



CITY PLANNING COMMISSION

January 27, 2010 / Calendar No. 7

C 100054 ZSM

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

1. Section 74-743(a)(1) to allow the distribution of open space without regard for zoning district boundaries; and
2. Section 74-743(a)(2) to modify the rear yard regulations of Sections 23-532 (Required rear yard equivalents) and 33-283 (Required rear yard equivalents), to modify the height and setback regulations of Sections 23-632 (Front setbacks in districts where front yards are not required), 33-43 (Maximum Height of Walls and Required Setbacks), 35-62 (Maximum Height of Wall in Initial Setback Distance) and 23-663 (Street wall location and height and setback regulations in certain districts), and to modify the minimum required distance between two or more buildings regulations of Section 23-711 (Standard minimum distance between buildings);

to facilitate a proposed mixed-use development on property located at 592-608 Eleventh Avenue a.k.a. 507-533 West 44th Street a.k.a. 508-558 West 45th Street (Block 1073, Lot 1), within a General Large Scale Development, in R8/C2-5 and R10/C2-5 Districts, within the Special Clinton District (Excluded Area), Borough of Manhattan, Community District 4.

This application for a special permit was filed by the applicant on August 5, 2009. The special permit, along with its related actions, would facilitate would facilitate approximately 1,350 residential units, of which approximately 675 would be affordable, in addition to commercial and community facility uses.

RELATED ACTIONS

In addition to the special permit (C 100054 ZSM) which is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following which are being considered concurrently with this application:

- | | |
|--------------|--|
| C 100051 ZMM | Zoning Map Amendment from M1-5 to R8/C2-5 and R10/C2-5 zoning districts |
| N 100052 ZRM | Zoning Text Amendment relating to Article IX, Chapter 6 (Special Clinton District) |

- C 100053 ZSM Special Permit pursuant to Section 74-681 to permit development over railroad or transit air space
- C 100055 HAM UDAAP designation, project approval and disposition of City-owned property

BACKGROUND

A full background discussion and description of this application appears in the report on the related application for a zoning map amendment (C 100051 ZMM).

ENVIRONMENTAL REVIEW

The application (C 100054 ZSM), in conjunction with the application for the related actions (C 100051 ZMM, N 100052 ZRM, C 100053 ZSM, C 100055 HAM), 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 09HPD022M. The lead agency is the Department of Housing Preservation and Development.

It was determined that the proposed action may have a significant effect on the environment and that an Environmental Impact Statement would be required. A summary of the environmental review and the Final Environmental Impact Statement appears in the report on the related application for a zoning map amendment (C 100051 ZMM).

UNIFORM LAND USE REVIEW

This application (C 100054 ZSM), in conjunction with the application for the related actions, (C 100051 ZMM, C 100053 ZSM, C 100055 HAM) was certified as complete by the Department of City Planning on September 8, 2009, and was duly referred to Community Board 4 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b) along with the related non-ULURP application (N 100052 ZRM), which was referred for review and comment.

Community Board Public Hearing

Community Board 4 held a public hearing on this application and the related actions on October 7, 2009, and on that date, by a vote of 35 in favor, none opposed with no abstentions, adopted a resolution recommending approval with conditions.

A summary of the recommendations of Community Board 4 appears on the related application for a zoning map amendment (C 100051 ZMM).

Borough President Recommendation

This application (C 100054 ZSM), in conjunction with the related actions, was considered by the Borough President, who issued a recommendation on November 30, 2009 recommending approval with conditions.

A summary of the recommendations of the Borough President appears on the related application for a special permit (C 100051 ZMM).

City Planning Commission Public Hearing

On November 18, 2009 (Calendar No. 6), the City Planning Commission scheduled December 2, 2009, for a public hearing on this application (C 100054 ZSM). The hearing was duly held on December 2, 2009 (Calendar No. 17) in conjunction with the public hearing on the applications for related actions.

There were twenty speakers, as described in the report for the related zoning map amendment (C 100051 ZMM), and the hearing was closed.

CONSIDERATION

The Commission believes that this application for a special permit (C 100054 ZSM), as modified, in conjunction with the application for related actions, is appropriate.

A full consideration and analysis of the issues, and reason for approving this application appear

in the related report for a zoning map amendment (C 100051 ZMM).

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-743:

- (1) the distribution of floor area, open space, dwelling units, rooming units and the location of buildings, primary business entrances, show windows and signs will result in better site plan and 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 occupant 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 people using the public streets;
- (3) where a zoning lot of a general large-scale development does not occupy a frontage on a mapped street, appropriate access to a mapped street is provided;
- (4) considering the size of the proposed general large-scale development, the streets providing access to such general large-sale development will be adequate to handle traffic resulting therefrom;
- (5) when the Commission has determined that the general large-scale development requires significant addition to existing public facilities serving the area, the applicant has submitted to the Commission a plan and timetable to provide such required additional facilities. Proposed facilities that are incorporated into the City's capital budget may be included as part of such plan and timetable; and
- (6) 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 having considered the Final Environmental Impact Statement (FEIS), for which a Notice of Completion was issued on January 13, 2010, with respect to this application (CEQR No. 09HPD022M), the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act & regulations, have been met and that:

1. Consistent with social, economic and other essential considerations, from among the reasonable alternatives thereto, the action approved is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts disclosed in the FEIS will be minimized or avoided to the maximum extent practicable.

The report of the City Planning Commission, together with the FEIS, constitutes the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

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

1. Section 74-743(a)(1) to allow the distribution of open space without regard for zoning district boundaries; and
2. Section 74-743(a)(2) to modify the rear yard regulations of Sections 23-532 (Required rear yard equivalents) and 33-283 (Required rear yard equivalents), to modify the height and setback regulations of Sections 23-632 (Front setbacks in districts where front yards are not required), 33-43 (Maximum Height of Walls and Required Setbacks), 35-62

(Maximum Height of Wall in Initial Setback Distance) and 23-663 (Street wall location and height and setback regulations in certain districts), and to modify the minimum required distance between two or more buildings regulations of Section 23-711 (Standard minimum distance between buildings);

to facilitate a proposed mixed-use development on property located at 592-608 Eleventh Avenue a.k.a. 507-533 West 44th Street a.k.a. 508-558 West 45th Street (Block 1073, Lot 1), within a General Large Scale Development, in R8/C2-5 and R10/C2-5 Districts, within the Special Clinton District (Excluded Area), in a general large-scale development, Borough of Manhattan, Community District 4, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 100054 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 SLCEArchitects, filed with this application and incorporated in this resolution:

<u>Drawing Number</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-3	Site Plan	12.29.2009
Z-4	Zoning Calculations	07.31.2009
Z-4a	Zoning Analysis Table	07.31.2009
Z-5	Required Yards	12.29.2009
Z-6	Distance Between Buildings	12.29.2009
Z-7	Open Space	12.29.2009
Z-8	Height and Setback Sections	12.29.2009
Z-9	Height and Setback Sections	12.29.2009
Z-10	Height and Setback Sections	12.29.2009
Z-11	Height and Setback Isometric View	12.29.2009
Z-11.1	Height and Setback Plan at Street	12.29.2009
Z-11.2	Height and Setback Plan at Rear Yard	12.29.2009
Z-11.3	Rear Yard Plan	12.29.2009

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. Development pursuant to this resolution shall be allowed only after the attached Restrictive Declaration marked as Exhibit 1 hereto, together with any necessary administrative and technical changes acceptable to the counsel of the City Planning Commission, is executed by Gotham Developers, LLC.
5. The development shall include those mitigative measures listed in the Final Impact Statement (CEQR No. 09HPD022M) issued on January 13, 2010 and identified as practicable.
6. 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 report and resolution and any subsequent modifications shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.
7. 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.

8. 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.

9. 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 100054 ZSM), duly adopted by the City Planning Commission on January 27, 2010 (Calendar No. 7), is filed with the Office of the Speaker, City Council, and the Borough President, in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, FAICP, Chair
KENNETH J. KNUCKLES, Esq., Vice Chairman
ANGELA M. BATTAGLIA, RAYANN BESSER, IRWIN G. CANTOR, P.E.,
ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,
RICHARD W. EADDY, NATHAN LEVENTHAL, ANNA HAYES LEVIN,
SHIRLEY A. McRAE, KAREN A. PHILLIPS, Commissioners

DECLARATION OF GENERAL LARGE-SCALE DEVELOPMENT

THIS DECLARATION, made as of this ____ day of _____, 2010 by 44th Street Development LLC, 520 West 45th Street Owner LLC and Studio City LLC, each a New York limited liability company, having an address c/o The Gotham Organization, 1010 Avenue of the Americas, New York, NY 10018 (individually and collectively, the "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the fee owner of certain real property located in the Borough of Manhattan, County, City and State of New York, designated for real property tax purposes as Block 1073, Lot 1, which real property is more particularly described in Exhibit "A" annexed hereto and made a part hereof (the "Subject Property"); and

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

WHEREAS, the New York City Department of Housing Preservation and Development ("HPD") filed applications with the New York City Department of City Planning ("City Planning") for (1) a special permit pursuant to Zoning Resolution Section 74-743 (Special provisions for bulk modification) to permit modification of the applicable yard, distance between buildings, height and setback and open space requirements (C 100054 ZSM) (the "Large Scale Special Permit"); (2) a special permit pursuant to Zoning Resolution Section 74-681 (Development within or over a railroad or transit right-of-way or yard) to permit a permanent platform to be constructed over the Amtrak railroad right-of-way to be included in the lot area of the Subject Property (C 100053 ZSM); (3) a zoning map amendment to rezone the Subject Property from an M1-5 district to an R10/C2-5 district within 350 feet of Eleventh Avenue and an R8/C2-5 district beyond 350 feet from Eleventh Avenue (C 100051 ZMM); (4) zoning text amendments to Zoning Resolution Section 96-82 to define the R10 portion of the Subject Property as an Inclusionary Housing designated area with the Special Clinton District (N 100052

ZRM); (5) disposition of the Subject Property from HPD to the Declarant and designation of the Large Scale Development Project as an Urban Development Action Area Project (C 100055 HAM) (collectively, the “Applications”); and

WHEREAS, to insure that the development of the Subject Property is consistent with the analysis in the Final Environmental Impact Statement (“FEIS”) issued for City Environmental Quality Review Application No. 09HPD022M pursuant to Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY §5-01 et. seq. (“CEQR”) and the State Environmental Quality Review Act, New York State Environmental Conservation Law §§ 8-0101 et seq. and the regulations promulgated thereunder at 6 NYCRR Part 617 (“SEQRA”) and incorporates certain requirements for mitigation of significant adverse environmental impacts, Declarant has agreed to restrict the development, operation, use and maintenance of the Subject Property in certain respects, which restrictions are set forth in this Declaration; and

WHEREAS, Zoning Resolution Section 74-743(b)(8) 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 (the “Commission”); and

WHEREAS, _____ Title Insurance Company has certified in a certification attached hereto as Exhibit "B" and made a part hereof, that as of _____, 2009, Declarant, _____, and _____ are the only parties in interest (“Parties in Interest”) to the Subject Property as "Parties in Interest" is defined in subdivision (c) of the definition of "zoning lot" in Zoning Resolution Section 12-10; and

WHEREAS, all Parties in Interest to the Subject Property have either executed this Declaration or waived their rights to execute this Declaration by written instruments annexed hereto as Exhibits “B-1” and “B-2” and made a part hereof, which instruments are intended to be recorded simultaneously with this Declaration; 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 developed as a general large-scale development site.

2. Development of Large Scale Development Project.

(a) Declarant covenants and agrees that the Subject Property shall be developed in substantial compliance with the following plans prepared by SLCE Architects, approved as part of the Large Scale Special Permit and annexed hereto in Exhibit "C" and made a part hereof:

<u>Number</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-3	Site Plan	12.29.2009
Z-4	Zoning Calculations	07.31.2009
Z-4a	Zoning Analysis Table	07.31.2009
Z-5	Required Yards	12.29.2009
Z-6	Distance Between Buildings	12.29.2009
Z-7	Open Space	12.29.2009
Z-8	Height and Setback Sections	12.29.2009
Z-9	Height and Setback Sections	12.29.2009
Z-10	Height and Setback Sections	12.29.2009
Z-11	Height and Setback Isometric View	12.29.2009
Z-11.1	Height and Setback Plan at Street	12.29.2009
Z-11.2	Height and Setback Plan at Rear Yard	12.29.2009
Z-11.3	Rear Yard Plan	12.29.2009
Z-18	Rail R.O.W.	07.31.2009

(b) Declarant further covenants and agrees that no other development of the Subject Property, including any development otherwise permitted on an 'as of right' basis under the provisions of the Zoning Resolution, shall be permitted unless Declarant has submitted an application for a modification to this declaration in accordance with the provisions of section 9

of this declaration, and such application has been approved. Unless developed in accordance with the Large Scale Special Permit, Declarant shall not apply for or accept building permits for any development.

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 a fee interest in the Subject Property. At such time as a Declarant or any successor to a Declarant no longer holds a fee interest in the Subject Property, such Declarant's or such Declarant's successor's obligations under this Declaration shall wholly cease and terminate and the party succeeding such Declarant or such Declarant's successor as fee owner of the Subject Property shall assume the obligations of Declarant pursuant to this Declaration with respect to actions or matters occurring subsequent to the date such party acquires a fee 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 a fee interest in the Subject Property. In no event shall any officer, director, trustee, member, partner, manager, employee, representative or agent of Declarant have any personal liability under this Declaration.

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 and the date of recordation shall be the Effective Date. . Declarant shall promptly provide to the Chairperson a copy of the Declaration as recorded, so certified by the City Register.

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

(a) if to Declarant:
44th Street Development, LLC
c/o The Gotham Organization, Inc.
1010 Avenue of the Americas
New York, New York 10018
Attention: David Picket

with a copy to:
Bryan Cave LLP
1290 Avenue of the Americas
New York, New York 10104-3300
Attention: Robert S. Davis, Esq.

(b) if to the Commission:
New York City Planning Commission
22 Reade Street
New York, New York 10007
Attention: Chairperson

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

(c) if to a Party in Interest other than Declarant:
at the address provided in writing to the Commission in accordance with this Section 6

(d) if to a Mortgagee:

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

Declarant, the Commission, any Party in Interest, and any Mortgagee may, by notice provided in accordance with this Section 6, change any name or address for purposes of this Declaration. In order to be deemed effective any Notice shall be sent or delivered in at least one of the following manners: (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 the Commission to Declarant shall also be sent to every Mortgagee of whom the Commission 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 Commission shall be provided to all Declarants of whom the Commission has notice.

7. 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, subject to Sections 7(c) and 7(d) hereof, 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. 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 a development on the Subject Property which does not comply with the terms of this Declaration.

(b) Notwithstanding any provision of this Declaration, only Declarant, and Declarant's successors and assigns and the City, acting through the Commission, shall be entitled to enforce or assert any claim arising out of or in connection with this Declaration; provided that a Mortgagee or Party In Interest which is curing an alleged violation pursuant to Section 7(d) hereof shall have the right to enforce the provisions of Section 7(d) of this Declaration. Nothing contained herein should be construed or deemed to allow any other person or entity to have any

interest in or right of enforcement of any provision of this Declaration or any document or instrument executed or delivered in connection with the Applications.

(c) Prior to the City instituting any proceeding to enforce the terms or conditions of this Declaration due to any alleged violation hereof, the City shall give Declarant and all Parties in Interest thirty (30) business days written notice of such alleged violation, during which period Declarant and the Parties in Interest 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 or the Parties in Interest commence to effect such cure within such twenty (20) day period (or if cure is not capable of being commenced within such twenty (20) day period, Declarant or the Parties in Interest commence to effect such cure when such commencement is reasonably possible), and thereafter proceed 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 or the Parties in Interest continue to proceed diligently with the effectuation of such cure. In the event that more than one Declarant exists at any time on the Subject Property, notice shall be provided to all Declarants from whom the City has received notice in accordance with Section 6 hereof, and the right to cure shall apply equally to all Declarants.

(d) 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 7 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.

8. Applications.

(a) Declarant shall include a copy of this Declaration with any application made to the Buildings Department as required for a foundation, new building, alteration, or other permit for (i) any portion of the Large Scale Development Project built pursuant to the Large Scale Special Permit;). 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 and constructing, or the

Buildings Department 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, provided that Section 2 of this Declaration is fully complied with in connection therewith.

(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 8(b) shall be construed as superseding the requirements, restrictions, or approvals that may be required under agreements with any other Agency or the City.

9. Amendment, Modification and Cancellation.

(a) This Declaration may be amended, cancelled, or modified only upon approval of the Commission after application by Declarant, 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 9 (a) hereof, the Chairperson may by its express written consent administratively approve modifications or amendments to this Declaration that, in the sole judgment of the Chairperson, are determined by the Chairperson to be minor amendments or modifications of this Declaration, and such minor modifications and amendments shall not require the approval of the Commission or from any other public body, private person, or legal entity of any kind. Notwithstanding the foregoing, no modification pursuant to Section 2(b) hereof shall be administratively approved.

(c) This Declaration and its obligations and agreements are in contemplation of Declarant receiving approvals or modified approvals of the Applications. In the event that the Declarant withdraws the Applications before a final determination or the Applications are not approved, the obligations and agreements pursuant to this Declaration shall have no force and effect and this Declaration shall be cancelled.

12. Severability. In the event that any of the provisions of the Declaration shall be deemed, decreed, adjudged, or determined to be invalid or unlawful by a court of competent

jurisdiction, such provision shall be severable and the remainder of this Declaration shall continue to be in full force and effect.

13. Default and Attorneys' Fees. If Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration, and such finding is upheld on final appeal or the time for further review of such finding or appeal by a court of by other proceedings has lapsed, Declarant shall indemnify and hold harmless the City and the Commission from and against all reasonable legal and administrative expenses arising out of or in connection with the enforcement of Declarant's obligations under this Declaration.

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

44TH STREET DEVELOPMENT LLC

A New York limited liability company

By: Studio City LLC
A New York limited liability company, its manager

By: Picket Realty Construction Consultants LLC
A New York limited liability company, its sole member

By: _____

Name: David L. Picket

Title: Member

520 WEST 45TH STREET OWNER LLC

A New York limited liability company

By: Studio City LLC
A New York limited liability company, its manager

By: Picket Realty Construction Consultants LLC,
A New York limited liability company, its sole member

By: _____

Name: David L. Picket

Title: Member

STUDIO CITY LLC

A New York limited liability company, its manager

By: Picket Realty Construction Consultants LLC,
A New York limited liability company, its sole member

By: _____

Name: David L. Picket

Title: Member

ACKNOWLEDGEMENT

State of New York

County of New York

On the _____ day of _____, 2010 before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A

Legal Description of Subject Property

EXHIBIT B

Title Company Certification of Parties In Interest

EXHIBIT B-1

Waiver of Right to Execute Declaration

EXHIBIT B-2

Waiver of Right to Execute Declaration

EXHIBIT C

Large Scale Development Project Plans