



CITY PLANNING COMMISSION

July 2, 2008/Calendar No. 20

C 080178 ZSM

IN THE MATTER OF an application submitted by Park Avenue Hotel Acquisition, LLC, 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. Sections 81-212 and 74-79 - to allow the transfer of 200,965 square feet of floor area from property located at 375 Park Avenue (Block 1307, Lots 1 and 9001) that is occupied by a landmark building to property located at 610 Lexington Avenue (Block 1307, Lots 14 and 59), to modify the requirements of Section 23-851 (Minimum Dimension of Inner Courts), Section 23-861 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines/General Provision), Section 36-62 (Required Accessory Off-Street Loading Berths), and Section 81-45 (Pedestrian Circulation Space) and Section 37-07 (Requirements for Pedestrian Circulation Space); and
2. Section 81-277 - to modify the height and setback requirements of Section 81-27 (Alternative Height and Setback Regulations – Daylight Evaluation)

to facilitate the development of a 63-story mixed use building on property located at 610 Lexington Avenue (Block 1307, Lots 14 and 59), in a C6-6 District, within the Special Midtown District, Community District 5, Borough of Manhattan

197-d (b) (2) eligible

This application for a special permit was filed by Park Avenue Hotel Acquisition, LLC and 375 Park Avenue, L.P., on November 17, 2007, to facilitate the construction of a 63 story, approximately 712-foot tall, mixed-use building at the south west corner of East 53rd Street and Lexington Avenue in Manhattan Community District 5.

RELATED ACTION

In addition to the application for a special permit which is the subject of this report (C 080178 ZSM), implementation of the proposed development also requires action by the City Planning Commission on the following application which is considered concurrently with this application:

N 080177 ZRM: A zoning text amendment concerning Section 81-212 (Special provisions for transfer of development rights from landmark sites) of the Special Midtown District.

BACKGROUND

The project site (Block 1307, Lot 59) is located on the south west corner of East 53rd Street and Lexington Avenue, and has approximately 100 feet of frontage on Lexington Avenue and 103 feet of frontage on East 53rd Street. The site is vacant and was formerly improved with the Central Branch of the YWCA. The project site is part of a larger zoning lot that includes 600 Lexington Avenue (Block 1307, Lot 14) which is developed with a 35 story office tower. The zoning lot has an area of 21,387 square feet.

The western portion of Block 1307 consists of the Seagram Building (Lots 1 and 9001), a 38 story office tower and a designated Landmark. The Seagram Building zoning lot has an area of 59,949 square feet,

Existing Zoning and Context

The project zoning lot is located in a C6-6 zoning district. In a C6-6 zoning district, the basic maximum permitted floor area ratio for residential use is 10.0, which may be increased to 12.0 through the provision of residential recreation space, and the basic maximum FAR for commercial use, community facility use and combined commercial, community facility and residential uses is 15.0. The zoning lot permits 320,805 square feet of floor area if developed at the basic maximum FAR of 15.0. The 600 Lexington Avenue building, which would remain, has an existing floor area of 239,743 square feet, leaving 81,062 square feet of floor area available for development.

The Seagram Building zoning lot is zoned C5-3, C5-2.5 and C6-6. C5-3 zoning districts in the Midtown Special District permit the same floor area ratios as C6-6 zoning districts and C5-2.5 zoning districts permit a basic maximum FAR of 12.0 for commercial, community facility and residential uses, although residential uses are limited to 10.0 FAR unless residential recreation space is provided. For purposes of transferring development rights pursuant to Section 74-79 of the Zoning Resolution, Section 81-211 of the Special Midtown District permits a maximum FAR of 16.0 in C5-3 districts and 13.0 in C5-2.5 districts.

The project site is located in the Midtown central business district amidst several large office buildings including: Citigroup Center, an approximately 915 foot tower located on the east side of Lexington Avenue between East 53rd Street and East 54th Street; 599 Lexington Avenue (approximately 650 feet tall) across Lexington Avenue from the project site, the Seagram Building, and Lever House located at the northwest corner of East 53rd Street and Park Avenue. To the north along Lexington Avenue, residential uses are more prevalent.

Proposed Project

The proposed project would consist of a new mixed-use building containing restaurant, bar and hotel uses on the first and second floors, additional hotel uses on floors 3 through 52, and residential uses on floors 53 through 63. The proposed project would rise to a height of approximately 712 feet (including mechanical floors) and contain approximately 282,027 square feet of floor area, including 225,504 square feet of hotel use, 47,019 square feet of residential use, and 9,504 square feet of retail use.

The proposed building would be designed as two distinct forms, a nine story podium fronting on Lexington Avenue and a 63 story tower on the western portion of the development site, closest to the Seagram Building. The podium would rise approximately 111 feet and would be located along the entire Lexington Avenue frontage of the project site. The tower would begin at a depth of approximately 56 feet from Lexington Avenue and set back 10 feet from East 53rd Street. These two forms would be separated by an atrium that would serve as the building's main entrance from East 53rd Street and rise unobstructed to a height of approximately 106 feet. The tower dimensions would be approximately 90 feet by 47 feet, creating very small floor plates of approximately 4,230 square feet. According to the applicant, the massing of the building is intended to echo the tower and bustle form of the Seagram building's north elevation.

The proposed building would feature a crenulated or ridged surface of points and bays, and would be faced in a clear white glass material chosen in an effort to contrast with and visually enhance the Seagram Building's dark glass curtain wall.

REQUESTED ACTIONS

To facilitate the proposed project, the following actions are required:

Special Permit to allow the transfer of floor area from a landmark site and to modify bulk regulations pursuant to Sections 81-212, 81-277, and 74-79 (C 080178 ZSM)

As required by Section 74-791, on February 13, 2007, the Landmarks Preservation Commission (LPC) voted to approve the restoration work and continuing maintenance program outlined in a report, dated February 28, 2007, to the Chair of the City Planning Commission. In the report, LPC stated their support for the requested bulk modifications relating to the proposed project and for the transfer of development rights from the Seagram Building

Transfer of Floor Area from a Landmark

The applicant seeks to transfer 200,965 square feet of floor area from the Seagram Building zoning lot (the landmark zoning lot) to the project zoning lot pursuant to Section 81-212 and 74-79. The landmark zoning lot permits 865,792 square feet of floor area, of which 664,614 square feet of floor area has been utilized within the Seagram building. With the proposed transfer, 212 square feet of unused floor area would remain on the landmark zoning lot. The project zoning lot would be developed with a total of 521,770 square feet, 282,027 square feet of floor area on the project site and 239,743 square feet of floor area in the existing 600 Lexington Avenue building.

In order to achieve a building design on the project site that the applicant believes appropriately relates to the Seagram Building, the applicant requests several bulk modifications.

Height and Setback Modifications

The applicant seeks to modify the height and setback regulations within the Special Midtown District (Section 81-27 – “Alternative Height and Setback Regulations – Daylight Evaluation”) pursuant to Sections 81-277 and 74-79. Pursuant to the methodology for calculating height and setback compliance in Section 81-27, in C6-6 districts, a development or enlargement must achieve an overall score of 75, with no single street having a score lower than 66. The project zoning lot receives a passing score along Lexington Avenue, a score of 58.28 along East 52nd Street, -8.73 along East 53rd Street and an overall score of 47.25.

Modification of Minimum Distance Between Legally Required Windows and Lot Lines

The applicant seeks to modify the requirements of Section 23-86 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines) in order to allow the proposed residential portion of the building to have legally-required windows less than one foot from its western lot line instead of 30 feet from the lot line, as normally required. In order to meet the required condition for such a modification under the terms of the proposed zoning text amendment, discussed below, a 30 foot wide easement will be provided over the adjacent Seagram Building zoning lot to provide light and air for the west facing windows in the building. This modification would apply to the residential portion of the building, located on floors 53 through 63.

Modification of Courts

The applicant seeks to modify the requirements of Section 23-85 (Inner Court Regulations) in order to allow the proposed building to provide a court that does not meet the minimum dimensional requirements along the westerly side lot line. Section 23-851 requires that inner courts have a minimum area of 1,200 square feet and a minimum dimension of 30 feet. The proposed building would have an inner court along the westerly side lot line ranging in depth from approximately half an inch to approximately 10 inches due to the crenulated façade of the proposed building. These dimensions would not meet either inner court dimensional requirement. The requested modification would apply to the residential portion of the building from floors 53 through 63.

The applicant is also requesting a zoning waiver to modify minimum court dimensions for the hotel portion of the building. The dimension of the proposed court, which would be adjacent to the commercial portion of the building from floors 2 through 52 at the northern end of the building and floors 14 through 52 at the southern portion of the building, would be the same as those of the residential court.

Modification of Accessory Off-Street Loading Berths

The applicant seeks to modify the requirements of Section 36-62 (Required Accessory Off-Street Loading Berths) so that no loading berths would be provided within the proposed building. Section 36-62 requires that one loading berth be provided for the hotel, based upon the rate of 1 berth required for the first 300,000 square feet of floor area for hotel use in C6-6 districts. Instead, the applicant proposes to have deliveries made to the project site from the curbside lane of East 53rd Street near the proposed building's service entrance, through a proposed six-foot-wide enclosed service corridor immediately to the west of the proposed building on the landmark zoning lot, and into three dedicated service elevators.

Modification of Pedestrian Circulation Space

The applicant seeks to modify the requirements of Sections 81-45 (Pedestrian Circulation Space) and 37-50 (Requirements for Pedestrian Circulation Space) in order to allow pedestrian circulation spaces that do not meet the dimensional requirements. The proposed building would provide 1,742 square feet of pedestrian circulation space, which is more than the 1,739 square feet required, based upon 1 square foot per 300 square feet of floor area on the zoning lot. However, one of the pedestrian circulation spaces provided, the building entrance recess area located at the restaurant entrance along Lexington Avenue, would not provide the minimum dimensions required by Section 37-50. This space would have a length of 10 feet 3 inches and a depth of 5 feet, compared to the 15-foot minimum length and 10-foot minimum depth required. Further, the building entrance recess area on East 53rd Street would extend for a distance of 65 feet six inches along the street line, where the maximum length of such space is required to be 50 feet. Additionally, at the entrance to the hotel lobby, also on East 53rd Street would have an

overhanging canopy at a height of 13 feet 7 inches and thus would not provide the 15-foot minimum clear height required.

Zoning Text Amendment (N 080177 ZRM)

The applicant is requesting a zoning text amendment to Section 81-212 that would add the bulk modifications described above to those now available in the Midtown Special District through Section 74-79 special permits. The additional allowable modifications would only be available to zoning lots located in C5-3, C6-6, C6-7, and C6-7T districts within the Special Midtown District).

In order to grant the modification of minimum distance between legally required windows and walls or lot lines, conditions relating to the provision of an area equal to the required minimum distance and protection of that area by a light and air easement on the landmark zoning lot must be met. To grant the modification of required accessory, off-street loading berths, the Commission must make findings relating to the physical constraints associated with providing a loading berth, its potential impact on the landmark, and its effect on pedestrian and vehicular traffic.

ENVIRONMENTAL REVIEW

This application (C 080178 ZSM), in conjunction with the application for the related actions (N 080177 ZRM) 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 08DCP042M. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on February 11, 2008.

UNIFORM LAND USE REVIEW PROCEDURE

This application (C 080178 ZSM) was certified as complete by the Department of City Planning on February 11, 2008, and was duly referred to Manhattan Community Board 5 and the Manhattan Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b). The application for the related non-ULURP text amendment (N 080177 ZRM), was also referred to Manhattan Community Boards 4, 5, 6, 7, 8, the Manhattan Borough President, and the Manhattan Borough Board for information and comment.

Community Board Public Hearing

Community Board 5 held a public hearing on this and the related application (N 080177 ZRM) on April 10, 2008, and on that date, by a vote of 36 in favor, 0 opposed, and 1 abstained.

Community Board 5's resolution noted concern that the building, "does not include an off street loading berth, and there is no agreement for sharing an off street loading berth and/or driveway with the adjacent Seagram building, making it necessary for passenger and bulk loading, including hotel garbage, to take place on the sidewalk or street(s)..."

The resolution expressed further concern, "about the immediate and long term impacts of the proposed text amendment to Section 74-79 of the Zoning Resolution for the Special Midtown District, the principle of amending the Zoning Resolution for one building and the precedent that would be set in the Special Midtown District for future applications with similar modifications..."

Borough President Recommendation

This application (C 080178 ZSM) and the related application (N 080177 ZRM) were considered by the Borough President, who issued a recommendation disapproving the applications on May 16, 2008, subject to the following conditions:

1. The text is amended to require a loading/unloading strategy to be referred to the Department of Transportation for their review and approval;
2. The text is amended to empower the Commission to evaluate findings relating to potential negative impacts on land use and pedestrians created by the proposed waiver of circulation space;
3. The text is amended to empower the Commission to ensure that appropriate legal agreements have been reached to ensure the monitoring and enforceability of any traffic management plan; and
4. The findings of the special permit, as amended, have been satisfied.

City Planning Commission Public Hearing

On May 7, 2008 (Calendar No. 4), the City Planning Commission scheduled May 21, 2008, for a public hearing on this application (C 080178 ZSM). The hearing was duly held on May 21, 2008 (Calendar No. 15), in conjunction with the hearing on the related application (N 080177 ZRM). There were three speakers in favor of the applications and six speakers in opposition.

Those speaking in favor of the applications included the applicant's attorney, project architect, and transportation consultant. Those in opposition included a representative from the Manhattan Borough President's office and from the office of the Councilmember from the 4th District, and residents in Community District 5.

The applicant's attorney described the proposed project and hotel operation, and explained the reasons for the proposed bulk modifications, including the modification of loading berth requirements. The project architect described the physical constraints associated with including a complying loading berth within the proposed building and the transportation consultant described the proposed parking regulations that would be implemented to facilitate on-street loading for the hotel operation.

The Director of Land Use for the Manhattan Borough President reiterated the Borough President's recommendation. The representative for the Councilmember from the 4th

District stated his agreement with the concerns of the Borough President and Community Board. Members of the West 54th & West 55th Street block associations raised concerns about the applicability of the proposed text amendment to future projects in Midtown.

CONSIDERATION

The Commission believes that the special permit (C 080178 ZSM), in conjunction with the related application for zoning text amendment (N 0080177 ZRM), is appropriate.

The Commission recognizes that the Seagram Building is one of the most significant landmark structures in New York City and that the program for continuing maintenance and restoration work required as part of this application is important to ensuring its future preservation. The Commission notes that the transfer of development rights from the landmark zoning lot to the project zoning lot would essentially exhaust the floor area located on the site of the Seagram Building, likely preventing any potential future development in the Seagram plaza. The Commission further notes that the transfer of development rights would not increase the total floor area permitted on the project block, but would rather shift density toward Lexington Avenue, where very high density buildings currently exist, and away from Park Avenue, where densities are lower.

The Commission believes that the proposed massing of 610 Lexington Avenue relates well to the composition of the Seagram Building and notes that the placement of the proposed tower on the project site, its lack of setbacks, the quality of materials, and the location of the hotel entrance respects the architectural significance of the Seagram Building. The Commission also notes that the proposed tower will not be visible from Park Avenue, further respecting the Seagram Building.

The Commission recognizes that the architecture and composition of the proposed building would result in west facing windows less than one foot from the project's western lot line. In this regard, the Commission notes that under the provisions of the proposed text amendment, the provision of a light and air easement over the adjacent

Seagram building equal in distance to what would normally be required between legally required windows and lot lines is a condition of the granting of this special permit.

The Commission believes that the lack of an off-street loading berth will not create significant vehicular congestion on East 53rd Street due to: 1) the relatively lower delivery requirements of this hotel when compared to hotels with large function or event facilities, and a greater number of rooms; and 2) the amount of existing on-street parking in the immediate area exclusively for commercial loading activities. The Commission also believes that the lack of an off-street loading berth would improve pedestrian circulation on the southern sidewalk of East 53rd Street since the sidewalk would be uninterrupted by a curb cut and associated vehicular traffic.

Furthermore, the Commission notes that the applicant has proposed, and the Department of Transportation has agreed in a letter dated May 7, 2008, to change parking regulations along 103 feet of frontage on East 53rd Street adjacent to the proposed project to allow for a significant hotel loading zone and to allow for nighttime deliveries between midnight and 7a.m. The Commission further notes that the hotel operator, in a letter dated June 24, 2008, has agreed to make deliveries only during late night/early morning hours and hire off-duty police officers to help enforce parking regulations.

The Commission notes that pursuant to Section 81-44 of the Special Midtown District, 53rd street is one of four streets in the Special Midtown District where curb cuts are prohibited, except by authorization, in order to facilitate the movement of east-west traffic through Midtown and to reinforce these streets as pedestrian corridors. The Commission further notes that the placement of a loading berth within the proposed building by authorization, would not be feasible due to the structural requirements of the tower or desirable due to its aesthetic and visual impact on the Seagram Building and East 53rd Street. The Commission further notes that it is not feasible to share loading berths with 600 Lexington Avenue or the Seagram building due to the existing physical constraints which restrict direct connections.

With regard to the proposed text amendment, the Commission notes that Section 74-79 of the Zoning Resolution allows for several bulk modifications for the purpose of permitting development which relates harmoniously with an adjacent landmark building while accommodating additional floor area. The proposed amendment to the zoning resolution would allow additional bulk modifications to a limited class of high density zoning districts in order allow for greater flexibility to achieve development compatible with landmarks. The Commission notes that the proposed amendment would only be applicable in the Special Midtown District where small lots and high densities make site planning and design, in the context of a landmark, challenging. The Commission believes that the proposed text amendment, as modified, is appropriate.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-792 (e) (Conditions and Limitations) of the Zoning Resolution;

1. That the permitted transfer of floor area or variations in the front height and setback regulations will not unduly increase the bulk of any new development, density of population or intensity of use in any block to the detriment of the occupants of buildings on the block or nearby blocks, and that any disadvantages to the surrounding area caused by reduced access of light and air will be more than offset by the advantages of the landmark's preservation to the local community and the City as a whole;
2. That the program for continuing maintenance will result in the preservation of the landmark; and
3. Not applicable

The City Planning Commission hereby makes the following pursuant to Section 81-212 (Special provisions for transfer of development rights from landmark sites) of the Zoning Resolution;

1. A loading berth permitted by City Planning Commission authorization pursuant to Section 81-44 would have an adverse impact on the landmark building or other structure that is the subject of the special permit;
2. Because of existing buildings on the zoning lot, there is no other feasible location for the required loading berths; and
3. The modification or waiver will not create or contribute to serious traffic congestion or unduly inhibit vehicular and pedestrian movement; and

The Commission hereby makes the following findings pursuant to Section 81-277 (Special permit for height and setback modifications) of the Zoning Resolution;

1. That the requested departure from the alternate height and setback regulations is the minimum amount necessary to achieve a feasible building design;
2. That the disadvantages to the surrounding area resulting from reduced light and air access will be more than offset by the advantages of the landmark's preservation to the local community and the City as a whole; and
3. That where the landmark is located on the zoning lot proposed for development or on a lot contiguous thereto or directly across a street therefrom, the modification of the alternate height and setback regulations will adequately protect the setting for the landmark.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the actions 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 Park Avenue Hotel Acquisition, LLC and 375 Park Avenue, L.P., 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. Sections 81-212 and 74-79 - to allow the transfer of 200,965 square feet of floor area from property located at 375 Park Avenue (Block 1307, Lots 1 and 9001) that is occupied by a landmark building to property located at 610 Lexington Avenue (Block 1307, Lots 14 and 59), to modify the requirements of Section 23-851 (Minimum Dimension of Inner Courts), Section 23-861 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines/General Provision), Section 36-62 (Required Accessory Off-Street Loading Berths), and Section 81-45 (Pedestrian Circulation Space) and Section 37-07 (Requirements for Pedestrian Circulation Space); and

2. Section 81-277 - to modify the height and setback requirements of Section 81-27 (Alternative Height and Setback Regulations – Daylight Evaluation)

to facilitate the development of a 63-story mixed use building on property located at 610 Lexington Avenue (Block 1307, Lots 14 and 59), in a C6-6 District, within the Special Midtown District, Community District 5, Borough of Manhattan, is approved subject to the following conditions:

1. The property that is the subject of this application (C 080178 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by SLCE Architects filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-1a	Site Plan @ Roof Level	February 4, 2008
Z-2	ULURP Zoning Site Plan Attachment 2 + 4	February 4, 2008

Z-2a	ULURP Zoning Site Plan Attachment 2 + 4	July 1, 2008
Z-3	ULURP Zoning Calculations (Attachment 4)	February 4, 2008
Z-6	Continuity & Pedestrian Circulation Space (Attachment 4)	February 4, 2008
Z-9	Building Sections	February 4, 2008
Z-10	ULURP Zoning Roof Plan, Viewpoints Compliance Notes	February 4, 2008
Z-11	ULURP Zoning Plan and Section Angles Scoring	February 4, 2008
Z-12	ULURP Zoning Daylight Evaluation Diagram	February 4, 2008
Z-13	ULURP Zoning Daylight Evaluation Diagram	February 4, 2008
Z-14	ULURP Zoning Daylight Evaluation Diagram	February 4, 2008

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

5. 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 and the related restrictive declaration 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 or of the related restrictive declaration.
6. 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.
7. In the event 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 the restrictive declaration described below and any subsequent modifications to such documents 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.
8. Development pursuant to this resolution shall be allowed only after Amended and Restated Light and Air Easement Agreement dated July 1st, 2008, which is

attached hereto, shall have been duly recorded and filed in the Office of the Register of the City of New York, County of New York.

9. Development pursuant to this resolution shall be allowed only after certain legal documents, substantially in the form identified below, have been further executed by all parties in interest, or such parties in interest have waived execution of such, and have subordinated their interests. Any modifications to such documents, or the form of any waiver and subordination, shall be acceptable to the General Counsel to the Department of City Planning.

- a. Declaration dated July 1, 2008, executed on behalf of Park Avenue Hotel Acquisition LLC
- b. Declaration dated July 1, 2008, executed on behalf of 375 Park Avenue L.P.
- c. Transfer of Development Rights and Notice of Restrictions Pursuant to Section 74-79 of the Zoning Resolution of the City of New York, dated July 1, 2008 and executed on behalf of Park Avenue Hotel Acquisition LLC and on behalf of 375 Park Avenue L.P.

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, County of New York.

The above resolution (C 080178 ZSM), duly adopted by the City Planning Commission on July 2, 2008 (Calendar No. 20), 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, ANGELA R. CAVALUZZI, AIA, BETTY Y. CHEN,

MARIA M. DEL TORO, RICHARD W. EADDY, NATHAN LEVENTHAL,

JOHN MEROLO, KAREN A. PHILLIPS, Commissioners

IRWIN G. CANTOR, P.E., Commissioner, Voting 'No'

AMENDED AND RESTATED LIGHT AND AIR EASEMENT AGREEMENT

EASEMENT AGREEMENT made as of this 1st day of July, 2008, between 375 Park Avenue L.P., a Delaware limited partnership, having an address c/o RFR Holding LLC, 390 Park Avenue, New York, New York 10022, (hereinafter referred to as "375 LP"), and Park Avenue Hotel Acquisition, LLC, a Delaware limited liability company, having an address at c/o RFR Holding LLC, 390 Park Avenue, New York, New York 10022 (hereinafter referred to as "Acquisition LLC").

WITNESSETH:

WHEREAS, 375 LP is the fee owner of certain land with a building located thereon, located in the City and State of New York, Borough of Manhattan, City, County and State of New York, designated as Block 1307, Lot 1 on the Tax Map of the City of New York (hereinafter referred to as "Parcel A-1") and more particularly described by a metes and bounds description set forth in Exhibit A-1 annexed hereto and made a part hereof;

WHEREAS, Acquisition LLC is the owner in fee simple of certain airspace located above Parcel A-1 designated as Block 1307, Lot 9001 on the Tax Map of the City of New York, New York County (hereinafter referred to as "Parcel A-2" and, together with Parcel A-1, "Parcel A") and more particularly described by a metes and bounds description set forth in Exhibit A-2 annexed hereto and made a part hereof;

WHEREAS, Acquisition LLC is also the fee owner of certain land located in the City and State of New York, Borough of Manhattan, City, County and State of New York, designated as Block 1307, Lot 59 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 a 38-story building erected on Parcel A-1 (hereinafter referred to as the "375 Building");

WHEREAS, on November 15, 2007, pursuant to application numbers 080177ZRM and 080178ZSM ("Application"), and in connection with a proposed commercial and residential building to be constructed on Parcel B, Acquisition LLC applied to the City Planning Commission of the City of New York (hereinafter referred to as "CPC"), for (1) a zoning text amendment to Zoning Resolution Section 81-212 to allow, in connection with a Section 74-79 special permit, modification of Section 23-861 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines/General provisions), requirements governing the minimum dimensions of a court, Section 36-62 (Required Accessory Off-Street Loading Berths) and Sections 81-45 (Pedestrian Circulation Space) and 37-50 (Requirements for Pedestrian Circulation Space), and (2) a special permit pursuant to Sections 74-79, 81-212 and 81-277 of the Zoning Resolution to permit 200,965 square feet of unused development rights to be transferred from Parcel A to the zoning lot that includes Parcel B (the "Parcel B Zoning

Lot”) to permit the maximum permitted floor area on the Parcel B Zoning Lot to be increased on the basis of such transfer of development rights, and to modify Zoning Resolution Sections 81-27 (Alternative Height and Setback Regulations - Daylight Evaluation), 23-861 (Minimum Distance Between Legally Required Windows and Walls or Lot Lines/General provisions), 36-62 (Required Accessory Off-Street Loading Berths), 81-45 (Pedestrian Circulation Space) and 37-07 (Requirements for Pedestrian Circulation Space), and 23-851 (Minimum dimensions of inner courts);

WHEREAS, the CPC may approve the Application upon the condition, inter alia, that 375 LP and Acquisition LLC, in its capacity as owner of Parcel A-2, 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;

WHEREAS, (1) 375 LP, (2) 375 Park Avenue Investors II LLC, as predecessor-in-interest to Acquisition LLC, in its capacity as owner of Parcel A-2, and (3) 610 Lexington Acquisition LLC, as predecessor-in-interest to Acquisition LLC, in its capacity as owner of Parcel B, did previously enter into that certain Light and Air Easement Agreement dated as of August 10, 2005 and recorded in the Office of the City Register for New York County on October 26, 2005 at CRFN 2005000598304 (the "Prior Easement Agreement");

WHEREAS, 375 LP and Acquisition LLC desire to modify and supercede the Prior Easement Agreement; and

NOW, THEREFORE, good and valuable consideration having been paid, 375 LP and Acquisition LLC, in its capacity as owner of Parcel A-2, for themselves, and their legal representatives, successors and assigns hereby make, with respect to their respective interests in Parcel A, the following grant to Acquisition LLC, in its capacity as owner of Parcel B, its legal representatives, successors, and assigns and to any future owners of Parcel B:

1. The right to unrestricted light and air over Parcel A as described herein, such that any construction on Parcel A shall never infringe upon the light and air to Parcel B, except for the space occupied by the 375 Building as it exists on the date hereof (hereinafter referred to “the 375 Building Envelope”).
2. 375 LP and Acquisition LLC, in its capacity as owner of Parcel A-2, covenant and agree that no new buildings, improvements, alterations or additions shall be constructed or allowed to exist on the area of the easement (hereinafter referred to as the “Easement Area”) granted herein, and no construction, addition, reconstruction, replacement, repair or rebuilding (collectively, “Rebuilding”) of the 375 Building shall be made so as to encroach beyond the 375 Building Envelope into the Easement Area (but nothing contained in this Section 2 shall be deemed to prohibit or restrict the replacement, or continued maintenance, on or above the roof of the portion of the 375 Building within the Easement Area of any parapet, bulkhead, fence, elevator shaft, water tower, antenna, satellite dish,

chimney, pipe, ladder, fire escape, or other mechanical or telecommunications equipment as the same exist on the date hereof or to prohibit or restrict the replacement, reconstruction or continued maintenance of any buildings or improvements within the Easement Area as the same exist on the date hereof).

3. The Easement Area consists of a thirty (30) feet by ninety (90) feet portion of Parcel A more particularly described by a metes and bounds description set forth in Exhibit C-1 and a drawing set forth in Exhibit C-2 annexed hereto and made a part hereof, except for the space occupied by the 375 Building as it exists on the date hereof that is within the Easement Area.
4. This Amended and Restated Easement Agreement modifies and supersedes in all respects the terms, conditions, rights and provisions of the Prior Easement Agreement.
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.

375 PARK AVENUE L.P.

By: 375 GP LLC, its general partner

By: _____

Name: *Abg Rosen*
Title: *Authorized Signatory*


PARK AVENUE HOTEL ACQUISITION, LLC

By: _____

Name: *Kevin Carlson*
Title: *Authorized Signatory*

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

On the 1 day of July in the year 2008 before me, the undersigned, personally appeared AMY ROSEN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

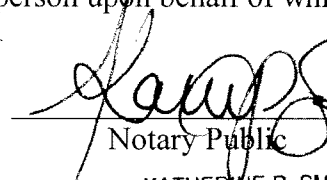


Notary Public

KATHERINE P. SMITH (Carpenter)
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01SM6137915 (0016137915)
QUALIFIED IN NASSAU COUNTY
MY COMMISSION EXPIRES DEC. 5, 2009

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

On the 1 day of July in the year 2008 before me, the undersigned, personally appeared ERIC CARLSON, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

KATHERINE P. SMITH (Carpenter)
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01SM6137915 (0016137915)
QUALIFIED IN NASSAU COUNTY
MY COMMISSION EXPIRES DEC. 5, 2009

EXHIBIT A-1

ALL THAT CERTAIN plot, piece or parcel of land below a horizontal plane that is 600 feet above the Manhattan Datum, the system known as the Borough Works Datum of the Borough of Manhattan, which designates as zero an elevation which is 2.75 feet above the mean sea level at Sandy Hook, New Jersey (the "Manhattan Datum"), with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at a corner formed by the intersection of the northerly side of East 52nd Street and the easterly side of Park Avenue;

THENCE RUNNING northerly along the easterly side of Park Avenue, 200 feet 10 inches;

THENCE easterly along the southerly side of East 53rd Street, 302 feet;

THENCE southerly parallel with the easterly side of Park Avenue, 100 feet 5 inches to the center line of the block;

THENCE westerly along the center line of the block at right angles to the last mentioned course, 7 feet;

THENCE southerly parallel with the easterly side of Park Avenue, 100 feet 5 inches to the northerly side of East 52nd Street;

THENCE westerly along the northerly side of East 52nd Street 295 feet to the corner the point or place of BEGINNING.

Said premises are known as 375 Park Avenue and designated as Block 1307 Lot 1 as shown on the Tax Map of the City of New York.

EXHIBIT A-2

ALL THAT CERTAIN volume of air above a horizontal plane that is 600 feet above the Manhattan Datum, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at a corner formed by the intersection of the northerly side of East 52nd Street and the easterly side of Park Avenue;

THENCE RUNNING northerly along the easterly side of Park Avenue, 200 feet 10 inches;

THENCE easterly along the southerly side of East 53rd Street, 302 feet;

THENCE southerly parallel with the easterly side of Park Avenue, 100 feet 5 inches to the center line of the block;

THENCE westerly along the center line of the block at right angles to the last mentioned course, 7 feet;

THENCE southerly parallel with the easterly side of Park Avenue, 100 feet 5 inches to the northerly side of East 52nd Street;

THENCE westerly along the northerly side of East 52nd Street 295 feet to the corner the point or place of BEGINNING.

Said premises are known as 375 Park Avenue and designated as Block 1307 Lot 9001 as shown on the Tax Map of the City of New York.

EXHIBIT B

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

BEGINNING at the intersection of the Southerly side of Fifty-third Street and the Westerly side of Lexington Avenue;

THENCE Westerly along the Southerly side of Fifty-third Street, a distance of 103 feet;

THENCE Southerly parallel with Lexington Avenue, a distance of 100 feet 5 inches;

THENCE Easterly parallel with Fifth-third Street, a distance of 103 feet to the Westerly side of Lexington Avenue;

THENCE Northerly along the Westerly side of Lexington Avenue, a distance of 100 feet 5 inches to the point or place of BEGINNING.

Said premises are known as 610 Lexington Avenue and designated as Block 1307 Lot 59 as shown on the Tax Map of the City of New York.

EXHIBIT C-1

ALL THAT CERTAIN volume of air above a horizontal plane that is 116.47 feet above the Manhattan Datum and below a horizontal plane that is 753.57 feet above the Manhattan Datum, situate, lying and being in the Borough of Manhattan, County, City and State of New York, bounded and described as follows:

BEGINNING at a point located a distance of 103 feet westerly from the intersection of the southerly side of East 53rd Street and the westerly side of Lexington Avenue;

THENCE RUNNING southerly parallel with the westerly side of Lexington Avenue, 10 feet, to a POINT OR PLACE OF BEGINNING;

THENCE RUNNING southerly parallel with the westerly side of Lexington Avenue, 90 feet;

THENCE westerly parallel with the southerly side of East 53rd Street, 30 feet;

THENCE northerly parallel with the westerly side of Lexington Avenue, 90 feet;

THENCE easterly parallel with the southerly side of East 53rd Street, 30 feet to the POINT OR PLACE OF BEGINNING.

EXHIBIT C-2

