-way streets, dispersing access to the site through four signalized intersections, and limiting traffic impacts. At-grade loading berths would be split between Clermont and Vanderbilt avenues, reducing impacts on each street.

PROPOSED ACTIONS

To facilitate the development of the proposed building, the following actions are requested:

Zoning Map Amendment (C 090441 ZMK)

The proposed action would rezone the block bounded by Fulton Street, Vanderbilt Avenue, Atlantic Avenue and Clermont Avenue from M1-1 and R6/C2-3 to C6-3A. The existing M1-1 zoning district permits a floor area ratio (FAR) of 1.0 for manufacturing, commercial, and limited community facility uses (Use Groups 4-14, 16 and 17). The R6/C2-3 district allows residential, community facility and commercial uses (Use Groups 1-8, 14) with a maximum FAR

of up to 2.43 for residential uses, 4.8 for community facility uses, and 2.0 for commercial uses. The optional Quality Housing program permits up to 3.0 FAR for residential uses with a height limit of 70 feet.

The proposed C6-3A district permits residential, commercial and community facility uses (Use Groups 1-12,) including larger retail stores than are permitted under the C2-3 district, but excludes the manufacturing uses permitted under the M1 district. With the related zoning text amendment (N 090442 ZRK) to include the block as part of an Inclusionary Housing designated area, the C6-3A district would allow a base FAR of 6.5 for residential uses, and up to a maximum FAR of 8.5 with the provision of permanently affordable housing. Community facility uses would be limited to and FAR of 7.52 and commercial uses would be limited to an FAR of 6.0. C6-3A zoning districts have a height limit of 145 feet, with a minimum base height of 60 and a maximum base height of 102 feet. At the base height, a 10-foot setback is required from the surrounding wide streets.

The proposed zoning district would reflect the height and scale of the existing building and accommodate the proposed project's heights, FAR and uses. The C6-3A district reflects the heights of the existing building, which ranges from 94 feet to 135 feet, and allows for the lower heights along Fulton Street including a base height of 69 feet 6 inches. The proposed district's FAR limits would allow an increase in commercial floor area that would permit expansions of the existing building to better facilitate commercial uses and would allow the development of retail uses along Fulton Street. The proposed zoning district would also allow the addition of residential uses on undeveloped portions of the block, that are currently prohibited by the existing M1-1 district.

Zoning Text Amendment (N 090442 ZRK)

The applicant is requesting an amendment to Zoning Resolution (Z.R.) Section 23-922(e) to extend an existing Inclusionary Housing designated area to include the project site, and an amendment to Section 23-144 to allow the floor area ratios permitted under the Inclusionary

Housing Program to apply in designated R9A districts in Brooklyn Community District 2. An existing Inclusionary Housing designated area that includes areas east of Vanderbilt Avenue, adjacent to the project site, was adopted in 2007 as part of the Fort Greene/Clinton Hill rezoning. The Inclusionary Housing Program permits a base residential FAR of 6.5 and a maximum residential FAR of 8.5 with the provision of permanently affordable housing in a C6-3A district. Under the Inclusionary Housing Program, 80 percent of residential floor area above the base FAR of 6.5 would be required to be permanently-affordable to households earning up to 80 percent of Area Median Income (AMI). Approximately 85 units are proposed to be provided as affordable housing pursuant to the Inclusionary Housing Program, which would equal more than 20 percent of the residential floor area on the site. Affordable units would meet all of the size and distribution requirements of the Inclusionary Housing Program.

Special Permit for Bulk Modifications (C 090443 ZSK)

The applicant is requesting a special permit pursuant to Section 74-743 for bulk modifications in order to allow greater flexibility in developing a site plan for the 2.9-acre block. The waivers are intended to allow a better site plan and design in response to an irregularly shaped block and to provide a better relationship among the existing building, the proposed new building and open areas; and, between the project and adjacent streets, surrounding development and adjacent open areas than would be possible without the requested relief.

The applicant requests modification of the residential lot coverage requirements of Section 23-145 to permit lot coverage to be distributed on the property without regard to interior or corner lot lines or district boundaries. The regulations allow a maximum 80 percent lot coverage on corner lots and 70 percent lot coverage on interior and through lots. The proposed building would cover 88 percent of the corner lot at Fulton Street and Vanderbilt Avenue. The lot coverage would be below the maximum permitted lot coverage on the through lot and the corner lot at Fulton Street and Clermont Avenue, and would be below the total lot coverage permitted for the three lots combined.

A modification of the inner court recess requirements is also requested. Section 23-852 requires that the width of an inner court recess be at least twice its depth. Portions of the irregularly-shaped inner court recess for the new building would have a width of less than twice its depth. The proposed inner court responds to the unusually-shaped site while allowing for an optimal residential floorplate. All legally required windows facing the inner court recess would be a minimum of 30 feet from facing walls.

The applicant is requesting modification of the streetwall location requirements of Sections 35-24 and 23-942(b) to permit portions of the street wall below the maximum base height to be located away from the street line and to permit the street wall of the new building to be located more than 15 feet from the intersection of Fulton Street and Clermont Avenue. The regulations require a streetwall up to the minimum base height along the entire street frontage, except within 15 feet of a corner. The applicant proposes setting the building back 38 feet from the corner of Clermont Avenue and Fulton Street in order to allow that corner to provide a wide enough entry to serve as the principal residential entry to the building. A series of four 3-foot deep and 24-foot wide setbacks are proposed along Vanderbilt Avenue (one setback), Fulton Street (two setbacks), and Clermont Avenue (one setback) in order to break up the length of the new building's façades. Finally, the applicants propose 10-foot deep and 27-foot wide setbacks where the new building meets the existing building along Vanderbilt and Clermont Avenues, in order to provide a clear visual break between the new and existing buildings. Entrances and exits to the parking garage would be located within the 10-foot deep setbacks.

ENVIRONMENTAL REVIEW

This application (C 090443 ZSK), in conjunction with the applications for the related actions (C 090441 ZMK and N 090442 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 09DCP025K. The lead agency is the City Planning Commission.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on June 1, 2009. A revised Environmental Assessment Statement was prepared August 14th, 2009 to reflect the revisions to the project discussed below, and a revised Negative Declaration was issued on August 17th, 2009.

UNIFORM LAND USE REVIEW

This application (C 090443 ZSK), in conjunction with the applications for the related zoning map change application (C 090441 ZMK), was certified as complete by the Department of City Planning on June 1, 2009, and was duly referred to Community Board 2 and the 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 090442 ZRK), which was referred to Community Board 2 and the Borough President in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Community Board 2 held a public hearing on this application and the related applications (C 090441 ZMK and N 090442 ZRK) on June 10, 2009 and on that date by a vote of 38 to 0 adopted a resolution recommending approval of the applications.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on July 17, 2009 approving the application and its related applications (C 090441 ZMK and N 090442 ZRK) “subject to the condition that the affordable housing commitment of not less than 20 percent be adequately memorialized.”

City Planning Commission Public Hearing

On July 1, 2009 (Calendar No. 8), the City Planning Commission scheduled July 22, 2009 for a public hearing on this application (C 090443 ZSK). The hearing was duly held on July 22, 2009 (Calendar No. 22), in conjunction with the public hearings on the applications for the related actions (C 090441 ZMK and N 09442 ZRK). There were 5 speakers in favor of the application, and none in opposition.

Speakers in favor included four representatives of the developer and the Councilmember for the 35th District.

The Councilmember for the 35th District testified that she supported the project because it would provide affordable housing, would provide an anchor for the business district along Fulton Street, would provide space for businesses and would provide needed and desired services to the Fort Greene and Clinton Hill neighborhoods.

The developer's representatives, including counsel and architects, described the proposed project, and discussed the design process and considerations that led to the current proposal. They noted that the proposed new building, with retail along Fulton Street, and plans for the existing building, including retail at the ground floor and active uses in the upper floors, will help to enliven a Fulton Street. The developer's representative mentioned that they are currently talking with two schools who are interested in locating in the existing building, replacing commercial floor area with community facility floor area. The developer's counsel noted that the proposed accessory parking garage would be used primarily as accessory parking for the businesses, residents, visitors and customers of the building, but that some use by the surrounding community would be allowed. The developer testified that they will seek to provide affordable housing in the project.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that this Special Permit (C 090443 ZSK) for bulk modifications, in conjunction with the related applications for amendment of the Zoning Map (C 090441 ZMK), and amendment of the Zoning Resolution (N 090442 ZRK) as modified, is appropriate.

The Commission believes that the requested actions would facilitate the reuse of the existing, primarily-vacant loft building and the development of a new residential building with affordable housing on the block consistent with the scale of the existing building. The proposed C6-3A district would allow for a mixture of commercial and residential uses that would reflect and complement the uses in the surrounding area, and would help to fill in a gap in the retail corridor along Fulton Street.

The proposed zoning text amendment, which would designate the project site an “Inclusionary Housing Designated Area” by extending the program adopted for Fort Greene/Clinton Hill one block to the west, would encourage the creation of permanently affordable housing on the project site. The program allows a bonus of up to 33 percent of total floor area for new development which provides 20 percent of its floor area as affordable housing. This program is an effective tool for promoting affordable housing in conjunction with new developments and would result in up to 85 permanently affordable housing units to be included on the proposed project. The Commission notes that since the application was referred, the City Council, on July 29, 2009 adopted amendments to the Inclusionary Housing Program and the Commission has therefore modified the proposed zoning text amendment (N 090442 ZRK) to conform to text adopted by the City Council on July 29, 2009.

The Commission believes that the special permit to modify bulk regulations, is appropriate. The Commission believes that modifying the streetwall requirements for the new building would create greater visual relief and interest than a wall built to the street lot line for the length of the new building. The Commission also believes that the proposed relief from the inner court recess requirement and the proposed redistribution of residential lot coverage respond appropriately to the unusual shape of the site. The proposed inner court recess maintains a minimum 30 foot

distance between windows and opposite walls while reflecting the shape of the block and maintaining appropriate floorplates for residential uses. The proposed lot coverage modification allows for a distribution of lot coverage that provides a wider courtyard through the middle of the block and appropriate floorplates on the northeast corner of the block. Together, the bulk waivers allow for a design that responds to the existing building's height, but that steps down toward Fulton Street, providing for a better transition to the neighborhoods to the north and east than a building built to the C6-3A limits.

The Commission notes that a condition of its approval is that the applicant record a restrictive declaration against the property that would, among other things, require that any development with more than 6.5 FAR be built pursuant to the inclusionary housing program requirements and that the building height and setbacks approved under this special permit be maintained.

The Commission notes that the application was revised on August 10, 2009 to allow up to 60,000 square feet in the existing building to be used for public schools as a community facility use, a use that was not contemplated when the application was certified. These revisions do not affect the design or overall FAR of the development.

FINDINGS

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

- (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 #general large-scale 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 #general large-scale development#, the #streets# providing access to such #general large-scale development# will be adequate to handle traffic resulting therefrom;
- (5) not applicable;
- (6) not applicable;
- (7) not applicable; and
- (8) a declaration with regard to ownership requirements in paragraph (b) of the #general large-scale development# definition in Section 12-10 (DEFINITIONS) has been filed with the Commission.

RESOLUTION

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

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the consideration and findings described in this report, the application by Atara Vanderbilt, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-743(a) of the Zoning Resolution to modify the requirements of Section 23-145 (For residential buildings developed or enlarged pursuant to the Quality Housing Program), Section 23-852 (Inner court recess), and Section 35-24 (Special Street Wall Location and Height and Setback Regulations in Certain Districts) to facilitate a mixed use development on property located at 470 Vanderbilt Avenue (Block 2009, Lots 1, 19, 20, 23, 26, 31-44), in a C6-3A District, within a General Large-Scale Development, Borough of Brooklyn, Community District 2:

1. The property that is the subject of this application (C 090443 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Costas Kondylis and Partners LLP, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-1	Site Plan	August 10, 2009
Z-2	Calculations	August 10, 2009
Z-5	Lot Coverage Base Plane Cal.	August 10, 2009
Z-6	Height and Setback Sections	August 10, 2009
Z-7	Height and Setback Sections	August 10, 2009

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 that 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 1, with such administrative changes as are acceptable to Counsel to the City Planning Commission, has been executed by Greenpoint Goldman SM LLC and Atara Vanderbilt, LLC, and recorded in the Office of the City 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. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sub-lessee or occupant.
6. In the event that the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this resolution and any subsequent modifications shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.
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 090443 ZSK), duly adopted by the City Planning Commission on August 19, 2009 (Calendar No. 27), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, FAICP, Chair
KENNETH J. KNUCKLES, ESQ., Vice Chairman
ANGELA M. BATTAGLIA, RAYANN BESSER,
IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, AIA,
ALFRED C. CERULLO, III, RICHARD W. EADDY,
NATHAN LEVENTHAL, SHIRLEY A. MCRAE,
KAREN A. PHILLIPS, Commissioners

EXHIBIT 1

DECLARATION OF GENERAL LARGE-SCALE DEVELOPMENT

THIS DECLARATION, made as of this 19th of August, 2009 by GREENPOINT GOLDMAN SM LLC, a New York limited liability company having an address at 640 Fifth Avenue, New York, New York 10019 (“Greenpoint”) and ATARA VANDERBILT, LLC, a Delaware limited liability company having an address c/o GFI Capital Resources Group, Inc., 50 Broadway, 4th Floor, New York, New York 10004 (“Atara” and collectively with Greenpoint, hereinafter referred to as “Declarants”).

WITNESSETH:

WHEREAS, Greenpoint is the fee owner of certain real property located in the Borough of Brooklyn, City of New York, County of Kings and State of New York, designated for real property tax purposes as Block 2009, Lots 1, 19, 20, 23, 26, 31, 32, 33, 34, 37, 38, 39, 40, 41, 42 and 43, which real property is more particularly described in Exhibit “A” annexed hereto and made a part hereof (the “Greenpoint Property”); and

WHEREAS, Atara is the ground lessee of the Greenpoint Property and the fee owner of certain real property located in the Borough of Brooklyn, City of New York, County of Kings and State of New York, designated for real property tax purposes as Block 2009, Lots 35, 36 and 44, which real property is more particularly described in Exhibit “A” (together with the Greenpoint Property, the “Subject Property”); and

WHEREAS, Declarants desire to improve the Subject Property as a “general large-scale development” (such proposed improvement of the Subject Property the “Large Scale Development Project”) meeting the requirements of Section 12-10 (Definition) of the New York City Zoning Resolution (the “Zoning Resolution”), such Large Scale Development Project to consist of the renovation and enlargement of an existing 10-story commercial building (the

“Existing Building”) and the development of a new 12-story mixed residential and ground floor retail building (the “New Building”) on the Subject Property; and

WHEREAS, Declarants filed the following applications (collectively, the “Applications”) with the New York City Department of City Planning (hereinafter “City Planning”) to modify (i) residential lot coverage requirements to permit lot coverage to be distributed without regard to through or corner lot lines [§ 74-743 (a)(1)]; (ii) requirements regarding the permissible configuration of inner court recesses [§74-743 (a)(2)]; and (iii) street wall location requirements [§74-743 (a)(2)] (items i through iii collectively, the “Large Scale Special Permits”) (090443ZSK) and related applications for a zoning map change (090441ZMK) and zoning text amendment (N090442ZRY); and

WHEREAS, to insure that the development of the Subject Property (i) is consistent with the analysis in the Environmental Assessment Statement (“EAS”) issued for City Environmental Quality Review Application No. 09DCP081K 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 (ii) includes certain project components related to the environment which were material to the analysis of potential environmental impacts in the EAS (“PCREs”), Declarants have agreed to restrict the development, operation, use and maintenance of the Subject Property in certain respects, which restrictions are set forth in this Declaration; and

WHEREAS, Section 74-743(b)(8) of the Zoning Resolution requires that a declaration with regard to ownership requirements in paragraph (b) of the definition of “general large scale development” in Section 12-10 be filed with the New York City Planning Commission (the “CPC”); and

WHEREAS, First American Title Insurance Company of New York, Inc., has certified in a certification attached hereto as Exhibit “B” and made a part hereof, that as of March 2, 2009, Declarants and Canadian Imperial Bank of Commerce, acting through its New York Agency, as administrative agent and acting in its capacity for certain other lenders (“CIBC”), are the only parties in interest (“Parties in Interest”) to the Subject Property as “Parties in Interest” as defined in subdivision (c) of the definition of “zoning lot” in Section 12-10 of the Zoning Resolution; and

WHEREAS, Declarants represent and warrant that the Parties in Interest listed in Exhibit B are the only known parties in interest to the Subject Property as of the date hereof; and

WHEREAS, all Parties in Interest to the Subject Property have either executed this Declaration or waived their rights to execute this Declaration by written instruments annexed hereto as Exhibit “B-1” and made a part hereof, which instruments are intended to be recorded simultaneously with this Declaration; and

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

NOW THEREFORE: Declarants hereby declare, covenant and agree as follows:

1. Development of the Subject Property.

(a) Declarants hereby declare and agree that, following the Effective Date (as defined in Section 6 hereof), the Subject Property shall be treated as a general large-scale development site and, if developed pursuant to the Large Scale Special Permits, shall be developed and enlarged as a single unit, and that (i) the maximum floor area ratio, as defined in Section 12-10 of the Zoning Resolution, shall not exceed the base floor area

ratio of 6.5, except that such the maximum floor area ratio may be further increased to 7.13 through the provision of lower income housing, pursuant to the provisions relating to Inclusionary Housing designated areas in Section 23-90 of the Zoning Resolution; (ii) the maximum street wall height and building height of the New Building shall not exceed the heights set forth in the Approved Plans (as hereinafter defined); (iii) the maximum number of accessory parking spaces shall not exceed 397; (iv) the maximum aggregate square footage of Use Group 6A, 6C, and 10A retail or service uses permitted on the Subject Property shall not exceed 113,604 square feet; and (v) no residential uses shall be permitted in the Existing Building.

(b) Notwithstanding anything to the contrary herein, in the event that the Subject Property is not developed pursuant to the Large Scale Special Permits, Declarants may develop the Subject Property as would be permitted pursuant to the C6-3A district, provided that (i) such development does not violate any regulation applicable within a C6-3A district; (ii) such development complies with the provisions of clauses (i) through (v) of Section 1(a) above, except that the envelope of any as-of-right building containing up to 12 stories with mixed residential and ground floor retail (hereinafter the “As-of-Right Building”) may comply with the street wall location requirements of Z.R. Sections 35-24 and 23-942(b); and (iii) such development complies with the provisions of Section 3 below.

2. Development of Large Scale Development Site. If the Subject Property is developed in whole or part pursuant to the Large Scale Special Permits, Declarants covenant that the Subject Property shall be developed in substantial compliance with the following plans prepared by Costas Kondylis and Partners LLP, approved as part of the Large Scale Special Permits and annexed hereto in Exhibit “C” and made a part hereof (the “Approved Plans”):

Sheet No.	Title	Date
Z-1	Site Plan	08/10/2009
Z-2	Calculations	08/10/2009
Z-5	Lot Coverage / Base Plane Calculation	08/10/2009
Z-6	Height and Setback Sections	08/10/2009
Z-7	Height and Setback Sections	08/10/2009

3. Project Components Related to the Environment.

Declarants shall undertake the PCREs set forth in this Section 3 for (i) development under the Large Scale Special Permits; and (ii) any development permitted on an ‘as of right’ basis under the provisions of the Zoning Resolution, subject to Section 1(b) hereof.

(a) Noise Attenuation. The New Building or any As-of-Right Building constructed on the Subject Property shall include both well-sealed double-glazed windows and an alternate means of ventilation (i.e., through-wall air conditioner sleeves or central air conditioning) in order to provide noise attenuation that meets or exceeds the values shown in Table 1 below. The Existing Building shall also meet or exceed the attenuation specified in Table 1 by using an alternate means of ventilation (i.e., through-wall air conditioner sleeves or central air conditioning).

Table 1
Noise Attenuation Requirements (in dBA)

Building	Use	Façade	Minimum Required Building Attenuation
Existing Building	Commercial	South	30
	Commercial	West	20*
	Commercial	East	30
	Commercial	North	25
	Community Facility	South	35
	Community Facility	West	30
	Community Facility	East	35
	Community Facility	North	30
New Building or As-of- Right Building	Residential	West	25**
	Residential	East	35
	Residential	North	30
	Commercial	West	20
	Commercial	East	30
	Commercial	North	25
<p>* To be increased to 25 dBA in the event the Existing Building is occupied by any Community Facility uses.</p> <p>** To be increased to 30 dBA in the event the Existing Building is occupied by any Community Facility uses.</p>			

(b) Air Quality. The HVAC system serving the Existing Building shall burn natural gas exclusively. If the Existing Building is occupied only by commercial uses its exhaust stack or stacks shall be located a minimum of 115 feet from the New Building or any As-of-Right Building. If the Existing Building is occupied by community facility uses its exhaust stack or

stacks shall be located a minimum of 120 feet from the New Building or any As-of-Right Building. In either case, no air intakes or operable windows shall be located along the western and southern facades of the portion of the Existing Building that is above such exhaust stack or stacks as shown on the diagrams attached as Exhibit “D”.

(c) Certification of Compliance. Declarants shall provide certifications of compliance with the PCREs set forth in this Section 3 made by a licensed professional engineer or registered architect (i) with respect to the Existing Building only, concurrently with the execution of this Declaration (“Initial Certification of Compliance”) in the form attached as Exhibit “E” and (ii) with respect to the Existing Building and the New Building or any As-of-Right Building, upon completion of construction on the Subject Property (“Final Certification of Compliance”) in the form attached as Exhibit “F”. In addition, prior to the change in the use of any portion of the Existing Building to a Use Group 3A community facility school and/or daycare facility, Declarants shall provide a certification of compliance (“Use Group 3A Certification of Compliance”) in the form attached as Exhibit “G”. Declarants shall provide the City or its designated representative reasonable access to the Subject Property for the purpose of verifying compliance. If, based on such verification, the City reasonably determines that the certification provided by Declarants is materially deficient or inaccurate, Declarants shall meet and confer with the City to establish and implement remedial measures to ensure adequate compliance.

(d) Declarants shall neither request nor accept a Temporary Certificate of Occupancy nor a Certificate of Occupancy for (i) any initial change in use in the Existing Building, (ii) any change in use in any portion of the Existing Building to a Use Group 3A school or daycare facility and (iii) any residential units in the New Building or an As-of-Right Building, until the Chairperson of the CPC certifies to the New York City Department of Buildings that an Initial Certification of Compliance, Use Group 3A Certification of Compliance or Final Certification of Compliance, as applicable, acceptable to the City has been provided to the City pursuant to Section (3)(c).

(e) Inconsistency with the EAS. If this Declaration inadvertently fails to include a PCRE set forth in the EAS, such PCRE shall be deemed incorporated in this Section 3 by reference. If there is any inconsistency between a PCRE as set forth in the EAS and as incorporated

in this Declaration, the more restrictive provision shall be applicable. For certainty, PCREs related to remediation of hazardous materials on the Subject Property are set forth in that certain Declaration, dated as of May 26, 2009, by Declarants, and shall not be deemed to be incorporated herein pursuant to this Section 3(e).

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

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

6. Effective Date. This Declaration and the provisions and covenants hereof shall become effective upon the New York City Council's approval of the Applications pursuant to the New York City Charter ("Effective Date"). Prior to the approval of the Applications by the City

Council, Declarants shall deliver to City Planning duplicate originals of the executed Declaration.

7. Recordation. Declarants shall file and record this Declaration in the Office of the City Register of the City of New York (the “Register’s Office”), indexing it against the Subject Property within five (5) business days of the Effective Date (such date, the “Recording Date”). Declarants shall promptly provide to the Chairperson of the CPC a copy of the Declaration as recorded, so certified by the City Register. If Declarants fail to so record this Declaration by the Recording Date, CPC may record a duplicate original of this Declaration, but all costs of recording, whether undertaken by Declarants or by CPC, shall be borne by Declarants.

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

- (i) if to Declarants:
to the addresses at the commencement of this Declaration;

with a copy to:
Greenberg Traurig, LLP
200 Park Avenue
New York, New York 10166
Attention: Jay A. Segal, Esq.;

and to:
Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas

New York, New York 10019
Attention: Steven Simkin, Esq.;

- (ii) if to CPC:
New York City Planning Commission
22 Reade Street
New York, New York 10007
Attention: Chairperson;

with a copy to:
the general counsel of CPC at the same address;

- (iii) if to CIBC:
Canadian Imperial Bank of Commerce
200 West Madison
Suite 2610
Chicago, Illinois 60606
Attention: US Loan Services;

with a copy to:
Winston & Strawn LLP
200 Park Avenue
New York, New York 10166
Attention: Ross A. Honig, Esq.;

- (iv) if to a Party in Interest other than Declarants or CIBC:
at the address provided in writing to CPC in accordance with this Section 8.

Declarants, CPC and any Party in Interest may by notice provided in accordance with this Section 8, change any name or address for purposes of this Declaration. In order to be deemed effective any Notice shall be sent or delivered in at least one of the following manners: (A) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed delivered for all purposes hereunder five days after being actually mailed; (B) sent by overnight courier service, in which case the Notice shall be deemed delivered for all purposes hereunder on the date the Notice was actually received or was refused; or (C) delivered by hand, in which case the Notice will be deemed delivered for all purposes hereunder on the date the Notice was actually received. All Notices from CPC to Declarants shall also be sent to every mortgagee of whom CPC has notice, and no Notice shall be deemed properly given to Declarants without such notice to such mortgagee(s). In the event that there is more than one Declarant at any time, any Notice from the City or the CPC shall be provided to all Declarants of whom CPC has notice.

9. Defaults and Remedies.

(a) Declarants acknowledge 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 Declarants fail to perform any of Declarants' obligations under this Declaration, the City shall have the right, subject to Sections 9(c) and 9(d) hereof, to enforce this Declaration against Declarants and exercise any administrative legal or equitable remedy available to the City, and Declarants hereby consent to same; provided that this Declaration shall not be deemed to diminish Declarants's or any other Party in Interest's right to exercise any and all administrative, legal, or equitable remedies otherwise available to it. Declarants also acknowledge 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 Declarants 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 a development on the Subject Property to which the failure to perform applies.

(b) Notwithstanding any provision of this Declaration, only Declarants, and Declarants' 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 Applications.

(c) 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 Declarants twenty (20) business days written notice of such alleged violation, during which period Declarants shall have the opportunity to effect a cure of such alleged violation or to demonstrate to the City why the alleged violation has not occurred. If Declarants commence to effect such cure within such twenty (20) day period (or if cure is not capable of being commenced within such twenty (20) day period, Declarants commence to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid twenty (20) day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as Declarants continue to proceed diligently with the effectuation of such cure. In the event that more than one Declarant exists at any time on the Subject Property, notice shall be provided to all Declarants from whom the City has received notice in accordance with Section 8 hereof, and the right to cure shall apply equally to all Declarants.

(d) If Declarants fail to observe any of the terms or conditions of this Declaration, and Declarants fail to cure such violation within the applicable grace period provided in Section 9(c) above, then, upon the expiration of such cure period, prior to institution by the City of any action or proceeding against Declarants, every Party in Interest to this Agreement or future Party in Interest which has given written notice of its name and interest in accordance with Section 8 hereof, shall be given twenty (20) days written notice of such alleged violation by the City, during which period each Party in Interest shall have the opportunity to effect such cure. If any Party in Interest commences to effect a cure during such twenty (20) day period and thereafter proceeds diligently to complete the effectuation of such cure, such cure period

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

(e) If, after due notice and opportunity to cure as set forth in this Declaration, Declarants, or a Party in Interest shall fail to cure the alleged violation, the City may exercise any and all of its rights, including without limitation those delineated in this Section 9 and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Declarants are in default of a material obligation under this Declaration.

10. Applications.

Declarants shall include a copy of this Declaration with any application made to Buildings as required for a foundation, new building, alteration, or other permit (a "Permit") for (i) any portion of the Large Scale Development Project built pursuant to the Large Scale Special Permits; or (ii) development permitted on an 'as of right' basis in accordance with Section 1(b). 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 Declarants from filing for and constructing, or Buildings from issuing, any permit for all or any portion of the Large Scale Development Project, in such phase or order as Declarants see fit in Declarants' discretion, provided that Sections 2 and 3 of this Declaration are fully complied with in connection therewith.

11. Amendment, Modification and Cancellation.

(a) This Declaration may be amended, cancelled, or modified only upon approval of the CPC after application by Declarants, and no other approval shall be required from any other public body, private person, or legal entity of any kind. Notwithstanding anything herein to the contrary, Declarants shall neither seek nor accept an amendment or modification to this

Declaration without the prior written consent of CIBC, for so long as it is a Party in Interest in the Subject Property, or any subsequent holder of a first mortgage on the Subject Property.

(b) Notwithstanding anything to the contrary contained in Section 11 (a) hereof, the Chair of CPC may by its express written consent administratively approve modifications or amendments to this Declaration that, in the sole judgment of the Chair, are determined by the Chair to be minor amendments or modifications of this Declaration, and such minor modifications and amendments shall not require the approval of CPC or from any other public body, private person, or legal entity of any kind.

(c) This Declaration and its obligations and agreements are in contemplation of Declarants receiving approvals or modified approvals of the Applications. In the event that (i) the Declarants withdraw the Applications before a final determination, (ii) the Applications are not approved or (iii) such approvals are set aside in a final, non-appealable judgment rendered by a court of competent jurisdiction (or are set aside and no appeal is taken within the period allowed), the obligations and agreements pursuant to this Declaration shall have no force and effect and this Declaration shall be cancelled.

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

13. Default and Attorneys' Fees. If Declarants are 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 or appeal by a court of by other proceedings has lapsed, Declarants shall indemnify and hold harmless the City and the CPC from and against all reasonable legal and administrative expenses arising out of or in connection with the enforcement of Declarants' obligations under this Declaration.

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

15. Counterparts. This Declaration may be executed in counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the undersigned has executed this Declaration this _____ day of _____, 2009.

GREENPOINT GOLDMAN SM LLC
a limited liability company

By: _____
Name: _____
Title: _____

ATARA VANDERBILT, LLC
a limited liability company

By: _____
Name: _____
Title: _____

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF NEW YORK
COUNTY OF _____

On the _____ day of _____ in the year 2009 before me, the undersigned, personally appeared _____, 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.

Signature and Office of individual taking
acknowledgment

STATE OF NEW YORK
COUNTY OF _____

On the _____ day of _____ in the year 2009 before me, the undersigned, personally appeared _____, 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.

Signature and Office of individual taking
acknowledgment

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

Description of Block 2009, Lots 1, 19, 20, 23, 26, 31, 32, 33, 34, 37, 38, 39, 40, 41, 42 and 43

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 the corner formed by the intersection of the Northeasterly side of Atlantic Avenue with, the Westerly side of Vanderbilt Avenue;

RUNNING THENCE Northerly along the Westerly side of Vanderbilt Avenue, 453 feet 2 inches;

THENCE Westerly at right angles to Vanderbilt Avenue, 100 feet;

THENCE Northerly parallel with Vanderbilt Avenue, 20 feet;

THENCE Easterly at right angles to Vanderbilt Avenue, 100 feet to the Westerly side of Vanderbilt Avenue;

THENCE Northerly along the Westerly side of Vanderbilt Avenue, 137 feet 7 inches to the corner formed by the Intersection of the Southwesterly side of Fulton Street and the Westerly side of Vanderbilt Avenue;

THENCE Westerly along the Southwesterly side of Fulton Street, 30 feet 1 inch;

THENCE Southerly at right angles to Fulton Street, 60 feet 4 inches;

THENCE Southerly parallel with Vanderbilt Avenue, 11 feet 10 inches;

THENCE Westerly at right angles to Vanderbilt Avenue, 40 feet;

THENCE Northerly parallel with Vanderbilt Avenue, 25 feet;

THENCE Northerly at right angles to Fulton Street, 73 feet 5-1/2 inches to the Southwesterly side of Fulton Street;

THENCE Westerly along the Southwesterly side of Fulton Street, 178 feet 3-3/4 inches to the corner formed by the intersection of the Southwesterly side of Fulton Street and the Easterly side of Clermont Avenue;

THENCE Southerly along the Easterly side of Clermont Avenue, 669 feet 1 inch to the corner formed by the intersection of the Easterly side of Clermont Avenue and the Northeasterly side of Atlantic Avenue;

THENCE Southeasterly along the Northeasterly side of Atlantic Avenue, 218 feet 11 inches to the corner, the point or place of BEGINNING.

Premises known as: 456-470 Vanderbilt Avenue a/k/a Atlantic Avenue a/k/a 810-836 Fulton Street, Brooklyn.

Description of Block 2009, Lots 35 & 36

BEGINNING at a point on the southerly side of Fulton Street 30 feet 1 inch westerly from the corner formed by the intersection of the southerly side of Fulton Street and the westerly side of Vanderbilt Avenue;

RUNNING THENCE southerly at right angles to Fulton Street 60 feet 4 inches;

THENCE southerly parallel with Vanderbilt Avenue 11 feet 10 inches;

THENCE westerly at right angles to Vanderbilt Avenue 40 feet;

THENCE northerly parallel with Vanderbilt Avenue 25 feet;

THENCE northerly at right angles to Fulton Street 73 feet 5½ inches to the southwesterly side of Fulton Street;

THENCE easterly along the southerly side of Fulton Street 40 feet to the point or place of BEGINNING.

Description of Block 2009, Lot 44

BEGINNING at a point on the westerly side of Vanderbilt Avenue 137 feet 7 inches southerly from the corner formed by the intersection of the westerly side of Vanderbilt Avenue and the southerly side of Fulton Street;

RUNNING THENCE southerly along the westerly side of Vanderbilt Avenue 20 feet;

THENCE westerly at right angles to Vanderbilt Avenue 100 feet;

THENCE northerly parallel with Vanderbilt Avenue 20 feet;

THENCE easterly at right angles to Vanderbilt Avenue 100 feet to the westerly side of Vanderbilt Avenue to the point or place of BEGINNING.

EXHIBIT B

CERTIFICATION OF “PARTIES-IN-INTEREST”

(attached behind)

EXHIBIT B-1

**WAIVER OF EXECUTION OF DECLARATION OF GENERAL
LARGE-SCALE DEVELOPMENT AND SUBORDINATION OF MORTGAGE**

WAIVER OF EXECUTION OF DECLARATION OF GENERAL LARGE-SCALE DEVELOPMENT AND SUBORDINATION OF MORTGAGE, made this _____ day of _____, 2009 by Canadian Imperial Bank of Commerce, acting through its New York agency, as administrative agent and acting in its capacity for certain other lenders (collectively, the "Mortgagee"), having an office at 200 West Madison, Suite 2610, Chicago, Illinois 60606, Attn. US Loan Services, as assignee.

WITNESSETH :

WHEREAS, the Mortgagee is the lawful holder of that certain Project Loan Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Instrument, dated November 13, 2007 (the "Project Loan Mortgage") made by Atara Vanderbilt, LLC, a Delaware limited liability company (the "Mortgagor"), in favor of the Mortgagee, in the original principal amount of \$23,640,000.00, recorded in the Office of the Register/Clerk of the City of New York, County of Kings, on January 15, 2008 as City Register File No. (CFRN) 2008000019688; and

WHEREAS, the Mortgagee is also the lawful holder of that certain Amended, Restated and Consolidated Acquisition Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Instrument, dated November 13, 2007 (the "Acquisition Loan Mortgage" and collectively with the Project Loan Mortgage, the "Mortgage") made by the Mortgagor in favor of the Mortgagee, in the original principal amount of \$24,000,000.00, recorded in the Office of the Register/Clerk of the City of New York, County of Kings, on January 15, 2008 as City Register File No. (CFRN) 2008000019687; and

WHEREAS, the Mortgage encumbers all or a portion of the property (the "Premises") known as Block 2009, Lot(s) 1, 19, 20, 23, 26, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44 on the Tax Map of the City of New York, County of Kings, and more particularly described in **Schedule A** attached hereto and made a part hereof, and any improvements thereon (such improvements and the Premises are collectively referred to herein as the "Subject Property"), which Subject Property is the subject of a Declaration of General Large-Scale Development, dated _____, 2009 (the "Declaration"), made by Greenpoint Goldman SM LLC and Mortgagor; and

WHEREAS, Mortgagee represents that the Mortgage, together with certain related fixture filings and assignments of leases and rents, represents its sole interest in the Subject Property; and

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

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

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

This Waiver of Execution of Declaration of General Large-Scale Development and Subordination of Mortgage shall be binding upon the Mortgagee and its heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Mortgagee has duly executed this Waiver of Execution of Declaration of General Large-Scale Development and Subordination of Mortgage as of the date and year first above written.

MORTGAGEE:

**CANADIAN IMPERIAL BANK OF
COMMERCE, New York Agency,
as Agent for Certain Lenders**

By: _____
Name:
Title:

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF NEW YORK
COUNTY OF _____

On the _____ day of _____ in the year 2009 before me, the undersigned personally appeared _____, 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.

Signature and Office of individual taking
acknowledgment

SCHEDULE A

LEGAL DESCRIPTION OF SUBJECT PROPERTY

Description of Block 2009, Lots 1, 19, 20, 23, 26, 31, 32, 33, 34, 37, 38, 39, 40, 41, 42 and 43

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 the corner formed by the intersection of the Northeasterly side of Atlantic Avenue with, the Westerly side of Vanderbilt Avenue;

RUNNING THENCE Northerly along the Westerly side of Vanderbilt Avenue, 453 feet 2 inches;

THENCE Westerly at right angles to Vanderbilt Avenue, 100 feet;

THENCE Northerly parallel with Vanderbilt Avenue, 20 feet;

THENCE Easterly at right angles to Vanderbilt Avenue, 100 feet to the Westerly side of Vanderbilt Avenue;

THENCE Northerly along the Westerly side of Vanderbilt Avenue, 137 feet 7 inches to the corner formed by the Intersection of the Southwesterly side of Fulton Street and the Westerly side of Vanderbilt Avenue;

THENCE Westerly along the Southwesterly side of Fulton Street, 30 feet 1 inch;

THENCE Southerly at right angles to Fulton Street, 60 feet 4 inches;

THENCE Southerly parallel with Vanderbilt Avenue, 11 feet 10 inches;

THENCE Westerly at right angles to Vanderbilt Avenue, 40 feet;

THENCE Northerly parallel with Vanderbilt Avenue, 25 feet;

THENCE Northerly at right angles to Fulton Street, 73 feet 5-1/2 inches to the Southwesterly side of Fulton Street;

THENCE Westerly along the Southwesterly side of Fulton Street, 178 feet 3-3/4 inches to the corner formed by the intersection of the Southwesterly side of Fulton Street and the Easterly side of Clermont Avenue;

THENCE Southerly along the Easterly side of Clermont Avenue, 669 feet 1 inch to the corner formed by the intersection of the Easterly side of Clermont Avenue and the Northeasterly side of Atlantic Avenue;

THENCE Southeasterly along the Northeasterly side of Atlantic Avenue, 218 feet 11 inches to the corner, the point or place of BEGINNING.

Premises known as: 456-470 Vanderbilt Avenue a/k/a Atlantic Avenue a/k/a 810-836 Fulton Street, Brooklyn.

Description of Block 2009, Lots 35 & 36

BEGINNING at a point on the southerly side of Fulton Street 30 feet 1 inch westerly from the corner formed by the intersection of the southerly side of Fulton Street and the westerly side of Vanderbilt Avenue;

RUNNING THENCE southerly at right angles to Fulton Street 60 feet 4 inches;

THENCE southerly parallel with Vanderbilt Avenue 11 feet 10 inches;

THENCE westerly at right angles to Vanderbilt Avenue 40 feet;

THENCE northerly parallel with Vanderbilt Avenue 25 feet;

THENCE northerly at right angles to Fulton Street 73 feet 5½ inches to the southwesterly side of Fulton Street;

THENCE easterly along the southerly side of Fulton Street 40 feet to the point or place of BEGINNING.

Description of Block 2009, Lot 44

BEGINNING at a point on the westerly side of Vanderbilt Avenue 137 feet 7 inches southerly from the corner formed by the intersection of the westerly side of Vanderbilt Avenue and the southerly side of Fulton Street;

RUNNING THENCE southerly along the westerly side of Vanderbilt Avenue 20 feet;

THENCE westerly at right angles to Vanderbilt Avenue 100 feet;

THENCE northerly parallel with Vanderbilt Avenue 20 feet;

THENCE easterly at right angles to Vanderbilt Avenue 100 feet to the westerly side of Vanderbilt Avenue to the point or place of BEGINNING.

EXHIBIT C

APPROVED PLANS

(attached behind)

EXHIBIT D

RESTRICTED FACADES

(attached behind)

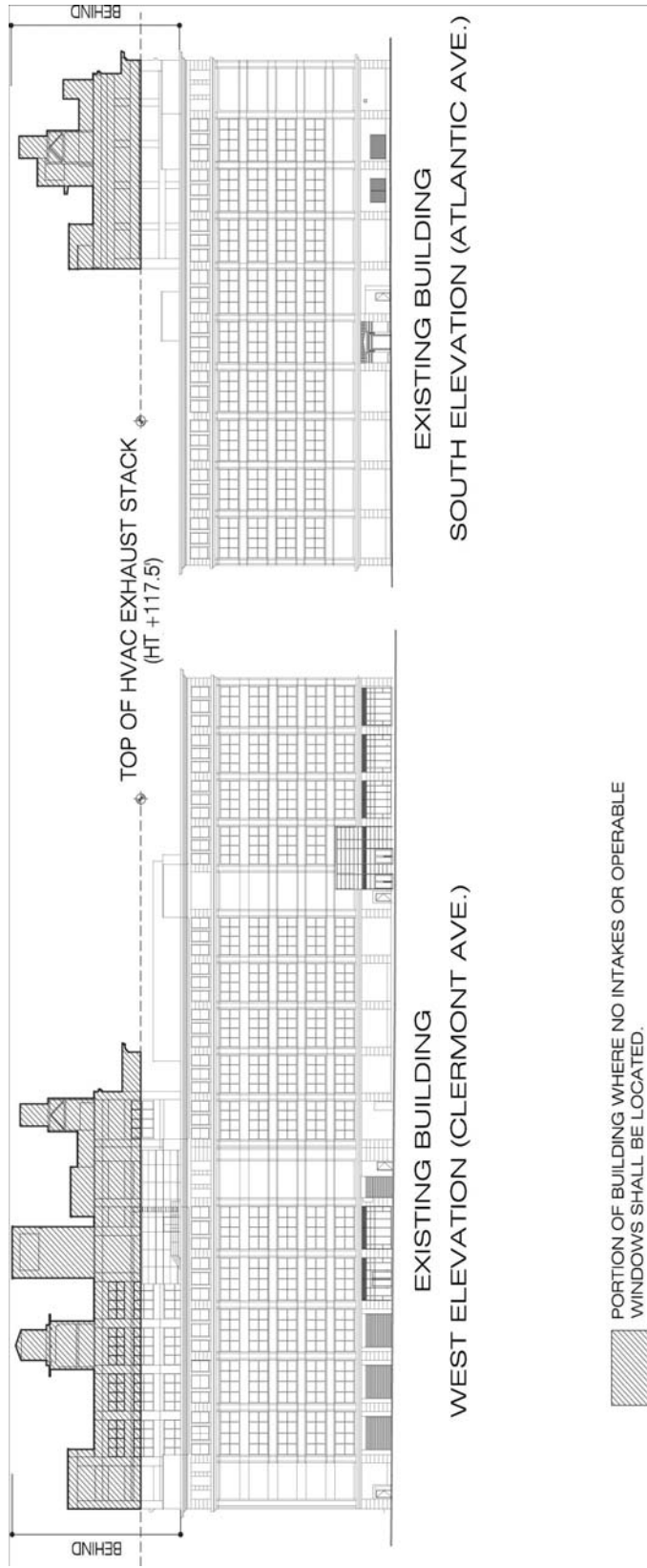


EXHIBIT E

INITIAL CERTIFICATION OF COMPLIANCE

[On Licensed Profession Engineer's / Architect's Letterhead]

_____, 20__

Hon. Amanda Burden
Chair
New York City Planning Commission
22 Reade Street
New York, New York 10007

Re: Initial Certification of Compliance
470 Vanderbilt Avenue, Brooklyn, New York

Dear Chair Burden:

Reference is made to that certain Declaration of General Large Scale Development, dated as of _____, 2009 (the "Declaration"), by Greenpoint Goldman SM LLC and Atara Vanderbilt, LLC. Capitalized terms used but not defined herein shall have the respective meanings set forth in the Declaration.

Pursuant to Section 3(c) of the Declaration, the undersigned, a [licensed professional engineer] [registered architect], does hereby certify that:

1. The Existing Building meets the attenuation specified in the table below by using an alternate means of ventilation (i.e., through-wall air conditioner sleeves or central air conditioning).

Table 1
Noise Attenuation Requirements (in dBA)

Building	Use	Façade	Minimum Required Building Attenuation
Existing Building	Commercial	South	30
	Commercial	West	20
	Commercial	East	30
	Commercial	North	25

2. The HVAC system serving the Existing Building burns natural gas exclusively. No air intakes or operable windows are located along the western and southern facades of the portion of the Existing Building shown on the diagrams attached as Exhibit “D” to the Declaration.

Sincerely,

[ENGINEER / ARCHITECT]

By: _____

Name:

Title:

cc: Keith Beck
Steven Hurwitz
Jay A. Segal, Esq.

EXHIBIT F

FINAL CERTIFICIATION OF COMPLIANCE

[On Licensed Profession Engineer's / Architect's Letterhead]

_____, 20__

Hon. Amanda Burden
Chair
New York City Planning Commission
22 Reade Street
New York, New York 10007

Re: Final Certification of Compliance
470 Vanderbilt Avenue, Brooklyn, New York

Dear Chair Burden:

Reference is made to that certain Declaration of General Large Scale Development, dated as of _____, 2009 (the "Declaration"), by Greenpoint Goldman SM LLC and Atara Vanderbilt, LLC. Capitalized terms used but not defined herein shall have the respective meanings set forth in the Declaration.

Pursuant to Section 3(c) of the Declaration, the undersigned, a [licensed professional engineer] [registered architect], does hereby certify that:

- 1) The [New Building] [As-of-Right Building] includes both well-sealed double-glazed windows and an alternate means of ventilation (i.e., [through-wall air conditioner sleeves] [central air conditioning]) and provides noise attenuation that meets the values shown below. The Existing Building meets the attenuation specified below by using an alternate means of ventilation (i.e., [through-wall air conditioner sleeves] [central air conditioning]).

Table 1
Noise Attenuation Requirements (in dBA)

Building	Use	Façade	Minimum Required Building Attenuation
Existing Building	Commercial	South	30
	Commercial	West	20*
	Commercial	East	30
	Commercial	North	25
	Community Facility	South	35
	Community Facility	West	30
	Community Facility	East	35
	Community Facility	North	30
New Building or As-of- Right Building	Residential	West	25**
	Residential	East	35
	Residential	North	30
	Commercial	West	20
	Commercial	East	30
	Commercial	North	25
<p>* To be increased to 25 dBA in the event the Existing Building is occupied by any Community Facility uses.</p> <p>**To be increased to 30 dBA in the event the Existing Building is occupied by any Community Facility uses.</p>			

- 2) The HVAC system serving the Existing Building burns natural gas exclusively. The Existing Building’s exhaust stack or stacks are located a minimum of [115][120] feet from the [New Building] [As-of-Right Building]. No air intakes or operable windows are located along the

western and southern facades of the portion of the Existing Building shown on the diagrams attached as Exhibit "D" to the Declaration.

Sincerely,

[ENGINEER / ARCHITECT]

By: _____

Name:

Title:

cc: Keith Beck
Steven Hurwitz
Jay A. Segal, Esq.

EXHIBIT G

USE GROUP 3A CERTIFICATION OF COMPLIANCE

[On Licensed Profession Engineer's / Architect's Letterhead]

_____, 20__

Hon. Amanda Burden
Chair
New York City Planning Commission
22 Reade Street
New York, New York 10007

Re: Use Group 3A Certification of Compliance
470 Vanderbilt Avenue, Brooklyn, New York

Dear Chair Burden:

Reference is made to that certain Declaration of General Large Scale Development, dated as of _____, 2009 (the "Declaration"), by Greenpoint Goldman SM LLC and Atara Vanderbilt, LLC. Capitalized terms used but not defined herein shall have the respective meanings set forth in the Declaration.

Pursuant to Section 3(c) of the Declaration, the undersigned, a [licensed professional engineer] [registered architect], does hereby certify that the Existing Building provides noise attenuation that meets the values shown below by using [an alternate means of ventilation (i.e., [through-wall air conditioner sleeves] [central air conditioning]) [well-sealed double-glazed windows].

Table 1
Noise Attenuation Requirements (in dBA)

Building	Use	Façade	Minimum Required Building Attenuation
Existing Building	Commercial	South	30
	Commercial	West	20*
	Commercial	East	30
	Commercial	North	25
	Community Facility	South	35
	Community Facility	West	30
	Community Facility	East	35
	Community Facility	North	30
New Building or As-of- Right Building	Residential	West	25**
	Residential	East	35
	Residential	North	30
	Commercial	West	20
	Commercial	East	30
	Commercial	North	25
<p>* To be increased to 25 dBA in the event the Existing Building is occupied by any Community Facility uses.</p> <p>**To be increased to 30 dBA in the event the Existing Building is occupied by any Community Facility uses.</p>			

Sincerely,

[ENGINEER / ARCHITECT]

By: _____

Name:

Title:

cc: Keith Beck
Steven Hurwitz
Jay A. Segal, Esq.