



CITY PLANNING COMMISSION

October 7, 2008 / Calendar No 9

C 080520 ZSX

IN THE MATTER OF an application submitted by the Department of Housing Preservation and Development pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to the following Sections of the Zoning Resolution:

1. Section 74-743(a)(2) to modify the height and setback regulations of Section 23-63 (Maximum Height of Walls and Required Setbacks), Section 23-66 (Required Side and Rear Setbacks), Section 33-43 (Maximum Height of Walls and Required Setbacks), and Section 35-60 (MODIFICATION OF HEIGHT AND SETBACK REGULATIONS FOR MIXED BUILDINGS); the rear yard regulations of Section 23-47 (Minimum Required Rear Yards) and 33-26 (Minimum Required Rear Yards); the minimum distance between buildings regulations of Section 23-711 (Standard minimum distance between buildings); and the court regulations of Section 23-85 (Inner Court Regulations); and
2. Section 74-743(a)(5) to modify the minimum distance between legally required windows and lot line regulations of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines);

in connection with a proposed mixed use development on property located at 527 Westchester Avenue (Block 2359, p/o Lots 1, 3 & 9001), in a General Large-Scale Development, within the Bronxchester Urban Renewal Area, in a C6-2 District, Borough of the Bronx, Community Board 1.

This application for the special permit pursuant to Section 74-743(a)(2) of the Zoning Resolution to modify height and setback provisions to facilitate mixed use development located at 527 Westchester Avenue (Block 2359, p/o Lots 1, 3 & 9001), within the Bronxchester Urban Renewal Area was filed by the Department of Housing Preservation and Development on June 24, 2008.

RELATED ACTIONS

In addition to the zoning map amendment which is the subject of this report (C 080520 ZSX), 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 080517 ZMX	Zoning Map amendment changing from an M1-1 District to an C6-2 District
N 080518 ZRY	Zoning Text Amendment
C 080519 ZSX	Special Permit to permit development over a rail right-of- way
C 080521 PQX	Acquisition of privately-owned property
C 080522 HAX	UDAAP designation and project approval and disposition of City-owned property
N 080523 HCX	Minor Change to the First Amended Bronxchester Urban Renewal Plan

BACKGROUND

A detailed description of a special permit pursuant to Section 74-743(a)(2) is included in the related application for UDAAP designation and project approval and disposition of City-owned property (C 080522 HAX).

ENVIRONMENTAL REVIEW

This application (C 080520 ZSX), in conjunction with the related applications (C 080517 ZMX, N 080518 ZRY, C 080519 ZSX, C 080521 PQX and C 080522 HAX), 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 08HPD018X. The lead agency is the Department of Housing Preservation and Development.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on June 19, 2008.

UNIFORM LAND USE REVIEW

This application (C 080520 ZSX), in conjunction with the related applications (C 080517 ZMX, C 080519 ZSX, C 080521 PQX and C 080522 HAX), was certified as complete by the Department of City Planning on June 30, 2008, and was duly referred to Community Board 1 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 application for a zoning text amendment (N 080518 ZRY) which was referred for information and review.

Community Board Public Hearing

Community Board 1 held a public hearing on this application on July 31, 2008, and on that date, by a vote of 22 to 0 with 0 abstentions, adopted a resolution recommending approval of the application.

Borough President Recommendation

This application (C 080520 ZSX) was considered by the Borough President, who issued a recommendation approving this application on August 21, 2008.

Planning Commission Public Hearing

On August 27, 2008 (Calendar No. 5), the City Planning Commission scheduled September 10, 2008,

for a public hearing on this application (C 080520 ZSX), in conjunction with the public hearing on the related applications (C 080517 ZMX, N 080518 ZRY, C 080519 ZSX, C 080521 PQX and C 080522 HAX). The hearing was duly held on September 10, 2008 (Calendar No. 23), in conjunction with the public hearing on the related applications (C 080517 ZMX, N 080518 ZRY, C 080519 ZSX, C 080521 PQX and C 080522 HAX).

There were four speakers in favor of the application and no speakers in opposition, , as described in the report on the related application for UDAAP designation project approval and disposition of City-owned property (C 080522 HAX), and the hearing was closed.

CONSIDERATION

The Commission believes that this application for a special permit (C 080520 ZSX), in conjunction with the related applications (C 080517 ZMX, N 080518 ZRY, C 080519 ZSX, C 080521 PQX and C 080522 HAX), is appropriate.

A full consideration and analysis of the issues and reasons for approving this application appears in the report on the related application for UDAAP designation project approval and disposition of City-owned property (C 080522 HAX).

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 environmental determination, and the consideration and findings described in this report, the application of the Department of Housing Preservation and Development and pursuant to Sections 197-c and 201 of the New York City Charter for the grant

of a special permit pursuant to:

1. Section 74-743(a)(2) to modify the height and setback regulations of Section 23-63 (Maximum Height of Walls and Required Setbacks), Section 23-66 (Required Side and Rear Setbacks), Section 33-43 (Maximum Height of Walls and Required Setbacks), and Section 35-60 (MODIFICATION OF HEIGHT AND SETBACK REGULATIONS FOR MIXED BUILDINGS); the rear yard regulations of Section 23-47 (Minimum Required Rear Yards) and 33-26 (Minimum Required Rear Yards); the minimum distance between buildings regulations of Section 23-711 (Standard minimum distance between buildings); and the court regulations of Section 23-85 (Inner Court Regulations); and
2. Section 74-743(a)(5) to modify the minimum distance between legally required windows and lot line regulations of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines);

in connection with a proposed mixed use development on property located at 527 Westchester Avenue (Block 2359, p/o Lots 1, 3 & 9001), in a General Large-Scale Development, within the Bronxchester Urban Renewal Area, in a C6-2 District, Borough of the Bronx, Community Board 1, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 080520 ZSX) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Dattner Architects and Grimshaw, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Att. 2a	Site Plan	06/12/08
Att. 2c	Site Plan w/Zoning Actions	06/12/08
Att. 3	Zoning Analysis	06/20/08

Att. 4a	Height and Setback Keys	NYC ZR 23-632	06/12/08
Att. 4b	Height and Setback Sections	NYC ZR 23-632	06/12/08
Att. 4c	Height and Setback Sections	NYC ZR 23-632	06/12/08
Att. 4d	Height and Setback Sections	NYC ZR 23-632	06/12/08
Att. 4e	Minimum Distance Between Buildings Sections		06/12/08

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to it construction, operation and maintenance.
4. The Special Permit shall not be exercised until a restrictive declaration, in substantially the form set forth in Exhibit A attached hereto, with such modifications and containing such other attachments as are approved by Counsel's Office to the Department of City Planning, has been executed by all parties in interest, or such parties in interest have waived execution of such restrictive declaration, and have subordinated their interests.. A further condition of development pursuant to this resolution shall be the recordation of such restrictive declaration, the terms of which are hereby incorporated into this resolution, in the Office of the Register of the City of New York, Bronx County, against the project site. Such filing and recordation shall take place on or after the date of the disposition of the project site pursuant to ULURP Application No. C 080522 HAX.

5. The Special Permit shall not be exercised until the Easement Agreements, in substantially the form set forth in Exhibits B and C, have been executed and containing such other attachments as are approved by Counsel's Office to the Department of City Planning. Any modifications to such Easement Agreements shall be acceptable to the General Counsel to the Department of City Planning. A further condition of development pursuant to this resolution shall be the recordation of such documents, the terms of which are hereby incorporated into this resolution, in the Office of the Register of the City of New York, Bronx County.
6. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sub-lessee or occupant.
7. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.
8. Neither the City of New York nor its employees or agents shall have any liability for money

damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 080520 ZSX), duly adopted by the City Planning Commission on October 7, 2008 (Calendar No. 9), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, FAICP, Chair
KENNETH J. KNUCKLES, Esq., Vice Chairman
ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, A.I.A.,
ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,
RICHARD W. EADDY, NATHAN LEVENTHAL, SHIRLEY A. McRAE,
JOHN MEROLO, Commissioners

EXHIBIT A

DECLARATION OF GENERAL LARGE-SCALE DEVELOPMENT

THIS DECLARATION, made as of this [insert day] of [month], [year] by VIA VERDE HOUSING DEVELOPMENT FUND CORPORATION, having its principal address c/o The Phipps Houses Group, 902 Broadway, 13th floor, New York, New York 10010-6033 (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the fee owner of certain real property located in the Borough of the Bronx, County of The Bronx, City and State of New York, designated for real property tax purposes as Block 2359, Lots [**to be determined**], which real property is more particularly described in Exhibit "A-1" annexed hereto and made a part hereof (the "Declarant's Parcel"): and

WHEREAS, the City of New York is the fee owner of certain real property located in the Borough of the Bronx, County of The Bronx, City and State of New York, designated for real property tax purposes as Block 2359, Lots [**to be determined**], which real property is more particularly described in Exhibit "A-2" annexed hereto and made a part hereof (the "City Parcel") (the Declarant's Parcel and the City Parcel, collectively the "Subject Property" as more particularly described in Exhibit A-3 annexed hereto and made a part hereof);

WHEREAS, Declarant desires to improve the Subject Property as a "general large-scale development" meeting the requirements of Section 12-10 of the Zoning Resolution (Definition) definition of "general large-scale development" (such proposed improvement of the Subject Property, the "Large Scale Development Project"); and

WHEREAS, on June 24, 2008, the City of New York (hereinafter referred to as the "City") (acting through the Department of Housing Preservation and Development), in connection with a proposed mixed

use development to be constructed on the Subject Property, applied to the City Planning Commission of the City of New York (hereinafter referred to as "CPC") for (1) a zoning map amendment changing from an M1-1 zoning district to a C6-2 zoning district (N080517ZMX); (2) the acquisition by the City of privately-owned property (C080521PQX); (3) UDAAP designation and, project approval and disposition of city-owned-property (C080522HAX); (4) a zoning text amendment to Section 74-74 to allow the modifications of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines) (C080518ZRY); (5) a special permit pursuant to Sections 74-681 to permit development over a railroad right-of-way (C080519ZSX); (6) a special permit pursuant to Section 74-743(a)(2) and 74-743(a)(5) to modify: the height and setback regulations of Section 23-63 (Maximum Height of Walls and Required Setbacks), Section 23-66 (Required Side and Rear Setbacks), Section 33-43 (Maximum Height of Walls and Required Setbacks) and Section 35-60 (Modification of Height and Setback Regulations for Mixed Building); the rear yard regulations of Section 23-47 (Minimum Required Rear Yards) and 33-26 (Minimum Required Rear Yards); the minimum distance between buildings regulations of Section 23-711(Standard Minimum Distance Between Buildings); the court regulations of Section 23-85 (Court Regulations); and the minimum distance between legally required windows and lot line regulations of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines) (C080520ZSX); (hereinafter referred to as, collectively, the "Land Use Applications");

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

WHEREAS, [insert title company name] has certified in a certification attached hereto as

Exhibit "B" and made a part hereof, that as of [insert date of title cert] Declarant and ___ are the only "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, Declarant desires to restrict the manner in which the Subject Property is developed in the future, and intends these restrictions to benefit all the land, including land owned by the City, lying within a one-half-mile radius of the Subject Property.

NOW THEREFORE: Declarant hereby declares covenants and agrees as follows:

1. Designation of General Large Scale Development. Declarant hereby declares and agrees 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 shall be developed and enlarged as a single unit.

2. Development of Large Scale Development Site. If the Subject Property is developed in whole or part in accordance with the Land Use Applications, Declarant covenants that the Subject Property shall be developed in substantial conformity with the following plans prepared by Dattner Architects and approved as part of the Land Use Applications (copies of which are annexed hereto in Exhibit "C" and made a part hereof: 1

Drawing No.	Title	Date
2a	Site Plan	June 12, 2008
2c	Site Plan w/Zoning Actions	June 12, 2008
3	Zoning Analysis	June 12, 2008

1 List of plans and dates will be revised based on final approvals.

4	Height and Setback Keys	June 12, 2008
4b	Height and Setback Sections	June 12, 2008
4c	Height and Setback Sections	June 12, 2008
4d	Height and Setback Sections	June 12, 2008
4e	Minimum Distance Between Buildings	June 12, 2008

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

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

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

5. Recordation. Declarant shall file and record this Declaration in the Office of the City Register of the City of New York (the "Register's Office"), indexing it against the Subject Property on or after the date of the disposition of the Subject Property pursuant to ULURP Application No. C080522HAX (such date, the "Recording Date"). Declarant shall promptly provide to the Chairperson of the CPC a copy of the Declaration as recorded, so certified by the City Register. If Declarant fails to so record this Declaration, CPC may record a duplicate original of this Declaration, but all costs of recording, whether undertaken by Declarant or by CPC, shall be borne by Declarant.

6. Effective Date. This Declaration and the provisions and covenants hereof shall become effective as of the Recording Date in accordance with Section 5 above, provided however, that in the event that any administrative, judicial, or other action or enforcement proceeding is brought challenging the validity of the approval of any of the Land Use Applications, the conveyance of the Subject Property to Declarant or any action undertaken in connection with or related thereto, then the Effective Date shall be deferred to the date of final resolution of such action or proceeding, including any appeals, upholding in all respects the approval of the Land Use Applications, the conveyance of the Subject Property, or such related action(s), as the case may be.

7. 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 Declarant:

to the address at the commencement of this Declaration Attention: President

with a copy to: the General counsel of Declarant at the same address

- (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 a Party in Interest other than Declarant:

at the address provided in writing to CPC in accordance

with this Section 7

- (iv) if to a Mortgagee:

at the address provided in writing to CPC in accordance with this Section 7

Declarant, CPC, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 7, change any name or address for purposes of this Declaration. In order to be deemed effective any Notice shall be sent or delivered in at least one of the following manners: (A) sent by registered or certified mail, postage pre-paid, return receipt requested, in which case the Notice shall be deemed delivered for all purposes hereunder five days after being actually mailed; (B) sent by overnight courier service, in which case the Notice shall be deemed

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

8. Defaults and Remedies.

(a) Declarant acknowledges that the restrictions, covenants, and obligations of this Declaration will protect the value and desirability of the Subject Property, as well as benefit the City. If Declarant fails to perform any of Declarant's obligations under this Declaration, the City shall have the right to enforce this Declaration against Declarant and exercise any administrative legal or equitable remedy available to the City, and Declarant hereby consents to same; provided that this Declaration shall not be deemed to diminish Declarant's or any other Party in Interest's right to exercise any and all administrative, legal, or equitable remedies otherwise available to it, and provided further, that the City's rights of enforcement shall be subject to the cure provisions and periods set forth in Sections 8(c) and 8(d) 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 certificate of occupancy, temporary or permanent, for any portion of the Large Scale Development Project on the Subject

Property built pursuant to the Land Use Applications; provided, however, that such right of revocation shall not permit or be construed to permit the revocation of any certificate of occupancy for any use or improvement that exists on the Subject Property as of the date of this Declaration;

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

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 Declarant twenty (20) business days written notice of such alleged violation, during which period Declarant 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 Declarant commences 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, Declarant commences 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 Declarant continues to proceed diligently with the effectuation of such cure. In the event that more than one Declarant exists at any time on the Subject Property, notice shall be provided to all Declarants from whom the City has received notice in accordance with Section 7 hereof, and the right to cure shall apply equally to all Declarants.

(d) If Declarant fails to observe any of the terms or conditions of this Declaration, and Declarant fails to cure such violation within the applicable grace period provided in Section 8(c) above, then, upon the expiration of such cure period, prior to institution by the City of any action or proceeding against Declarant, and every Party in Interest 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 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 the City, as if performed by Declarant.

(e) If, after due notice and opportunity to cure as set forth in this Declaration, Declarant, 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 8 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.

9. Applications.

(a) Declarant shall include a copy of this Declaration with any application made to the New York City Department of Buildings ("Buildings") for a foundation, new building, alteration, or other permit (a "Permit") for any portion of the Large Scale Development Project built pursuant to the Land Use Applications. Nothing in this Declaration, including but not limited

to the declaration and covenant made in Section 1 hereof to develop and enlarge the Subject Property as a single unit, shall be construed to prohibit or preclude Declarant from filing for, or Buildings from issuing, any permit for all or any portion of the Large Scale Development Project, in such phase or order as Declarant sees fit in Declarant's sole discretion.

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

10. Amendment, Modification and Cancellation.

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

(b) Notwithstanding anything to the contrary contained in Section 10 (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 a minor amendment or modification of this Declaration, and such minor modifications and amendments shall not require the approval of CPC.

11. 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.

12. 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.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of this [insert date].

VIA VERDE HOUSING DEVELOPMENT FUND COMPANY

By:
Name:
Title:

THE CITY OF NEW YORK, acting through the New York City Department of Education, hereby acknowledges and consents to the execution and recordation of this Declaration and agrees that the City Parcel shall be subject to the terms and conditions of this Declaration.

By: _____
Name:
Title:

STATE OF NEW YORK)
) .ss.:
COUNTY OF)

On the ____ day of _____ in the year 200, 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 on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT A-1

DESCRIPTION OF DECLARANT'S PARCEL

EXHIBIT A-2

DESCRIPTION OF CITY PARCEL

EXHIBIT A-3

DESCRIPTION OF SUBJECT PROPERTY

EXHIBIT B

PARTIES IN INTERST CERTIFICATION

EXHIBIT C

PLANS

EXHIBIT B

LIGHT AND AIR EASEMENT AGREEMENT

EASEMENT AGREEMENT made as of this _____ day of _____, 2008, between THE CITY of NEW YORK, having its principal address at City Hall, New York, New York 10007, acting through the NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, having its principal office at 100 Gold Street, New York, New York 10038 (hereinafter referred to as “Grantor”) and VIA VERDE HOUSING DEVELOPMENT FUND CORPORATION, having its principal address c/o The Phipps Houses Group, 902 Broadway, 13th floor, New York, New York 10010-6033 (hereinafter referred to as “Grantee”).

WITNESSETH:

WHEREAS, Grantor is the fee owner of certain land located in the City and State of New York, Borough of The Bronx, Bronx County, designated as Block 2359, Lot 255 on the Tax Map of the City of New York (hereinafter referred to as “Parcel A”) and more particularly described by a metes and bounds description set forth in Exhibit A annexed hereto and made a part hereof;

WHEREAS, the Grantee has acquired from Grantor and is now the fee owner of certain land located in the City and State of New York, Borough of The Bronx, Bronx County, designated as Block 2359, Lot [to be determined] on the Tax Map of the City of New York (hereinafter referred to as “Parcel B”) and more particularly described by a metes and bounds description set forth in Exhibit B annexed hereto and made a part hereof;

WHEREAS, in connection with the conveyance of the fee title of Parcel B from Grantor to Grantee, Grantor and Grantee entered into a Land Disposition Agreement (the “LDA”) bearing even date and intended to be recorded simultaneously herewith, setting forth the terms and conditions for the development of Parcel B by Grantee (the “Project”);

WHEREAS, on June 24, 2008, the City of New York (hereinafter referred to as the “City”) (acting through the Department of Housing Preservation and Development), in connection with a proposed mixed use development to be constructed on Parcel B, applied to the City Planning Commission of the City of New York (hereinafter referred to as “CPC”) for (1) a zoning map amendment changing from an M1-1 zoning district to a C6-2 zoning district (C080517ZMX); (2) the acquisition by the City of privately-owned property (C080521PQX); (3) UDAAP designation and, project approval and disposition of city-owned-property (C080522HAX); (4) a zoning text amendment to Section 74-743(a) to allow the modifications of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines) (N080518ZRY); (5) a special permit pursuant to Sections 74-681 to permit development over a railroad right-of-way (C080519ZSX); (6) a special permit pursuant to Section 74-743(a)(2) and 74-743(a)(5) to modify: the height and setback regulations of Section 23-63 (Maximum Height of Walls and Required Setbacks), Section 23-66 (Required Side and Rear Setbacks), Section 33-43 (Maximum Height of Walls and Required Setbacks) and Section 35-62 (Modification of Height and Setback Regulations for Mixed Building); the rear yard regulations of Section 23-47 (Minimum Required Rear

Yards) and 33-26 (Minimum Required Rear Yards); the minimum distance between buildings regulations of Section 23-711(Standard Minimum Distance Between Buildings); the court regulations of Section 23-85 (Court Regulations); and the minimum distance between legally required windows and lot line regulations of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines) (C080520ZSX); (hereinafter referred to as, collectively, the "Land Use Applications");

WHEREAS, the CPC approved the Land Use Applications upon the condition, inter alia, that Grantor create an easement for light and air for the benefit of the present and future owners of Parcel B in order to satisfy the applicable provisions of the Zoning Resolution of the City of New York and Multiple Dwelling Law;

NOW, THEREFORE, good and valuable consideration having been paid, the Grantor, for itself, and its legal representatives, successors and assigns hereby makes, with respect to its respective interest in Parcel A, the following grant to Grantee, its legal representatives, successors, and assigns and to any future owners of Parcel B:

1. The right to unrestricted light and air over a portion of Parcel A consisting of an area seventeen (17 feet) by one hundred fifteen (115) feet eleven (11) inches, as more particularly described by a metes and bounds description set forth in Exhibit C annexed hereto and made a part hereof (such area is hereinafter referred to as the "Easement Area").
2. Grantor covenants and agrees that no new buildings, improvements, alterations or additions shall be constructed or allowed to exist on or over the Easement Area.
3. This Easement Agreement may not be modified, amended or terminated without the prior written consent of the New York City Department of City Planning. Grantor may unilaterally terminate this Easement Agreement (with the prior written consent of the DCP) prior to the issuance of a certificate of occupancy if Grantee fails to complete the Project, subject to applicable cure and grace provisions, in accordance with the terms of the LDA. Upon such termination, Grantor shall have no obligation or liability of any kind to Grantee or its legal representatives, successors and assigns and to any future owners of Parcel B with respect to this Easement Agreement.
4. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. The covenants shall be enforceable in accordance with their terms.
5. This Easement Agreement shall be recorded in the Office of the City Register for Bronx County and the cross-reference number and title of the Easement Agreement shall be cited on each temporary and permanent certificate of occupancy hereafter issued for any building on Parcels A and B.

IN WITNESS WHEREOF, the parties have made and executed the foregoing Easement Agreement as of the date hereinabove written.

GRANTOR:

THE CITY OF NEW YORK

By: _____

GRANTEE:

VIA VERDE HOUSING
DEVELOPMENT FUND
COMPANY

By: _____

STATE OF NEW YORK)
) .ss.:
COUNTY OF)

On the ____ day of _____ in the year 200, 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 on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) .ss.:
COUNTY OF)

On the ____ day of _____ in the year 200, 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 on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT A
DESCRIPTION OF PARCEL A

EXHIBIT B
DESCRIPTION OF PARCEL B

EXHIBIT C

DESCRIPTION OF EASEMENT AREA

EXHIBIT C

LIGHT AND AIR EASEMENT AGREEMENT

EASEMENT AGREEMENT made as of this _____ day of _____, 2008, between NEW YORK CITY HOUSING AUTHORITY, having its principal address at 250 Broadway, New York, New York 10007 (hereinafter referred to as “Grantor”) and VIA VERDE HOUSING DEVELOPMENT FUND CORPORATION, having its principal address c/o The Phipps Houses Group, 902 Broadway, 13th floor, New York, New York 10010-6033 (hereinafter referred to as “Grantee”).

WITNESSETH:

WHEREAS, Grantor is the fee owner of certain land with a building located thereon, located in the City and State of New York, Borough of The Bronx, Bronx County, designated as Block 2359, Lot 210 on the Tax Map of the City of New York (hereinafter referred to as “Parcel A”) and more particularly described by a metes and bounds description set forth in Exhibit A annexed hereto and made a part hereof;

WHEREAS, the Grantee is the fee owner of certain land located in the City and State of New York, Borough of The Bronx, Bronx County, designated as Block 2359, Lot [**to be determined**] on the Tax Map of the City of New York (hereinafter referred to as “Parcel B”) and more particularly described by a metes and bounds description set forth in Exhibit B annexed hereto and made a part hereof;

WHEREAS, there is an 18-story building erected on Parcel A (hereinafter referred to as “Grantor’s Building”);

WHEREAS, on June 24, 2008, the City of New York (hereinafter referred to as the “City”) (acting through the Department of Housing Preservation and Development), in connection with a proposed mixed use development to be constructed on Parcel B, applied to the City Planning Commission of the City of New York (hereinafter referred to as “CPC”) for (1) a zoning map amendment changing from an M1-1 zoning district to a C6-2 zoning district (C080517ZMX); (2) the acquisition by the City of privately-owned property (C080521PQX); (3) UDAAP designation and, project approval and disposition of city-owned-property (C080522HAX); (4) a zoning text amendment to Section 74-743(a) to allow the modifications of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines) (N080518ZRY); (5) a special permit pursuant to Sections 74-681 to permit development over a railroad right-of-way (C080519ZSX); (6) a special permit pursuant to Section 74-743(a)(2) and 74-743(a)(5) to modify: the height and setback regulations of Section 23-63 (Maximum Height of Walls and Required Setbacks), Section 23-66 (Required Side and Rear Setbacks), Section 33-43 (Maximum Height of Walls and Required Setbacks) and Section 35-62 (Modification of Height and Setback Regulations for Mixed Building); the rear yard regulations of Section 23-47 (Minimum Required Rear Yards) and 33-26 (Minimum Required Rear Yards); the minimum distance between buildings regulations of Section 23-711 (Standard Minimum Distance Between Buildings); the court regulations of Section 23-85 (Court Regulations); and the minimum distance between legally required windows and lot line regulations of Section 23-86 (Minimum

Distance Between Legally Required Windows and Walls or Lot Lines) (C080520ZSX); (hereinafter referred to as, collectively, the "Land Use Applications");

WHEREAS, the CPC may approve the Land Use Applications upon the condition, inter alia, that Grantor create an easement for light and air for the benefit of the present and future owners of Parcel B in order to satisfy the applicable provisions of the Zoning Resolution of the City of New York and Multiple Dwelling Law.

NOW, THEREFORE, good and valuable consideration having been paid, the Grantor, for itself, and its legal representatives, successors and assigns hereby makes, with respect to its respective interest in Parcel A, the following grant to Grantee, its legal representatives, successors, and assigns and to any future owners of Parcel B:

3. The right to unrestricted light and air over two portions of Parcel A consisting of the following areas (such areas are collectively hereinafter referred to as the "Easement Areas") and are more particularly described by metes and bounds descriptions set forth in Exhibit C annexed hereto and made a part hereof:
 - (a) an area seventeen (17) feet by sixty seven (67) feet one (1) inch; and
 - (b) an area thirty (30) feet by one hundred five (105) feet three (3) inches.
4. Grantor covenants and agrees that no new buildings, improvements, alterations or additions shall be constructed or allowed to exist on or over the Easement Areas.
5. This Easement Agreement may not be modified, amended or terminated without the prior written consent of the New York City Department of City Planning.
6. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.
7. Failure to comply with the terms of this Easement Agreement may result in the exercise of administrative or legal remedies by the City of New York, including but not limited to the revocation of the special permit, building permits or certificates of occupancy.
8. This Easement Agreement shall be recorded in the Office of the City Register for New York County and the cross-reference number and title of the Easement Agreement shall be cited on each temporary and permanent certificate of occupancy hereafter issued for any building on Parcels A and B.

IN WITNESS WHEREOF, the parties have made and executed the foregoing Easement Agreement as of the date hereinabove written.

GRANTOR:

NEW YORK CITY
HOUSING AUTHORITY

By: _____

GRANTEE:

VIA VERDE HOUSING
DEVELOPMENT FUND
COMPANY

By: _____

STATE OF NEW YORK)
) .ss.:
COUNTY OF)

On the ____ day of _____ in the year 200, 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 on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) .ss.:
COUNTY OF)

On the ____ day of _____ in the year 200, 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 on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT A
DESCRIPTION OF PARCEL A

EXHIBIT B
DESCRIPTION OF PARCEL B

EXHIBIT C

DESCRIPTION OF EASEMENT AREAS