



CITY PLANNING COMMISSION

December 19, 2012 / Calendar No. 4

C 120397 ZSM
CORRECTED

IN THE MATTER OF an application submitted by Durst Development LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of special permits pursuant to the following sections of the Zoning Resolution:

1. Section 74-743(a)(1) - to allow the distribution of total allowable floor area under the applicable district regulations without regard for zoning district lines; and
2. Section 74-743(a)(2) - to allow the location of buildings without regard for the front wall height and initial setback requirements of Section 33-432, the tower requirements of Section 33-451, and the distance between building requirements of Section 23-711;

in connection with a proposed mixed-use development, on property bounded by West 58th Street, Eleventh Avenue, West 57th Street, and Twelfth Avenue (Block 1105, Lots 1, 5, 14, 19, 29, 36, and 43), within a Large-Scale General Development, in C4-7 and C6-2 Districts, within the Special Clinton District (Other Areas (Northern Subarea C1)), Community District 4, Borough of Manhattan.

This application for the grant of a special permit was filed by Durst Development, LLC, on June 6, 2012. The proposed special permit, along with its related actions, would facilitate the development of a proposed, mixed-use development on the block bounded by Eleventh Avenue, Twelfth Avenue, West 57th Street and West 58th Street, in the Special Clinton District, in Manhattan Community District 4.

RELATED ACTIONS

In addition to the proposed zoning special permit (C 120397 ZSM), which is the subject of this report, implementation of the proposed project also requires action by the City Planning Commission on the following applications, which are being considered concurrently with this application:

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| C 120396 ZMM | Amendment to the Zoning Map changing an M1-5 zoning district to a C6-2 zoning district within the Special Clinton District |
| C 120398 ZSM | Special Permit, pursuant to Section 13-561 of the Zoning Resolution, to allow an enclosed attended accessory parking garage |

M 010151(B) ZSM Modification of the Large-Scale General Development site plan associated with the original special permit (C 010151 ZSM) to reflect the proposed changes to the site plan

M 010148(A) ZMM Modification and termination of the existing restrictive declaration (D-145, ULURP # C010148 ZMM) to allow the execution of a new restrictive declaration in connection with proposed special permit C 120397 ZSM

BACKGROUND

The application for the proposed special permit, in conjunction with the related applications, would facilitate the integrated development of the block (“project site”) bounded by West 57th Street and West 58th Street, between Eleventh Avenue and Twelfth Avenue with a new, mixed residential and commercial building, a new community facility building, a residential conversion of an existing commercial building, and a new 285-space, below-grade accessory parking facility.

To the west of the project site, across Route 9A, is a portion of the Hudson River Park, three piers (Piers 97-99), and the Hudson River. Pier 97 was formerly used for Department of Sanitation truck parking and is currently planned as a public park and recreation area. Pier 98 is used for Con Edison employee car parking and storage of fuel oil. Pier 99, the West 59th Street Marine Transfer Station, is operated by the Department of Sanitation. This area is zoned M2-3.

Directly north of the project site is the former Interborough Rapid Transit Company Powerhouse, now a Con Edison facility, that is zoned M2-3. To the north of this property, the Riverside South Development extends from West 59th Street to West 72nd Street. Riverside South includes several residential high-rise towers. The southernmost portion of Riverside South consists of the Riverside Center proposal approved by the City Planning Commission in 2010, which includes five predominantly residential buildings for the blocks between West 59th and 61st streets. This area is predominantly zoned C4-7.

To the east of the project site is the Clinton community, an area with a variety of land uses and building types. The portion of Clinton in the vicinity of the project site (east of Route 9A and west of Tenth Avenue) traditionally contained many manufacturing uses, but in recent years, parcels have been redeveloped, and the area now hosts a mix of mid- and high-rise residential

buildings, commercial buildings, automobile showrooms, warehouses, office space, and film and television production studios. While many buildings closer to the Hudson River rise to between five and ten stories, many office and residential buildings between West 53rd and 61st streets, including one building directly to the east of the project site, rise to heights of 30 or 40 stories.

Also to the east of the project site along Tenth Avenue are several office buildings and residential towers with lower rise residences and retail uses farther east toward Ninth Avenue. Many of these buildings contain a mix of residential and commercial uses, including several residential towers with ground floor retail (particularly along the Ninth and Tenth Avenue corridors). This area to the east has a mix of zoning districts including C4-7 and C6-2 districts, as well as a C2-7 district along Tenth Avenue, which permits mixed buildings, with commercial FAR up to 2.0 and residential FAR up to 7.52. Also to the east are several additional, large R8 residential zoning districts, most between Eighth and Tenth avenues, with C2-5 and C1-5 commercial overlay zones. Several smaller M1-5 and M1-6 manufacturing zoning districts are also located close to the project site to the east.

To the south of the project site are a New York City Department of Sanitation garage and storage facility, a long, four-story parking garage, several car dealerships, and a five-story mixed residential and retail building. Three blocks south of the project site is Dewitt Clinton Park, a New York City Department of Parks and Recreation open space that occupies the two city blocks bounded by Twelfth Avenue, Eleventh Avenue, West 52nd Street, and West 54th Street. Farther to the south along Eleventh Avenue are residential, commercial and light industrial uses. This area is predominantly zoned with M1-5 and M2-3 manufacturing zoning districts, as well as an R9 residential zoning district and an M2-4 zone extending down to West 43rd Street to the west of Eleventh Avenue. There is also a C6-3X district, which allows 6.0 commercial FAR and 9.0 residential FAR, between 53rd and 54th Streets adjacent to Eleventh Avenue.

SITE DESCRIPTION

The project site, on which the Applicant holds a 99-year ground lease (of which 87 years remain), consists of the entire block bounded by Twelfth Avenue, West 58th Street, Eleventh Avenue, and West 57th Street. The site is approximately 3.69 acres in size or 160,000 square feet of lot area, consists of a single zoning lot, and is zoned C4-7 within 125 feet of the avenues and midblock along West 57th Street (to a depth of approximately 100 feet), and M1-5 in the

midblock facing West 58th Street. It is located within the northwest boundary of the Special Clinton District, and within the subarea designated as “Other Area (Northern Subarea C1).” The development proposed for the new mixed-use building extends approximately 500 feet east from Twelfth Avenue, is vacant, and the land slopes slightly up in elevation from west to east. On the northeastern corner of the project site, east of the project site on Lot 36, is the 98,500 square foot, six-story, brick Edison Storage Building constructed in the 1920s, with an approximately 20 space accessory open parking area. On the southeastern corner of the project block on Lot 29 is the Helena, a 38-story, 597-unit residential apartment building with approximately 12,000 square feet of ground floor retail and 100 accessory parking spaces, constructed in 2005. Along West 57th Street, the Helena property includes a grocery store and the entrance to the underground as-of-right accessory parking garage, as well as a bank at the corner of West 57th Street and Tenth Avenue.

There are several relevant prior City Planning approvals for the project site. On March 28, 2001 (Calendar Nos. 17-21), the City Planning Commission approved various actions as part of a plan to develop the Project Block as a Large Scale General Development (LSGD). These consisted of the following:

- C010148 ZMM: zoning map amendment rezoning from an M2-3 zoning district to a C4-7 district that portion of the Project Block within 125 feet of the avenues and in the midblock along West 57th Street (to a depth of approximately 100 feet), and from an M2-3 zoning district to an M1-5 district the portion of the Project Block in the midblock facing West 58th Street.
- C010151 ZSM: special permit pursuant to ZR Section 74-743(a)(3) allowing the modification of height and setback regulations in ZR Sections 33-432(a), 43-43, 33-451, and 43-45 on the Project Block.
- C010152 ZSM: special permit pursuant to ZR Section 74-744(b) allowing commercial uses in certain areas of the Project Block to be located at the same height or higher than certain permitted residential uses on the Project Block.
- C010149 ZSM: special permit pursuant to ZR Sections 13-562 and 74-52 allowing a 399-space attended public parking garage to be located below-grade in a building on the midblock portion of the Project Block.
- C010150 ZSM: special permit pursuant to ZR Sections 13-562 and 74-52 allowing a 239-space attended public parking garage on the ground and second floors of a building on the westerly portion of the Project Block.

The previously approved 2001 plan (C010151 ZSM, C010152 ZSM, C010149 ZSM, and C010150 ZSM) permitted up to approximately 1.33 million zoning square feet of development on the block. This development included 495,000 square feet in an office building on the western portion of the project block; 276,000 square feet of commercial uses in the midblock; for the eastern portion of the project block, two alternatives, either 600 residential units in a 520,800 square feet building or a second office tower of up to 595,000 square feet; and 638 public parking spaces. In both versions of the plan, the retail uses planned for the midblock area included possible development of several automobile dealerships and accessory uses.

In 2004, the City Planning Commission approved a minor modification (M 010151(A) ZSM) to the special permits described above in order to consolidate three existing curb cuts into a single curb cut along West 57th Street (leaving two total curb cuts along West 57th Street). Under the revised plan, the residential development option from the 2001 plan was selected. Subsequently, the 597-unit Helena apartment building with ground floor retail space and 100 accessory parking spaces was completed and is currently fully occupied on the southeastern portion of the project block. The Restrictive Declaration (D-145, C 010148 ZMM) currently encumbering the project site provides that the project site shall be developed in substantial conformity with the plans approved in connection with the 2001 large-scale permits as modified in 2004. This Restrictive Declaration is proposed to be modified and terminated and replaced with a new Restrictive Declaration in connection with the proposed project.

The western portion of the project site has remained vacant, and the two public parking garages approved in 2001 were not constructed. There is also a six-story brick building on the northeastern end of the project block that is occupied by Edison Storage Company.

In 2008, an application was submitted to the New York City Board of Standards and Appeals for a special permit pursuant to ZR Section 73-19 to permit the development of a 1,750 seat school (Use Group 3) for grades Pre-K through 12, in the midblock portion of the Project Block, partially within the M1-5 zoning district. The special permit was approved, but that project was not pursued at this location.

PROPOSED PROJECT

The proposed actions would facilitate development of a new mixed-use building on the project site that would have a modified pyramid shape with an internal courtyard, a two-story community facility building in the midblock portion of the project site, and the enlargement and conversion of the existing Edison Storage Building to residential and retail uses.

The mixed-use building would allow for up to 753 residential units with approximately 714,000 square feet of residential space. The applicant also proposes to include 20 percent or up to 151 affordable units through the “80/20” program. The proposed building would also include approximately 48,000 square feet of ground floor retail space, approximately 28,000 square feet of community facility space, approximately 80,000 gross square feet of commercial office space, and 285 accessory parking spaces. The building would occupy the majority of the project site, would include up to approximately 762,000 square feet in total, and would rise to approximately 457 feet at its highest point. Additional portions of the ground and second floors of the Mixed-Use Building may contain commercial and/or community facility uses, provided that in no event will the total amount of floor area located within the LSGD exceed the maximum permitted. The mixed-use building is proposed as a hybrid between a European perimeter block and a traditional Manhattan high-rise, whose ultimate form reflects the shape of an off-center, slightly twisted pyramid when viewed from the south, with the bulk massed toward the northeast portion of the building. It is designed to provide ample light and air to residential units facing both the street and interior courtyard, with many units facing south with unobstructed views toward the Hudson River. The interior courtyard would function as an open space amenity for the building’s residents and would be located above the program in the base of the building. The actions would also include construction of a two-story community facility building in the midblock portion of the Project Site along West 58th Street, abutting the Helena to the south and the Edison Storage Building to the east. The building entrance would be located off of West 58th Street along an angled, recessed façade east of the mid-block access drive described below. The building would include up to approximately 12,800 square feet and could include such uses as a museum annex, day care facility or medical offices.

The proposed actions would also facilitate the enlargement and conversion of the existing Edison Storage Building on the northeast corner of the block. This building could be used for up to 110 residential units (approximately 95,000 square feet of residential space) and approximately 5,000 square feet of ground-floor retail and 14,800 square feet of community facility space. The building would be reconfigured from a rectangular box to a U-shaped floor plan, with a possible enlargement of up to three floors using some of the floor area previously located in the center of the building, and unused floor area from elsewhere on the Project Block.

With the proposed actions, the project site would include a total of 385 parking spaces, as opposed to the 638 parking spaces previously approved by the City Planning Commission. These spaces would include a proposed new, 285-space accessory parking garage above grade in the mixed-use building that is part of the present application, and the 100 accessory parking spaces currently located beneath the Helena. The proposed garage would be located in an area on the project block near the 399-space public parking garage approved under the previous special permit (C 010149 ZSM) and would be accessed via a 25-foot wide curb cut on West 58th Street (instead of West 57th Street) located approximately 350 feet east of Twelfth Avenue. The applicant would surrender the prior parking garage approval upon approval of the proposed garage special permit.

The existing 23-foot curb cut currently providing access to the accessory parking garage located beneath the Helena, located approximately 220 feet west of Eleventh Avenue, would be removed. The existing accessory parking beneath the Helena would instead be accessed via a one-way (north), 50-foot wide, mid-block access drive connecting West 57th and 58th Streets. This access drive would be located approximately 250 feet west of Eleventh Avenue and would include 25-foot curb cuts at each end of the drive.

The proposed project would not modify the building envelope approved for the Helena pursuant to the previously approved special permit (M 010151(A) ZSM. The only changes to the Helena building as part of the proposed actions are the removal of the existing accessory parking garage curb cut at West 57th Street and the installation of retail uses on the ground floor portion of the Helena where the existing parking garage entrance would be removed.

REQUESTED ACTIONS

ZONING MAP AMENDMENT FROM M1-5 TO C6-2 (C120396 ZMM).

The application seeks to rezone a portion of the project site to facilitate development of the new mixed use building with predominantly residential uses, as well as ground-floor retail, on the western and midblock portions of the block. The proposed project would not be possible in the current M1-5 district, which does not permit residential uses. The proposal would rezone the midblock portion of the project block facing West 58th Street from an M1-5 district to a C6-2 district. The remainder of the project block, within 125 feet of the avenues and along West 57th Street (to a depth of approximately 100 feet), would remain a C4-7 commercial district. Overall, approximately 55,229 square feet of the site's zoning lot would be located in the C6-2 district, with approximately 105,437 square feet remaining in the C4-7 district. The C6-2 district has a maximum FAR of 6.0 for commercial development and 6.5 for community facility uses, and the C4-7 district has a maximum FAR of 10.0. The proposed project would generate an average FAR of approximately 8.63 over the entire project block. The project site would continue to be located within the area of the Special Clinton District classified as "Other."

LARGE-SCALE BULK SPECIAL PERMIT PURSUANT TO ZR SECTION 74-743 (C120397 ZSM)

Special permit pursuant to ZR 74-743(a)(1)

The proposed special permit pursuant to ZR Section 74-743(a)(1), to permit the distribution of floor area where the FAR within a large-scale general development would otherwise exceed the adjusted maximum floor area ratio for the portion of the zoning lot, is being sought to permit the new mixed-use building to slope back from the southwest corner of site, with much of the building's bulk located in the C6-2 portion of the Project Site. This requires distribution of the allowable floor area from the C4-7 zoning district to the C6-2 zoning district on the project site.

Pursuant to ZR Section 33-123, the maximum FAR in C6-2 districts (R8 equivalent) is 6.0 for commercial, 6.5 for community facility, and 6.02 for residential uses. Pursuant to ZR Section 77-22, with the majority of the zoning lot in a C4-7 (R10 equivalent) district, where up to 10.0 FAR is permitted, the total maximum floor area permitted on the project block is approximately 1,386,554 square feet, which is an average FAR for the entire block of 8.63. The proposed new

mixed use building would contain approximately 611,549 square feet of residential floor area in the C6-2 district, more than would be permitted in that district alone. This waiver would allow up to approximately 174,018 square feet, including 135,000 square feet of residential development rights to be distributed from the C4-7 district to the C6-2 portion of the project site. This transfer of floor area will allow the majority of the bulk of the mixed-use building to be located at the northeast corner, and permit the building's façade to slope down toward Twelfth Avenue and the waterfront.

Special permit pursuant to ZR 74-743(a)(2)

The proposed special permit pursuant to ZR Section 74-743(a)(2), to permit placement of buildings without regard for the applicable distance between buildings or height and setback regulations of ZR 33-432 and 33-451, is being sought to permit the proposed massing of the mixed-use building. This special permit would modify the earlier height and setback waiver approved pursuant to M 010151(A) ZSM.

The proposed mixed-use building would not comply with the maximum base height and initial setback distance requirements along West 58th Street, nor with the sky exposure plane. In addition, the mixed-use building would not comply with tower regulations above an elevation of Manhattan Datum 103'-5" (or 88 feet from curb level, where the sky exposure plane intersects with the building along West 58th Street). Waiver of these requirements would allow the bulk of the mixed-use building to rise in a pyramid shape at the northeast corner, increasing the amount of light and air around the building, and preserving westward views of the Hudson River for both the residents of the Helena and the new building. This bulk configuration allows for less bulk near the waterfront with additional bulk rising on the portion of the project site closer to the Helena and the larger buildings to the east, mirroring the scale of development in the surrounding area.

Zoning Resolution Section 33-432 establishes a maximum street wall height in C4-7 districts of 85 feet above curb level before a building must set back from the property line. Zoning

Resolution Section 33-432 imposes the same requirement in C6 districts. Above the 85-foot height, along narrow streets, development must set back 20 feet and fit within a sky exposure plane of 2.7 feet of vertical height to 1 foot of horizontal depth, and along wide streets must set back 15 feet and fit within a sky exposure plane of 5.6 to 1 (see also ZR 35-62). The street wall proposed along West 58th Street, which extends from 33 feet high at its lowest point to 457 feet at its apex and allows the majority of the mixed-use building's bulk to be located at its northeast corner, will not comply with the maximum street wall height limitation of 85 feet, nor will the development along this frontage comply with the applicable setback and sky exposure plane. The proposed enlargement to the Edison storage building would rise to approximately 112 feet, and similarly would not comply with the maximum street wall height, setback, and sky exposure plane regulations applicable along the through lot portion of West 58th Street. Accordingly, modification of the maximum street wall height, setback, and permitted sky exposure plane provisions provided in ZR Section 33-432 will be required for the mixed-use building and the Edison storage building on the project site.

Tower regulations will control development on the project site above an elevation of Manhattan Datum 103'-5". Above this height, all portions of the development will occupy 36.5 percent (i.e., no more than 40 percent) of the area of the zoning lot. However, the tower floor plates in the proposed envelopes for the mixed-use building and Edison storage building will not set back from the street line as required by zoning, i.e. 15 feet from a wide street and 10 feet from a narrow street, on West 58th Street and Eleventh Avenue. In addition, the aggregate amount of floor area located within 40 feet of a wide street and 50 feet of a narrow street will exceed the amounts permitted along the West 57th Street, West 58th Street, and Eleventh Avenue frontages of the project site, requiring modification of ZR Section 33-451. The amount of tower area within 40 feet of Eleventh Avenue would be up to 6,412 square feet, 4,812 square feet more than is permitted. The amount of tower area within 40 feet of West 57th Street would be up to 3,625 square feet, 2,025 square feet more than is permitted. The amount of tower area within 50 feet of West 58th Street would be up to 26,022 square feet, 24,147 square feet more than is permitted.

The special permit pursuant to ZR Section 74-743(a)(2) would also allow a portion of the eastern façade of the mixed-use building to be 35 feet from the commercial western wall of the Helena, and would allow the Edison storage building to have an interior courtyard. Pursuant to ZR Section 23-711, the minimum required distance between the proposed project and the Helena is 50 feet from wall to window. The proposed special permit pursuant to ZR Section 74-743(a)(2), to permit the location of buildings without regard for the applicable distance between buildings regulations, would allow slightly less distance between the buildings than is generally allowed. With the proposed interior “cut out,” the Edison storage building envelope would provide 40 feet from window to window between the Edison storage building and the northern wall of the Helena. This waiver would allow this distance for the three top floors of the Edison storage building, resulting in less distance between the buildings (40 feet) at that location than is otherwise required (60 feet).

SPECIAL PERMIT FOR AN ACCESSORY PARKING GARAGE (C120398 ZSM)

A special permit pursuant to ZR Section 13-561 would allow a 285-car accessory garage located on portions of the ground floor and mezzanine level of the new mixed-use building. This would allow more accessory spaces in the garage than would otherwise be permitted under ZR 13-12, 13-133, and 13-134. The proposed garage would be accessed via a 25-foot curb cut on West 58th Street located approximately 350 feet east of Twelfth Avenue. West 58th Street is a one way eastbound narrow street that is only accessed from Twelfth Avenue. Vehicles would enter the garage via a two-way 20-foot wide opening in the ground floor of the building and would proceed to a stop sign, where an attendant would take over operation of the vehicle and park it in a parking space either on the ground floor or up a half level in the mezzanine. A total of 14 reservoir spaces would be provided.

MODIFICATION OF LSGD SITE PLAN (M010151(B) ZSM)

The existing LSGD site plan associated with the previously-approved special permit (C 010151(A) ZSM) will be modified pursuant to ZR Section 74-743(a)(3) to reflect changes to the site plan as described in this application, including changes to the uses permitted in the LSGD (to allow the additional residential uses) and to the previously-approved massing, including the building footprint, height and setback, distance between buildings, and type and sizes of the parking garage.

MODIFICATION AND TERMINATION OF EXISTING RESTRICTIVE DECLARATION (M010148(A) ZMM)

The Restrictive Declaration (D-145, ULURP # C010148 ZMM) currently governing development on the project site was executed on March 28, 2001 and amended on May 25, 2004. It would be modified and terminated, and replaced with a new restrictive declaration which reflects the proposed project massing and the new residential uses. The restrictive declaration would also include provisions relating to, among others: a restriction of as-of-right development in the event the proposed special permit that is the subject of this application is not utilized, project components related to the environment (PCREs) for sustainability and construction of the proposed mixed use development, and third-party monitoring of certain PCREs.

ENVIRONMENTAL REVIEW

This application (C 120397 ZSM), in conjunction with the application for the related actions (C 120396 ZMM, C 120398 ZSM, M 010151(B) ZSM and M 010148(A) ZMM) 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 12DCP020M. The lead is the City Planning Commission.

It was determined that the Department's proposal may have a significant effect on the environment. A Positive Declaration was issued on September 1, 2011, and distributed, published and filed. Together with the Positive Declaration, a Draft Scope of Work for the Draft Supplemental Environmental Impact Statement (DSEIS) was issued on September 1, 2011. A public scoping meeting was held on October 4, 2011. A Final Scope of Work was issued on July 11, 2012.

A DSEIS was prepared and a Notice of Completion for the DSEIS was issued on July 11, 2012. On November 14, 2012, a public hearing was held on the DEIS pursuant to SEQRA and other relevant statutes. A Final Supplemental Environmental Impact Statement (FSEIS) reflecting the

comments made during scoping and the public hearing on the DEIS was completed and a Notice of Completion for the FSEIS was issued on December 7, 2012.

(E) Designations

Significant adverse impacts related to hazardous materials, air quality and noise would be avoided through the placement of (E) designations on selected projected and potential development sites. The FEIS did not identify significant adverse impacts, as is summarized in the Executive Summary of the FEIS.

UNIFORM LAND USE REVIEW

This application (C 120397 ZSM), in conjunction with the applications for the related actions (C 120396 ZMM and C 120398 ZSM), was certified as complete by the Department of City Planning on July 11, 2012, and was duly referred to Community Board 4 and the Manhattan Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b), along with the non-ULURP actions which were referred for information and review in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Community Board 4 held a public hearing on this and related actions on September 5, 2012, and on that date, by a vote of 38 in favor, 0 opposed and 3 present not voting, adopted a resolution recommending disapproval of the applications, “unless a restrictive declaration be filed that requires that 20% of the units developed be affordable in perpetuity.”

The recommendation further stated that “Should the condition requiring permanent affordability be met, CB4 also recommends denial unless:

The Applicant surrender the prior public parking garage previously approved for 399 spaces (ULURP No. C010149ZSM) upon approval of the proposed garage Special Permit for accessory parking spaces;

The number of parking spaces is reduced to 163 spaces;

The driveway be reduced substantially in width, perhaps by half, with the other half devoted to an inviting public space, enhanced by seating and plantings;

The frontage along West 58th Street is enlivened and welcoming to pedestrians and that the square footage devoted to mechanicals and/or parking is significantly reduced; and

The Applicant works with CB4 to identify the proposed user for the community facility space.”

Borough President Recommendation

This application (C 120397 ZSM), in conjunction with the related actions, was considered by the President of the Borough of Manhattan, who issued a recommendation on October 19, 2012 for approval of the applications, subject to the following conditions:

“...that the applicant follow through on commitments to:

- modify the design of the mid-block access drive to widen the pavement, narrow the roadbed, include tree pits and benches, and optimize the pedestrian experience to make this place inviting to the public;
- activate the street level of West 58th Street with additional retail space, sidewalk lighting and gallery windows;
- explore improving the underpass beneath the Joe DiMaggio Highway at West 59th Street to make this a safe and inviting channel for pedestrians and cyclists;
- consult with CB4 to identify an appropriate community facility tenant if a day care provider cannot be found; and
- provide affordable units through the 80/20 Housing Program should the storage building be converted to include residential uses.”

City Planning Commission Public Hearing

On October 17, 2012, (Cal. No. 3), the City Planning Commission scheduled October 31, 2012 for a public hearing on this application. Due to Hurricane Sandy, the October 31, 2012 scheduled hearing was continued to November 14, 2012 (Calendar No. 14), in conjunction with the public hearings on the applications for the related actions (C 120396 ZMM and C 120398 ZSM).

There were 13 speakers in favor of the application, and eight speakers in opposition.

Six of the applicant’s representatives spoke in favor of the application and described the

proposed project. A representative of the Durst Organization gave a general statement of support for the entire project. Another representative spoke in additional detail about specific components of the project and addressed questions regarding the mechanical requirements, including those related to Con Ed equipment. Two representatives of the applicant team's lead architectural design firm spoke to the overall design rationale and specific issues regarding the proposed driveway and building materials. Two other representatives for the applicant team's land use counsel also spoke in support of the project, providing details and rationale for the proposed parking capacity as well as clarifying questions related to the site's ground lease agreement.

The Council Member of the New York City Council District 6 spoke in favor of the project, while noting that there were specific outstanding issues which she would continue to raise with the applicant through the review process. Other speakers in favor of the proposed project included the Director of Land Use for the Manhattan Borough President, who reiterated the Borough President's recommendation for approval, with conditions. Representatives of the Regional Plan Association, the Citizens Housing & Planning Council, the Audubon Society, the National Resources Defense Council and the Settlement Housing Fund conveyed their organizations' support for the proposed project.

Three members of Community Board 4 spoke in opposition to the application, including the District Manager and the Chairperson of the Land Use Committee. All three members cited components of the Board's official resolution, speaking in particular to the community's need for affordable housing.

Others speaking in opposition to the proposal included a representative appearing on behalf of both the New York State Senator representing the 29th District and the United States' Congressman representing the 8th District of New York, two representatives of the West Side Neighborhood Alliance, a representative of Housing Conservation Coordinators and one unaffiliated area resident.

Speakers in opposition consistently described a need for more affordable housing options in the area. Several of those specifically called for the project to include either permanent affordability or a period of affordability equal to the balance of the effective ground lease. Some speakers called for affordable commercial opportunities for small business owners, alongside broader development of affordable housing. Several speakers cited an adjacent development to the south of the project site, as an example and model of permanent affordability realized despite the similar situation of a long-term ground lease held by the developer.

There were no other speakers, and the hearing was closed.

CONSIDERATION

The Commission believes that the special permit (C 120397 ZSM), as modified herein, in conjunction with the related applications for an accessory parking special permit (C 120398 ZSM), a zoning map amendment (C 120396 ZMM), the modification of a previously approved Large-Scale General Development special permit (M 010151(B) ZSM), and the modification and termination of the previously recorded restrictive declaration (M 010148(A) ZMM), is appropriate. The Commission believes that approval of these actions would facilitate the development of a significant mixed use project with a distinctive design and thoughtful site plan, and would integrate the project block into the evolving residential, institutional, and commercial neighborhood that has been rapidly developing in the surrounding area.

Large-Scale Bulk Modification Special Permit

The Commission believes that the proposed modifications to bulk regulations pursuant to Section 74-743 (General Large Scale Development) are appropriate. In particular, the Commission notes that the location of buildings, the distribution of floor area, and the proposed modifications to height and setback regulations result in a better site plan and in a better relationship between the proposed new development, open areas, and existing buildings on the project site, and between the project site and surrounding streets and open areas.

The Commission believes that the massing of the proposed new mixed use building on the western portion of the project site provides a unique and effective transition between the open

areas of the waterfront and Hudson River Park, and the high-rise developments to the east and north of the project site. The Commission also believes the building's massing and architecture will add a prominent visual marker to Manhattan's western skyline at the entrance to an important east-west corridor across the island.

The mixed use building is organized around a common inward-focused open space and that the building concentrates the majority of its bulk in the northeastern corner of the building's footprint. The Commission recognizes that these organizing principles push much of the building's bulk to the northern and eastern perimeter of the building, requiring modifications of height and setback regulations and the distribution of floor area across district boundaries. The Commission believes these site planning decisions are an appropriate response to the existing conditions on the project site and the surrounding blocks and help to maximize light and air to residential units within the building itself, to other residential units within the large scale development, and to other occupants and users of surrounding blocks. The Commission notes that the proposed mixed use building is located just to the south of the Con Edison steam plant and north of a Department of Sanitation garage facility and that the common interior courtyard for residents of the project will serve to counteract the presence of these industrial uses. The Commission further notes the placement of bulk to the northeastern portion of the building's footprint would have the effect of moving much of the building away from the Helena, and its western views. At the same time, the proposed massing scheme enhances access to light and air to the uses on the surrounding blocks to the south and west, and to users of Hudson River Park and the waterfront.

The Commission notes that the requested height and setback modifications for the mixed use building are generally located along West 58th Street, where users and occupants of the block to the north would not be affected, given its use as a Con Ed facility, and that minimal height and setback modifications are requested for the portion of the building located along West 57th Street, the street expected to be more heavily trafficked by pedestrians.

The Commission believes the redevelopment of the existing storage building for residential use is desirable and notes that the applicant submitted a revised application on December 14, 2012, reflecting refinements to its proposed program, including the extension of affordable housing, through the “80/20” program, to this portion of the project. The Commission notes that the residential conversion and enlargement of the existing storage building would be feasible through the addition of floor area in locations where such new floor area would require modification of bulk regulations governing height and setback and minimum distance between buildings. The Commission notes the building would be developed with a streetwall consistent with contextual building envelopes of the same density along avenues, and that the 40-foot separation between the enlarged portion of the storage building and the Helena’s north façade, although less than the 60 feet required, would be flanked by open space – Eleventh Avenue to the east and the space above the two story community facility to the west – minimizing the effect of reduced distances between portions of the two buildings.

The Commission also believes that the project’s site plan includes thoughtfully placed open spaces that will help to ameliorate the density and sheer rising form of the northeastern portion of the mixed use building, adequately separate the mixed use building from the Helena and other proposed buildings on the block, and provide a much needed public amenity for the surrounding community.

The Commission notes that two relatively small features of the open space plan, together with the 50-foot-wide through-block driveway and walkway, and the minimal height of the two story community facility building help to create an area of relief surrounding the tower portion of the mixed use building and enhance the overall site plan. The Commission notes that the mixed use building gradually pulls away from the West 58th Street streetline, beginning at its approximate midpoint, so that the northeastern corner of the building is setback a minimum of ten feet from the West 58th Street property line. Additionally, the plan includes a triangular open area in front of the two story community facility building fronting on the through-block walkway and West 58th Street, effectively creating a small plaza-like space opposite the tower footprint.

The Commission believes the 50 foot-wide through-block driveway and walkway also serves to provide adequate and functional separation between the proposed new mixed use building and the existing Helena building. The Commission notes that although the required distance between the two buildings is 50 feet, equal to the width of the through block driveway and walkway, the requirement is not being met because of the presence of balconies that extend approximately five feet from the mixed use building's eastern building wall, and because of the extension of a small portion of a proposed two story architectural feature demarcating the residential entrance to the mixed use building.

The applicant has provided a 50-foot-wide at-grade through-block driveway and walkway accessible to the public, approximately 250 feet west of Eleventh Avenue. The Commission is pleased that the applicant has refined the design of this space based on input from the public review process and notes that in a letter to the City Planning Commission, dated November 21, 2012, a design including a 22-foot wide drive lane, an 18-foot wide western walkway and 10-foot wide eastern walkway was proposed. In addition the applicant proposed trees, planting beds, and benches that would flank the driveway and signal the transition between vehicular and pedestrian space. The Commission believes the provision of these amenities and the changes to the driveway are integral to creating an inviting space, successful pedestrian circulation route, and a good overall site plan, and therefore the Commission modifies the application to incorporate the proposed changes.

The Commission believes the ground floor uses and façade treatment of the proposed mixed use building, as described at the public hearing, though not in the application as originally certified, are critical to the successful activation of both West 57th and West 58th streets and the successful integration of the project into the surrounding community and should be incorporated into the project approvals. The Commission therefore modifies the application to require retail frontage along West 58th Street at both the northeast and northwest corners of the mixed use building and the inclusion of display cases or vitrines, where feasible, in locations where mechanical rooms are required to occupy ground floor frontage. Along approximately the eastern two-thirds of the mixed use building's West 57th Street frontage, the Commission modifies the application to

require a minimum of three retail establishments with separate entrances and minimum depths of 30 feet in order to help enliven this major cross town street, provide a varied and engaging pedestrian experience and reinforce its importance as a corridor leading to the Hudson River. To further activate the streetscape, the Commission is modifying the application to incorporate a minimum of 50% transparent materials into the building walls between the height of two feet and twelve feet along West 57th Street.

The Commission notes that the proposed site plan will also be improved by the removal of the existing parking garage entrance and curb cut along West 57th Street that currently serves the Helena and its replacement with ground floor retail. The Commission believes the overall proposed changes to West 57th Street will dramatically improve pedestrian conditions and better connect the surrounding neighborhoods to the waterfront.

The streets accessing the project site are adequate to handle expected traffic volumes. The project site is well-situated at the intersection of Route 9A, a state highway that is approximately 145 feet wide, and West 57th Street, a major 100 foot-wide east-west corridor through Manhattan with travel lanes in both directions. Access to the parking facility on-site would be located from West 58th Street, a one-way eastbound narrow street, which can be accessed easily from Route 9A and Twelfth Avenue. The Commission further notes that the through-block driveway will help to alleviate the need for pick-ups and drop-offs on the street.

Modification and Termination of Restrictive Declaration

The applicant proposes to modify and terminate the existing Restrictive Declaration, approved in connection with a prior zoning map amendment. The declaration would be modified and terminated to allow for a new, separate restrictive declaration for the project site that would reflect the new land use actions and environmental review and contain other provisions specific to the proposed project. The Commission believes that the modification and termination of the existing Restrictive Declaration is appropriate.

Zoning Map Amendment

The Commission believes that the proposed zoning map amendment to change the existing M1-5 district, in the midblock frontage along West 58th Street, to a C6-2 district, in order to permit mixed-use commercial and residential development, is appropriate. The Commission believes that the proposed zoning map change is consistent with the 2001 project approvals granted for the site, which emphasized a land use rationale based on a general shift from manufacturing uses to a mix of commercial and residential uses. The Commission notes that its 2001 approvals cited several examples of rezonings within the vicinity of the project site that also reflected that rationale.

The purpose of the rezoning is to allow residential uses on the project site, which would not be permitted in the current M1-5 district. The Commission believes that where the 2001 proposal and approval had envisioned automotive-related uses on a portion of the project block, a manufacturing district designation was appropriate. However, the Commission believes that given the proximity to similarly rezoned areas, as well as continuing trends in land use reflecting a diminishing demand for manufacturing space, the proposed rezoning is appropriate. The rezoning would allow for uses more consistent with the emerging residential character of the adjacent Clinton and Upper West Side communities. Other C6-2 districts exist in the area surrounding the project block, including midblock areas along 58th through 61st Streets between Tenth and Eleventh Avenues, and midblocks along 53rd through 56th Streets between Ninth and Tenth Avenues. The Commission believes that the rezoning would allow residential and community facility uses within the project block at a scale appropriate to that of the surrounding area.

Accessory Parking Special Permit

The Commission believes that the proposed accessory parking garage special permit is appropriate. The Commission notes that the applicant currently has approvals for two unbuilt public parking garages with a maximum of 638 spaces on the project site and that the current application for a 285 space accessory facility will effectively supersede the prior approvals. The

Commission notes that the project site, including the existing 100 space accessory facility serving the Helena, would contain a total of 385 accessory parking spaces, a proposed 40% reduction in the number of spaces previously approved for the project block.

The Commission notes that the proposed number of accessory parking spaces represents approximately .27 spaces per unit and that this ratio is consistent with the census data related to car ownership for this area of the City. The Commission further notes that approximately 120,000 square feet of non-residential floor area is also proposed on the project site and that some amount of accessory parking is likely to be utilized for such uses.

The Commission observes that the project site is approximately one half mile from the nearest subway station, and that visitors to the project site may prefer to use a vehicle, especially given its accessibility from Route 9A. For the above reasons, the Commission believes that the spaces are needed for and will be used by the occupants, customers or employees of, and visitors to the project site.

The Commission notes that many of the previously available parking facilities in the surrounding area have been developed or are proposed to be developed with residential and commercial uses. Based on recent analyses conducted for the Riverside Center project, two blocks to the north of the project site, many of the parking facilities in the surrounding area can be expected to capture displaced parkers from that site and be at or close to capacity. The Commission believes that the requested additional accessory parking spaces are appropriate given the expected lack of available parking spaces for overnight use within the vicinity of the site.

The Commission notes that the location of the proposed parking garage on West 58th Street would not draw vehicles through local residential streets given that the streets surrounding the project site are not residential in nature and the garage would be accessed primarily from Route 9A and West 57th Street. The SEIS for the application shows that the proposed garage would not create or contribute to serious traffic congestion as the facility would increase trips by no more

than 3% during any peak hour. Additionally, the location of the garage on West 58th Street would not inhibit pedestrian movement given the street has little pedestrian activity due to the existing street network and its adjacency to the Con Ed facility. The Commission notes that the proposed garage would provide the required 14 reservoir spaces within the first floor of the garage.

The Commission notes that many members of Manhattan Community Board 4 and others from the community asked that the Commission require the applicant to commit to the provision of permanent or very long-term affordable housing as part of the proposed project rather than conform to the requirements of the “80/20” bond financing program, which require rents remain affordable for a term of approximately 30 years. The Commission is pleased that the applicant has strongly indicated its commitment to include affordable housing within its project through statements made in its ULURP application and at public meetings, and has extended such commitment to the redevelopment of the storage building. However, the Commission notes that the realization of such commitments depends upon accessing financing associated with the “80/20” program and that agreements for such financing in general cannot occur until a later stage in the development process. Furthermore, the Commission notes, as it has in adopting and applying the Inclusionary Housing program that voluntary, incentive based programs are appropriate tools to encourage the production of affordable housing in conjunction with new development. Mandating within the actions before the Commission that the project include affordable housing, or that any affordable housing provided under the “80/20” program be made affordable beyond the terms of the affordable housing financing agreement, would be contrary to this established policy.

Although the Commission does not believe an affordable housing requirement is appropriate, the Commission is confident that the applicant’s track record and its stated commitment to use of the “80/20” program will result in a project that includes affordable housing and notes that the “80/20” program, combined with the 421-a tax abatement available to developments that include 20 percent affordable housing on site, is itself a powerful incentive toward that end.

FINDINGS

Based upon the above consideration, the Commission hereby makes the following findings pursuant to Section 74-743 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];
- 8) a declaration with regard to ownership requirements in paragraph (b) of the large-scale general development definition in Section 12-10 (DEFINITIONS) has been filed with the Commission.

RESOLUTION

RESOLVED, that having considered the Final Supplemental Environmental Impact Statement (FSEIS), for which a Notice of Completion was issued on December 7, 2012, with respect to this application (CEQR No. 12DCP020M), 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 Proposed Action adopted herein is one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts disclosed in the FSEIS will be minimized or avoided to the maximum extent practicable by incorporating [as conditions to the approval,] those project components related to the environment and mitigation measures that were identified as practicable.

This report of the City Planning Commission, together with the FSEIS, constitute 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 200 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 Durst Development 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. Section 74-743(a)(1) - to allow the distribution of total allowable floor area under the applicable district regulations without regard for zoning district lines; and
2. Section 74-743(a)(2) - to allow the location of buildings without regard for the front wall height and initial setback requirements of Section 33-432, the tower requirements of Section 33-451, and the distance between building requirements of Section 23-711;

in connection with a proposed mixed-use development, on property bounded by West 58th Street, Eleventh Avenue, West 57th Street, and Twelfth Avenue (Block 1105, Lots 1, 5, 14, 19, 29, 36, and 43), within a Large-Scale General Development, in C4-7 and C6-2 Districts, within the Special Clinton District (Other Areas (Northern Subarea C1)), is approved subject to the following conditions:

1. The development that is the subject of this application (C 120397 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following approved plans prepared by SLCE Architects LLP, filed with this application and incorporated in this resolution, and in accordance with the provisions and procedures set forth in the Restrictive Declaration:

Dwg. No.	Title	Date
Z-004	Site – Plan	12/14/2012
Z-005	Zoning – Analysis	12/14/2012
Z-007	Average – Curb – Level	06/04/2012
Z-008	Tower Regulation Plan – Diagrams	07/06/2012
Z-010	Height & Setback Plan – Diagrams	07/06/2012
Z-011	Tower, Height & Setback Section – Diagrams	07/06/2012
Z-012	Tower, Height & Setback Section – Diagrams	07/06/2012
Z-013	Tower, Height & Setback Section – Diagrams	07/06/2012
Z-014	Tower, Height & Setback Section – Diagrams	07/06/2012
Z-015	Tower, Height & Setback Section – Diagrams (Existing Waivers)	07/06/2012
Z-018	Building – Separation Plan & Section – Diagrams	07/06/2012
Z-019	Open – Space Plan – Diagram	12/14/2012
Z-022*	Ground – Floor – Plan	12/14/2012

2. The development which is the subject of this application shall conform to all applicable laws and regulations relating to their construction, operation and maintenance.
3. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached hereto as Exhibit A, with such administrative changes as are acceptable to Counsel to the Department of City Planning, has been executed and recorded in the Office of the Register, New York County.

* Drawing Z-022 was incorrectly left off this drawing list in the original CPC report.

Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.

4. Development pursuant to this resolution shall be allowed only after the Modification and Termination of Restrictive Declaration attached as Exhibit A to the City Planning Commission report for concurrent related action M 010148(A) ZMM, with such administrative changes as are acceptable to Counsel to the Department of City Planning, has been executed and recorded in the Office of the Register, New York County.
5. 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.
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 and the restrictive declarations 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 restrictive declarations.

8. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city or such employees or agents failure to act in accordance with the provisions of this special permit.

The above resolution (C 120397 ZSM), duly adopted by the City Planning Commission on December 19, 2012 (Calendar No. 4), 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, RAYANN BESSER, IRWIN G. CANTOR, P.E.,
BETTY Y. CHEN, MARIA M. DEL TORO, JOSEPH I. DOUEK, ANNA HAYES LEVIN,
ORLANDO MARÍN, Commissioners

Commissioners **ALFRED C. CERULLO and RICHARD W. EADDY**: Recused

Commissioner **MICHELLE R. de la UZ**, voting NO



COREY JOHNSON
Chair

ROBERT J. BENFATTO, JR., ESQ.
District Manager

CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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September 7, 2012

Amanda M. Burden, AICP
Chair
City Planning Commission
22 Reade Street
New York, NY 10007

**Re: ULURP Applications Nos. 120396 ZMM, 120397 ZSM, 120398 ZSM, and
M010151 ZSM
625 West 57th Street (Manhattan Block 1105, Lots 1, 5, 14, 19, 29, 36, and 43)**

Dear Chair Burden:

Manhattan Community Board 4 ("CB4") has met several times with Durst Development LLC (the "Applicant") to discuss the Applicant's Uniform Land Use Review Procedure ("ULURP") applications to facilitate the development of a portion of the block bounded by West 57th and West 58th Streets, between Eleventh and Twelfth Avenues in Manhattan with the construction of a new, mixed residential, commercial, community facility, and parking uses (the "Project"). The Applicant is proposing up to 753 residential units — twenty percent (or up to 151) of which would be affordable units — approximately 714,000 square feet of residential space, 48,000 square feet of ground floor retail space, and 285 accessory parking spaces.

At the July 24, 2012, Clinton/Hell's Kitchen Land Use ("C/HKLU") Committee meeting, the Applicant heard, once again, the Committee's concerns and subsequent call for a number of changes to the Project, the most critical concern being the lack of permanently affordable housing units. While the Board would like to see this Project proceed, it cannot recommend approval for this application unless those concerns are substantially addressed. At this date, they have not been addressed to the Board's satisfaction.

Therefore, CB4 recommends denial of the application, unless the affordable housing units are permanently affordable and the concerns enumerated below are addressed to the Board's satisfaction.

Proposed Actions

The block the Project is located on is currently zoned partially M1-5 and partially C4-7. The proposed actions include rezoning the midblock portion of the block that faces West 58th Street from an M1-5 manufacturing district to a C6-2 commercial district which would allow for residential development at the site. Additionally, the Applicant is

requesting special permits for bulk modifications available to large-scale general developments and modifications of previously approved restrictive declarations in order to facilitate the innovative building form proposed for the Project.

The proposed rezoning and special permits will greatly benefit the Applicant by unlocking hundreds-of-thousands of square feet for residential development. Such a great private benefit must be matched by a comparable public benefit and in the Board's view the public benefit is not commensurate with the private boon. An innovative design alone is not a significant enough community benefit.

No Permanent Affordable Housing

The Applicant proposes to construct up to 753 residential units, twenty percent of which, or up to 151 units, would be affordable under the New York State Housing Finance Agency's 80/20 program. The Applicant will seek a 421-a tax exemption to reduce the real estate taxes for the Project. The Applicant has stated that the 20% of the units that are affordable will only remain affordable for the life of the bond, 35 years plus 15 years of attrition.

CB4 is pleased the Applicant has agreed that the affordable apartments will be distributed proportionately throughout the building and that fixtures and amenities will be the same in all apartments, affordable and market-rate. The Board also hopes the Applicant will provide reduced rates to the tenants in the affordable apartments for building amenities that charge fees, such as an exercise center.

While these 151 affordable units are a welcome benefit to the community (and provide a tax-exempt financing benefit to the Applicant) unless the units are permanently affordable, the benefit to this community will not be a lasting one. It has been a long time since this Board has been presented with a project that was not permanently affordable — the rezonings of West Chelsea, Eleventh Avenue, and Hudson Yards among others have all provided for permanent affordable housing as an integral part of the zoning.

The position of this Board is clear: we want and need – permanently affordable housing. Without permanently affordable units, Community District 4 cannot maintain its mixed-income residential character. It should be noted that the Project is located within the northwest boundary of the Special Clinton District, whose goals as specified by City Planning Commission include:

“to preserve and strengthen the residential character of the community;” and,

“to permit rehabilitation and new construction within the area in character with the existing scale of the community and at rental levels which will not substantially alter the mixture of income groups presently residing in the area.”

The residential and mixed income character of Clinton will neither be preserved nor strengthened without permanent affordability for a portion of its new housing stock.

Cars, 385. Humans, 0

The Project offers no open space for the community but would include 385 parking spaces, significantly fewer, the Board is happy to note, than the 638 parking spaces previously approved for the Project block. These spaces would include a new, above-grade, 285-space accessory parking garage in the mixed-use building and the 100 accessory parking spaces currently located beneath the Helena.

The proposed garage would be located in an area on the Project block that is near the 399-space public parking garage approved under the previous special permit (ULURP #C010149 ZSM). The proposed garage would be accessed via a 25-foot wide curb cut on West 58th Street (instead of West 57th Street) located approximately 350 feet east of Twelfth Avenue. The Applicant would surrender the prior parking garage approval upon approval of the special permit for the proposed garage.

While CB4 appreciates that the Applicant has reduced its proposed accessory parking spaces, we remain concerned that the number of proposed parking spaces far exceeds the Manhattan Core Parking requirements for residential and mixed use developments south of 60th Street, which allow parking spaces provided they do not exceed 20% of the apartments and one parking space per 4,000 square feet of retail/community facility space — and in any case not to exceed 200 spaces. We thus propose the developer reduce the number of parking spaces to 163 spaces (151 spaces for 20% of the residential apartments plus 12 spaces for 48,000 square feet of retail/community facility space).

Community Board 4 is pleased that the Applicant has agreed to restrict its parking to accessory parking for the tenants, retail businesses, and community facility and that this guarantee will be enforced by the Applicant for any third party garage operators that it may contract with.

Driveway versus Open Space

As part of the Project, the 23 foot curb cut currently providing access to the accessory parking garage located beneath the Helena, which is located approximately 220 feet west of Eleventh Avenue, would be removed. The existing accessory parking beneath the Helena would instead be accessed via a one-way (north), access drive connecting West 57th and 58th Streets. This access drive would be located approximately 250 feet west of Eleventh Avenue and would include 25 foot curb cuts at each end of the drive.

As the Project proposes to add over 750 new residential units to the neighborhood while providing no public open space, the Board suggests that the driveway become a public passageway rather than an exclusive private driveway. The roadway of the access drive should be reduced in width by half and this recouped space should be devoted to an inviting public space, enhanced by seating and plantings.

Community Facility

The Applicant proposes construction of a two-story community facility building in the

midblock portion of the Project site. The community facility would be located along West 58th Street, abutting the Helena to the south and the Edison Storage Building to the east. Entrance to the building would be off of West 58th Street along an angled, recessed façade east of the mid-block access drive. The building would include up to approximately 12,800 square feet and could include such uses as a museum annex, cultural facility, day care facility or medical offices.

The Board would welcome a museum annex, cultural facility, or a day care facility in the two floors of the proposed community facility. Currently, the Applicant is pursuing a day care facility but as of the date of this letter, no commitment for such use has been obtained. The Board requests the Applicant provide the Board with a written commitment of use when such is obtained.

Enlivening West 58th Street

Along the north side of the West 58th block is the Con Ed Power Station, a monumental building designed by Stanford White — an architect whose buildings have become *truly* iconic. The edifice, with its elaborately detailed Renaissance Revival facade, was built in 1904 and stands as a reminder that civic buildings in the City once aspired to greatness.

This Board has expressed its wish that the Project building recognize its adjacency to this remarkable New York building and ensure that West 58th Street not become an uninviting alleyway whose only purpose is to service the Project's mechanical and maintenance requirements. While the Applicant hopes to wrap retail space from Twelfth Avenue around the western end of West 58th Street, at the moment, the remainder of the south side of the West 58th Street is taken up with mechanical features, the parking driveway, and loading/unloading docks for the Project building. While the Applicant agrees that a more vibrant street would be desirable, helped perhaps by more retail space, as of this date, the Board has yet to be shown how this can be accomplished.

This Board is grateful for the Applicant's willingness to engage the community and listen to our concerns and would like to see this project succeed, both for the Applicant and for the community. In the Board's view, however, it can only succeed for the community if the word "permanently" precedes the term "affordable housing".

NOW, therefore, be it resolved that Manhattan Community Board No. 4 recommends denial of ULURP Applications No. 120396ZMM, 120397ZSM, 120398ZSM, M010151BZSM unless a restrictive declaration be filed that requires that 20% of the units developed be affordable in perpetuity.

Should the condition requiring permanent affordability be met, CB4 also recommends denial unless:

The Applicant surrender the prior public parking garage previously approved for 399 spaces (ULURP No. C010149ZSM) upon approval of the proposed garage Special Permit for accessory parking spaces;

The number of parking spaces is reduced to 163 spaces;

The driveway be reduced substantially in width, perhaps by half, with the other half devoted to an inviting public space, enhanced by seating and plantings;

The frontage along West 58th Street is enlivened and welcoming to pedestrians and that the square footage devoted to mechanicals and/or parking is significantly reduced; and

The Applicant works with CB4 to identify the proposed user for the community facility space.

Sincerely,



Corey Johnson, Chair
Manhattan Community Board 4



Jean-Daniel Noland, Chair
Clinton/Hell's Kitchen Land Use Committee

cc: DCP Calendar Office
DCP - Edith Hsu-Chen
Council Member Gale Brewer
Durst Organization – Helena Durst, Eva Durst, Jordan Barowitz
Fried Frank – Stephen Lefkowitz, Carol Rosenthal
Manatt – Claudia Wagner, Joshua Bocian
MBPO - Brian Cook, Karolina Grebowiec-Hall
Assembly Member Linda Rosenthal
State Senator Thomas Duane
Congressman Jerrold Nadler



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

October 19, 2012

Recommendation on
ULURP Application Nos. C 120396 ZMM, C 120397 ZSM, C 120398 ZSM, M 010148 (A)
ZMM and M 010151 (B) ZSM
625 West 57th Street by Durst Development LLC

PROPOSED ACTIONS

Durst Development LLC seeks the amendment of the Zoning Map from an M1-5 to a C6-2 District, special permits for bulk modification of the Large-Scale General Development ("LSGD"), a special permit to allow a 285-car accessory parking garage, and modification of the previously-approved LSGD and restrictive declaration of property bounded by West 57th and West 58th streets, between 11th and 12th avenues in Manhattan Community District 4. A Draft Supplemental Environmental Impact Statement was issued July 11, 2012.

The applicant seeks an **amendment of the Zoning Map** from an M1-5 District to a C6-2 District for a property bounded by West 58th Street, a line 125 feet westerly of 11th Avenue, a line midway between West 57th and 58th streets, and a line 125 feet easterly of 12th Avenue to facilitate the development of a mixed-use building, including residential uses.

Durst Development LLC also seeks **two special permits available to Large-Scale General Developments to modify bulk requirements** pursuant to: Zoning Regulation ("ZR") § 74-743(a)(1) to distribute allowable floor area without regard for zoning district boundaries; and § ZR 74-743(a)(2) to locate buildings without regard for the applicable distance between buildings or height and setback regulations. In order to grant a special permit, the City Planning Commission ("CPC") must find that the proposal will result in a better site plan and a better relationship among buildings and open areas to their surroundings; will not increase the bulk of buildings in any one block or obstruct light and air; and streets providing access are adequate to handle traffic.

The applicant seeks a **special permit pursuant to ZR § 13-561 to allow a 285-space accessory garage** on the ground and mezzanine levels of a mixed-use building. In order to grant the special permit, the CPC must find that (a) the additional spaces are needed for and will be used by occupants, visitors, or employees of the building; (b) there is insufficient parking space available within the vicinity of the site; (c) the additional trips will not create or contribute to



serious traffic congestion nor inhibit vehicular and pedestrian movement; (d) the entrance is located to draw a minimum amount of vehicular traffic to and through local streets; and (e) that there are an adequate number of reservoir spaces.

Lastly, the applicant seeks a **modification of the previously-approved Large-Scale General Development** pursuant to ZR § 74-743(a)(3) to reflect the proposed changes to the site plan and **further amend the Restrictive Declaration (D-145, ULURP # C 010148 ZMM)** to reflect the proposed massing and additional residential uses, reference special permits and related drawings described in the subject application and remove limits on square footage of retail uses.

PROJECT DESCRIPTION

Durst Development LLC proposes to redevelop a vacant portion of a block (Block 1105) bounded by West 57th and 58th streets, and 11th and 12th avenues. The proposed actions will facilitate the improvement of the site with two new buildings and adaptive reuse of an existing building. The largest building will be a new, mixed-use building with residential and community facility uses. Additionally, the applicant proposes a new community facility building, which is currently anticipated to house a day care facility. Finally, the applicant proposes to reuse a storage building currently occupied by Manhattan Mini Storage, which will be used for either commercial or residential uses.

The block comprises tax lots 1, 5, 14, 19, 29, 36 and 43; these lots constitute a single zoning lot. The applicant holds a 99-year ground lease for the entire block; 89 years remain on the lease. The mid-block portion of the block fronting West 58th Street and 125 feet from the avenues is zoned M1-5; the remainder of the block is zoned C4-7. The entire block is in Northern Subarea C1, "Other Areas," of the Special Clinton District.

The project block, measuring 160,667 SF in area, is bordered on its west side by 12th Avenue and the Joe DiMaggio Highway, which block direct access to the waterfront and Hudson River Park. The highway rises above street grade beginning at the corner of West 57th Street northward. Immediately across West 58th Street to the north is the former Interborough Rapid Transit Company Powerhouse, now operated by Consolidated Edison ("ConEd".) Designed by McKim, Mead & White and completed in 1904, this imposing six-story facility is pending landmark designation by the New York City Landmarks Preservation Commission. Blocks further north consist of parking lots and vacant sites that will be developed with residential towers that are part of the Riverside Center complex. The streets to the east of 11th Avenue include a mix of residential towers, office buildings, a hospital, auto dealerships and warehouses. The block south of the proposed development contains the New York City Department of Sanitation garage as well as a four-story public parking facility and car dealerships.

Project History

The development site was the subject of several previous land use applications. In 2001, the City Council approved a series of land use actions as part of a plan to develop the block as a LSGD. These actions included rezoning the block from M2-3 to C4-7 and M1-5, as well as special permits to modify bulk requirements, locate residential uses and provide public parking. The

city approved office and retail buildings in the western and middle portions of the block, with the option of a 600-unit residential building or office tower at the eastern end. A Restrictive Declaration in connection with this LSGD stipulated that if any portion of the block was developed in accordance with the 2001 permits, remaining development must conform to approved plans.

The Helena building was constructed on the eastern end of the block in 2004. It contains 597 residential units over 519,860 SF. Absent the proposed actions, the remainder of the block is prohibited from including residential uses and, further, must be developed according to the previously approved use and bulk requirements.

Zoning Map amendment

The existing zoning provides a floor-area-ratio (“FAR”) across the entire block of 8.28 for commercial/residential uses (1,330,320 SF), or 8.8 with community facility uses (1,413,867 SF).¹ The application seeks to rezone a 55,229-SF portion of the project block on West 58th Street from M1-5 to C6-2. With this amendment, the maximum floor area permitted across the entire block will become 8.63 FAR (1,386,554 SF) or 8.8 FAR with community facility uses (1,413,867 SF). This is an aggregate net increase of 0.35 FAR (56,234 SF). The C6-2 designation will additionally permit residential uses.

Mixed-use building

The applicant proposes a new, mixed-use building, which will occupy the westernmost two-thirds of the block. The building will contain 762,000 SF and rise to height of 470 feet or 35 stories. It will include 714,000 SF of residential uses (753 rental units), 48,000 SF of ground-floor retail space and 285 accessory parking spaces. The ground and second floors of the building may include additional commercial and community facility space not to exceed the allowable maximum total floor area.

151 units in the mixed-use building will be affordable through financing by the 80/20 Housing Program and 421-a Affordable Housing Program. The 151 affordable units represent 20% of the 753 residential units in the mixed-use building and 17.5% of the potential 863 new residential units sought in this application.²

The building is roughly pyramidal in shape, beginning at a two-story height along 12th Avenue and gradually rising to the full 35 stories at the northeast corner of the building’s footprint. Additionally, the applicant proposes an interior, rectangular courtyard on the third level for use by residents. This massing permits balconies along the sloped façade and around the perimeter of the courtyard.

There are two lobbies available to residents: one on West 58th Street and one along the mid-block access drive across from the Helena. Retail space is sited at ground level along West 57th Street and 12th Avenue, as well as to a depth of 80 feet on West 58th Street. The remainder of West 58th

¹ As previously discussed, the building is limited to commercial uses per the 2001 special permit.

² The remainder of the residential units will be located in the adaptively reused storage building.

Street's street frontage is occupied by loading bays, a ConEd transformer, and the building's mechanical space and emergency generator.

Community facility building

The proposal includes the construction of a two-story community facility building up to 12,800 SF in floor area in the middle of the block on West 58th Street. The building fronts the mid-block access drive and West 58th Street, but has a diagonal entrance, which permits views of the historic ConEd building directly to the north of the site. The applicant anticipates that the space will be occupied by a day care provider.

Storage building

The proposed actions would further allow for the existing storage building on the southwest corner of West 58th Street and 11th Avenue to be converted to either residential or commercial uses. The application allows up to 110 residential units over 95,000 SF, 5,000 SF of ground-floor retail and 14,800 SF of community facility space.

Access drive

A mid-block access drive is planned between the existing Helena building and the proposed mixed-use building, approximately 300 feet west of 11th Avenue. It will permit vehicular access to the Helena's 100-space parking garage as well as pedestrian access to one of two lobbies in the mixed-use building. The 50-foot-wide drive is entered by a 25-foot curb cut at West 57th Street and exited by a 25-foot curb cut on West 58th Street; all traffic on the access drive is northbound. The roadbed is approximately 25 feet wide, with a 15-foot wide pavement on the west side and 10-foot wide pavement on the east side of the drive.

Parking

Under the proposed zoning, the maximum number of permitted parking spaces is 192. The applicant proposes a total of 385 accessory parking spaces on the project block.³

285 parking spaces are to be located on the ground and mezzanine levels of the mixed-use building, beneath the third level courtyard. These spaces will be accessed via a 25-foot curb cut on West 58th Street, 350 feet east of 12th Avenue.

The Helena building on the eastern portion of the block includes 100 parking spaces, which are currently accessed by a curb cut on West 57th Street. This access is proposed to be relocated to the new mid-block access drive on the western side of the building.

COMMUNITY BOARD'S RECOMMENDATION

At its Full Board meeting on September 5, 2012, Community Board 4 ("CB4") recommended

³ The applicant currently holds special permits granted in 2001 for 638 public parking spaces on the project block. The applicant agrees to surrender prior parking approvals upon approval of the subject special permit application.

conditional disapproval of this ULURP application by a vote of 38 in favor and 0 opposed.

CB4's recommendation for disapproval is rooted in the absence of permanently affordable units as part of this development. While the applicant has committed to providing 151 units that will be affordable for the life of the 35-year bond, as well as an expected 15 years through tenant attrition, CB4 maintains a firm commitment to realizing opportunities for permanent affordable housing.

In addition to the requirement that affordable housing is provided in perpetuity, CB4 outlined the following conditions:

- the number of proposed parking spaces is reduced to 163;
- the mid-block access drive roadbed is reduced by half, and the remaining space is dedicated to public open space with seating and planting;
- the frontage along West 58th Street is enlivened and made more welcoming, and mechanical and parking space is significantly reduced; and
- the applicant works with CB4 to identify a tenant for the community facility space.

BOROUGH PRESIDENT'S COMMENTS

The proposed project by Durst Development LLC to add residential, commercial and community facility space to the middle and western portions of the block bounded by West 57th and West 58th streets, and 11th and 12th avenues appropriately diversifies the existing mix of uses and further infuses the area with 24-hour activity that promotes a vital and safe neighborhood.

The configuration of the planned mixed-use building addresses its unique location and site characteristics. The sloping façade and courtyard allow for spectacular views of the Hudson River from many residential units. The building's striking design, which has been widely applauded, makes a considerable contribution to the waterfront and further raises the standard of architecture expected in New York City.

The applicant generally meets the applicable findings of the special permits pursuant to ZR §§ 74-743(a)(1) and 74-743(a)(2) to modify bulk requirements as part of an LSGD. The pyramidal massing of the building requires that the majority of its bulk be located in the C6-2 portion of the site. The configuration of the building also prevents it from meeting maximum base height, initial setback distance, sky exposure plane and tower regulation requirements. The special permit will allow the building to be located with less distance from the Helena and storage building than allowed. As described, the superior design of the mixed-use building improves the general quality of space on the project block and complements existing structures.

The applicant also seeks a special permit to allow an additional 285-space accessory garage to be constructed as part of the mixed-use building. The Draft Supplemental Environmental Impact Statement indicates that weekday accessory parking demand would peak at 385 spaces. With the existing 100-space garage in the Helena, the total 385 parking spaces on the project block satisfactorily meet parking demand and prevent on-street parking congestion.

Large-Scale General Developments seek to promote improved site planning with special thought

to the future of surrounding structures and streets. The proposed development generally meets the special permit's findings by producing a bold design with uses that will significantly contribute to the neighborhood's overall vitality.

After careful review, there are several aspects of the proposed design that could be improved to enhance the overall site plan, including: the treatment of the through-block access drive and the pedestrian experience on West 58th Street. Additionally, there are elements of the proposed development beyond the specific land use actions that could be further modified to increase the development's potential benefits, including: creating better crossings to the Hudson River Park, identifying a specific tenant for the community facility building, and the proposed affordable housing.

Access Drive

The mid-block access drive will include a lobby for roughly half of the units in the new mixed-use building, as well as the relocated entrance to the Helena's garage. The addition of 753 residential units (863 units including the storage building) to the project block signifies a considerable increase in population in the immediate vicinity. With the exception of the interior courtyard for use by building residents, the application does not include any additional open space.

The mid-block drive presents itself as an opportunity to accommodate entrances to the buildings while providing some passive, planted open space that can be inviting to pedestrians. Incorporating greenery and seating can create a unique sense of place for both new residents and the surrounding community.

After due consideration, the applicant has agreed to modify the original design subject to further refinement and final consideration by the CPC and the New York City Council. The proposal will widen the western pavement to 18 feet and narrow the road bed to 22 feet in width, thereby providing more pedestrian space. Additionally, the applicant has placed numerous tree pits and benches along the drive. To further enhance the street-level experience, the pavements will not be separated from the road bed by curbs. Instead, the spaces will be delineated by tree pits, discreet bollards and textural variation in the paving.

West 58th Street ground floor treatment

The project site faces the full-block ConEd power station on the north side of West 58th Street. The building's grand architecture reflects its time and industrial function, with tall windows that begin several feet above grade. While this architecture is monumental, it results in a blank street wall for pedestrians. The blank wall has the potential to create a "dead zone," which not only fails to draw people along the block but potentially creates an unsafe environment. Therefore, superior site planning should suitably relate to the ConEd building and offset the lack of activity on West 58th Street.

On the south side of the street, the applicant intends to build a two-story community facility in the middle of the block and potentially convert the storage facility into a residential and retail

building on the corner of 11th Avenue. The proposed mixed-use building will include lobby space on West 58th Street and an entrance to the retail space at the western end of the block. However, a significant portion of the mixed-use building is programmed to include mechanical space, loading bays and a garage entrance along the ground level of West 58th Street. While the applicant has expressed the necessity for these mechanical spaces to be accessible from the street level, these are inactive spaces. Without attractive pedestrian uses, this segment of West 58th Street is in danger of feeling isolated and unsafe.

To address this, the applicant has proposed several modifications to improve the streetscape. The applicant proposes to move some mechanical space into the building by one and a half feet to accommodate a gallery window for art installations. The exhibits will be administered by a curatorial program run by the applicant. Additionally, the applicant is exploring illuminating the West 58th Street sidewalk through LED lighting mounted above the first level of the mixed-use building. Finally, to promote “eyes on the street,” the applicant has proposed a new retail or café space at West 58th Street and the access drive in the northeast corner of the mixed-use building. By integrating these uses and streetscape features into the ground floor, the West 58th Street frontage will be significantly more active and visually inviting. Further, these proposed modifications will promote a safer pedestrian environment and improve the overall site plan.

Hudson River Park access

One of the greatest challenges to creating significant pedestrian flow along West 58th Street is the lack of a destination point at the West Side Highway and West 58th Street. The highway ramp beside 12th Avenue between West 57th and 58th streets impedes direct access to the Hudson River Park and any future attractions on the waterfront. However, one block to the north at West 59th Street the ramp rises to a level sufficient to create a pedestrian underpass beneath. While West 59th Street is used by bicyclists and runners to access the West Side Greenway, it is poorly lit, deserted and flanked by parking and a derelict lot.

In order to create a destination point north of 57th Street, it is important to consider if the West 59th Street underpass can be improved. With a new active destination, pedestrians would be encouraged to use both West 59th Street and West 58th Street.

Through discussions, the applicant has identified an opportunity to improve the West 59th Street underpass by adding under-viaduct lighting, reflective paneling, new signage, maintained plantings and some recreational amenities. While the proposed changes will require consideration from multiple agencies, they would bring a neighborhood-wide benefit. An upgrade at this intersection could draw residents down West 58th Street, improving its overall safety. As part of this process, the applicant should continue discussions with relevant stakeholders and agencies to explore the feasibility of the project and identify its potential broader benefits.

Community facility building

The applicant has proposed a two-story community facility building, which as currently planned, will make a positive addition to the larger community. As such, the potential tenancy of the

community facility space is of particular interest to the community and CB4. The applicant seeks to tenant the space with a day care provider. However, community facilities encompass a broad range of uses that include not only day care, but uses such as doctor's and dentist's offices as well. If an appropriate day care provider cannot be found, these alternative uses could legally occupy the space.

Unfortunately, until approvals are received, it is difficult to identify a specific user. It is therefore appropriate to put safeguards in place that will ensure continued dialogue should a day care provider not be found. While the applicant is confident that a day care is an appropriate and likely occupant, Durst Development LLC has committed to liaising with CB4 should an alternative community facility use need to be identified.

Affordable Housing

The applicant has committed that 20% of the new units in the mixed-use building will be affordable, which is laudable as this pledge was made prior to the ULURP process. Further, the proposed affordable housing is not a requirement of any land use approvals sought. The new affordable housing will assist in helping to balance the needs of the surrounding community.

While the applicant has made this significant commitment, CB4 has rightly raised the concern that this housing is not permanently affordable. Since the Hudson Yards rezoning was approved in 2004, the city has made it a priority to encourage permanent affordable housing, specifically through the Inclusionary Housing bonus. Currently, the applicant is utilizing the 80/20 and 421-a programs, which commit the applicant to 35 years of affordability, after which the units will remain affordable until vacated. The applicant anticipates this will result in affordability for approximately 50 years.

Unfortunately, the applicant's lease was negotiated prior to the city's current permanent affordable housing policy. The lease did not anticipate or include the ability to provide affordable housing in perpetuity. The subject application does not take advantage of the Inclusionary Housing bonus, which is available in the existing C4-7 District. As the applicant is not receiving the benefits that come with the provision of Inclusionary Housing, the financial viability of programming permanent affordability at this juncture is strained. The applicant has stated that affordability in perpetuity would require the renegotiation of the land lease, which could result in continued vacancy at the site.

While modifying the length of affordability may not be possible, the applicant is strongly committed to making 20% of the units in the mixed-use building affordable. The total level of affordability, however, does not include the potential conversion of the storage building to housing. With the proposed storage building, the project's total share of affordability is 17.5%.

Achieving 20% affordability for any duration of time helps to stabilize the neighborhood and encourages mixed income communities. The total amount of affordable housing at this site should be set at 20%. The applicant has affirmed a commitment to this principle by ensuring that 20% of the residential units provided in the storage building will be affordable through the 80/20 Housing Program.

BOROUGH PRESIDENT'S RECOMMENDATION

The proposed development is a welcome addition to the Hudson River skyline. It regenerates this long-vacant site and brings new residential units, including affordable housing, retail space and a community facility. The applicant has committed to several improvements codified in the attached letter from the Durst Organization, dated October 18, 2012.

Therefore, the Borough President recommends conditional approval of ULURP Application Nos. C 120396 ZMM, C 120397 ZSM, C 120398 ZSM, M 010148 (A) ZMM and M 010151 (B) ZSM, provided that the applicant follows through on commitments to:

- **modify the design of the mid-block access drive to widen the pavement, narrow the roadbed, include tree pits and benches, and optimize the pedestrian experience to make this space inviting to the public;**
- **activate the street level of West 58th Street with additional retail space, sidewalk lighting and gallery windows;**
- **explore improving the underpass beneath the Joe DiMaggio Highway at West 59th Street to make this a safe and inviting channel for pedestrians and cyclists;**
- **consult with CB4 to identify an appropriate community facility tenant if a day care provider cannot be found; and**
- **provide affordable units through the 80/20 Housing Program should the storage building be converted to include residential uses.**



Scott M. Stringer
Manhattan Borough President

EXHIBIT A

RESTRICTIVE DECLARATION

THIS DECLARATION ("Declaration"), made as of this ___ of _____, 2012 by Durst Development L.L.C., a New York limited liability company, having an address at One Bryant Park, New York, NY 10036 ("Declarant").

WITNESSETH:

WHEREAS, the Declarant, a New York limited liability company, having its principal office at One Bryant Park, New York, NY 10036 is the current lessee under a ground lease dated February 1, 1999 (the "Ground Lease") originally between Four Plus Corporation ("Four Plus"), Chase Manhattan Bank as trustee ("Chase"), Waldo Hutchins III, as trustee ("Hutchins") and Elizabeth Appleby Gezelschap, as trustee ("Gezelschap"), together as Landlord, and Declarant, as Tenant, of certain real property located in the Borough of Manhattan, County of New York, City and State of New York, designated for real property tax purposes as Block 1105, Lots 1, 5, 14, 19, 29, 36, and 43, and known by street addresses 601-649 West 57th Street, 839-845 Eleventh Avenue, 614-616 West 58th Street, and 820-838 Twelfth Avenue, and which is more particularly described in Exhibit A annexed hereto and made a part hereof (the "Subject Property"); and

WHEREAS, the Ground Lease is for a term of ninety-nine years subject to the provisions of the Ground Lease; and

WHEREAS, a Declaration of Zoning Lot Restrictions, dated May 10, 1999, was executed so that the Property would be treated as a single "zoning lot" for purposes of the Zoning Resolution of the City of New York (the "Zoning Resolution"), which Declaration of

Zoning Lot Restrictions was recorded in Reel 2964, pg. 553 in the City Register, Manhattan Borough Office; and

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

WHEREAS, the Declarant previously sought and obtained approval from the New York City Planning Commission (the “Commission”) and the New York City Council (the “Council”) for (i) the rezoning of the Subject Property from M2-3 to C4-7 and M1-5 (Application #C010148ZMM); (ii) special permits pursuant to Zoning Resolution Section 74-74 (Large-Scale General Development) for allowing, as part of a large-scale general development, (a) the location of buildings without regard for the applicable height and setback regulations (Application #C010151ZSM) and (b) the modification of the location of use regulations (Application #010152ZSM); and (iii) two special permits pursuant to Zoning Resolution Section 74-52 and 13-562 to allow for two public parking garages within the large-scale general development, one for a 239-space facility and one for a 399-space facility (Application #C010149ZSM and #C010150ZSM); ((i) – (iii) collectively, the “2001 Land Use Approvals” and (ii)-(iii) collectively, the “2001 Development Special Permits”); and

WHEREAS, in connection with the 2001 Land Use Approvals, the Declarant entered into a Restrictive Declaration made as of March 28, 2001 (the “2001 Restrictive Declaration”), which was recorded in the Office of the City Register, New York County, at Reel 3292, Page

0709; and

WHEREAS, the Declarant sought and obtained pursuant to Application #C010151(A)ZSM (the “2004 Minor Modification”) a minor modification of the 2001 Land Use Approvals in order to permit the location of a second curb cut on the West 57th Street frontage in connection with construction of a building known as the “Helena” on the Subject Property, and in connection with the 2004 Minor Modification, the 2001 Restrictive Declaration was amended by an Amendment of Restrictive Declaration, made as of May 25, 2004, which was recorded in the Office of the City Register, New York County, under City Register File Number (“CFRN”) 2004000611700 (the 2001 Restrictive Declaration, as amended, the “Original Declaration”); and

WHEREAS, Declarant now intends to develop and operate at the Subject Property inter alia, up to one thousand, four hundred and thirty two (1,432) residential rental units, including the 597 units currently existing, and up to 835 new units in new or renovated buildings on the Subject Property and with twenty percent of such new units being affordable to persons or families of low income who qualify for occupancy pursuant to the “80/20” program under Section 142 of the Code or the section 421-a “80/20” program as applied to a rental building with affordable units and which new or renovated buildings would fit within a new height and setback envelope; and to make other modifications to the prior approvals for development of the Subject Property in order to provide the new development; and

WHEREAS, in furtherance thereof, Declarant has filed applications with the Commission requesting (i) a rezoning of that portion of the Subject Property currently

designated as an M1-5 zoning district, to a C6-2 zoning district (Application #C120396 ZMM); (ii) special permits pursuant to Zoning Resolution Section 74-74 (Large-Scale General Development) to allow, as part of the Large-Scale Development Project, (a) the distribution of floor area without regard for zoning district boundaries and (b) the location of buildings within the Large-Scale Development Project without regard for the applicable distance between buildings and height and setback regulations (Application #C120397 ZSM) (the “2012 Development Special Permit”); (iii) a special permit pursuant to Zoning Resolution Section 13-561 to allow a 285-car accessory parking garage as part of the Large-Scale Development Project (Application #C120398 ZSM); (iv) modification of the large-scale general development site plan previously approved as application #C010151(A) ZSM (Application #M01051(B) ZSM) (such modification collectively, with (i) and (ii) above as approved pursuant to the Final Approval (as defined in Section 6 hereof), the “2012 Large Scale Permits”); and (v) modification of the Original Declaration (Application #M01048(A) ZMM (items (i) through (v) collectively, the “2012 Land Use Applications”; the 2012 Land Use Applications as approved pursuant to the Final Approval, the “2012 Land Use Approvals”)); and

WHEREAS, in connection with the 2012 Land Use Approvals, Declarant desires to (i) modify the Original Declaration by terminating it pursuant to a separate Modification and Termination Agreement so that the Original Declaration would be of no force and effect, and (ii) enter into a Restrictive Declaration as set forth herein; and

WHEREAS, Chicago Title Insurance Company has certified in the certification (the “Certification”) attached hereto as Exhibit C and made a part hereof, that as of December 11,

2012, Declarant; Four Plus; EE 57th Street North Holdings, LLC; GE 57th Street North Holdings, LLC; Fadling LLC; Appleby North Holdings, LLC; Swallow, LLC; JPMorgan Chase Bank, N.A., as Trustee of the Rainsford D. Lynch Trust; JPMorgan Chase Bank, N.A., as Trustee of the Sara Treadwell Dudney Trust; Fannie Mae; The Helena Associates LLC; and DOI Helena LLC, are the sole parties-in-interest (the “Parties-In-Interest” or individually, a “Party-in-Interest”) in the Subject Property, as such term is defined in the definition of “zoning lot” in Section 12-10 of the Zoning Resolution; and

WHEREAS, all Parties-in-Interest, other than Declarant, have waived their rights to execute this Declaration and subordinated their interests to this Declaration by written instruments annexed hereto as Exhibit D and intended to be recorded simultaneously with this Declaration (the “Waivers”); and

WHEREAS, the Commission acted as lead agency and conducted an environmental review of the 2012 Land Use Applications pursuant to CEQR (as hereinafter defined) and SEQRA (as hereinafter defined); and

WHEREAS, a Final Supplemental Environmental Impact Statement (“FSEIS”) was prepared and the Commission issued a Notice of Completion of FSEIS on December 7, 2012.

WHEREAS, to insure that the development of the Subject Property is consistent with the analysis in the FSEIS upon which the Commission has made findings pursuant to the City Environmental Quality Review, 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 that the development of the Subject Property includes certain project components related to the environment as set forth in Section 3 herein which were material to the analysis of environmental impacts in the FSEIS (“PCREs” or “Environmental Measures”), 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, Declarant desires to restrict the manner in which the Subject Property is developed in the future and intends these restrictions to benefit all land on 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 the Subject Property shall be treated as a large-scale general development site and shall be developed as a single unit.

2. Development of Zoning Lot.

If the Subject Property is developed in whole or in part in accordance with the 2012 Large Scale Permits, Declarant covenants as follows:

(a) the Subject Property shall be developed and improved, except as otherwise indicated below, in substantial conformity with the following plans prepared by

SLCE Architects, LLP, approved as part of the 2012 Large Scale Permits, and annexed hereto as Exhibit E and made a part hereof:

Drawing No.	Title	Last Revised Date
Z-004	Site-Plan	12/14/12
Z-005	Zoning-Analysis	12/14/12
Z-007	Average-Curb-Level	6/4/12
Z-008	Tower Regulation Plan-Diagrams	7/6/12
Z-010	Height & Setback Plan -- Diagrams	7/6/12
Z-011	Tower Height & Setback Section -- Diagram	7/6/12
Z-012	Tower Height & Setback Section -- Diagrams	7/6/12
Z-013	Tower Height & Setback Section -- Diagrams	7/6/12
Z-014	Tower Height & Setback Section -- Diagrams	7/6/12
Z-015	Tower Height & Setback Section -- Diagrams (Existing Waivers)	7/6/12
Z-018	Building -- Separate Plan & Section -- Diagrams	7/6/12
Z-019	Open Space Plan -- Diagram	12/14/12
Z-022	Ground-Floor-Plan	12/14/12

(b) In no event shall more than one thousand, four hundred and thirty-two (1,432) dwelling units, including those currently located on the Subject Property, be located on the Subject Property at any time.

(c) Applicant has indicated that it intends to provide in any new residential building to be constructed on Tax Lots 1, 5, 14, 19 and 43 as more particularly described in Exhibit B-1 attached hereto (the "New Building Site" and any improvements thereon, the "New Building") and in any converted or new improvements to be used for residential uses on part of Tax Lot 36 as such tax lot is more particularly described in Exhibit B-2 attached hereto (the "Mini Storage Site", and any improvements thereon, the "Eastern Building"), rental units, including units (the "Affordable Housing Units") that will be affordable to persons or families of low income who qualify for occupancy pursuant to the requirements of (i) the "80/20" program under Section 142 of the Code or (ii) the Section 421-a "80/20" program as applied to a rental building with affordable units, or (iii) any successor program to (i) or (ii) above. A progress report, detailing Applicant's efforts to provide such units and setting forth the status of its application under the programs described above, will be submitted to the Borough President and the Land Use Office of the City Council, no less than once each six months following the commencement of construction. Nothing herein shall be construed to require that Affordable Housing Units be provided at the New Building Site or the Mini Storage Site.

(d) In the event that the Subject Property is not developed in accordance with the 2012 Large Scale Permits, then Declarant shall have the right to proceed with use and development of the Subject Property under the then-current zoning designation, provided that, residential development on the Subject Property shall be limited to 600 dwelling units and

520,800 square feet of floor area devoted to residential uses, and further provided that, all development must be located within the maximum building bulk envelopes as set forth in the 2001 Development Special Permits as modified by the 2004 Minor Modification, subject to any environmental conditions of, and without use of the bulk waivers in such approvals.

3. Project Components Related to the Environment. Declarant shall implement the following PCREs (Environmental Measures) in connection with the development of the Large Scale Development Project:

(a) Declarant shall comply with the “Greenhouse Gas Emissions Measures” set forth in the Greenhouse Gas Emissions Environmental Measures annexed to this Declaration as Exhibit F (the “Greenhouse Gas Emissions Environmental Measures”).

(b) Prior to commencement of construction (hereinafter defined) of the Large Scale Development Project and subject to DCP review pursuant to Section 3 of this Declaration, Declarant shall (x) develop a plan for implementation of, and (y) thereafter implement, the measures set forth in and annexed to this Declaration as Exhibit G and Exhibit H (the “Construction Environmental Measures” or “CEMs”).

(c) Declarant shall comply with the following additional PCREs relating to air quality at the Large Scale Development Project:

(1) Declarant shall not apply for or accept any temporary certificate of occupancy (“TCO”) or any permanent certificate of occupancy (“PCO”) for any dwelling units with windows or air intakes on the north side of the New Building until the Department of City Planning (“DCP”) has certified to the Buildings Department that the existing combustion turbine (the “CT”) at the Con Edison West 59th Street Generating Station has been converted to

burn natural gas for normal operations and testing (the “Con Edison Modifications”), and that the CT will comply with the following operating limits (the “CT Operating Limits”):

(A) the CT shall be bid in to the New York State Independent System Operator (“NYISO”) with a limitation of a maximum of four (4) consecutive hours of operation per day (the “Four Hour Per Day Limit”); and

(B) periodic testing of the CT by Con Edison shall be subject to the Four Hour Per Day Limit except for (x) emissions tests for particulate matter as required by the facility’s Title V permit, and (y) the initial startup, tuning, testing, and commissioning of the CT after it is converted to burn natural gas.

(2) Pursuant to the CT Operating Limits, the Four Hour Per Day

Limit shall not apply to the CT when the following conditions occur:

(A) when an emergency black start is needed for the Con Edison West 59th Street Generating Station;

(B) when an emergency black start is needed for the Con Edison Energy Control Center;

(C) during the summer (peak load) months, during an emergency condition or to avoid an emergency condition in the Con Edison 49th Street load pocket;

(D) During the non-summer months, during an emergency condition or to avoid an emergency condition in the 49th Street load pocket when one major piece of equipment is off-line for maintenance and two major pieces of equipment fail;

(E) when the NYISO or Con Edison operate in a “condition yellow” (i.e., when the system is one contingency from requiring voltage reduction or load shedding to maintain system integrity);
or

(F) when NYISO declares an emergency or when Con Edison or NYISO declares a maximum generation condition.

In the event of a condition specified in subsection (c)(2)(A) or (B) herein, the CT shall be permitted to run using kerosene or distillate oil. In the event of a condition specified in subsection (c)(2)(C), (D), (E) or (F) herein the CT shall be permitted to run using kerosene for any period when the gas supply to the CT is interrupted.

In order to satisfy the requirements of subsection (c)(1) hereof, it must be demonstrated, to the satisfaction of DCP, that: (aa) the CT Operating Limits have been accepted by NYISO and are in force and effect; (bb) the CT Operating Limits have been incorporated into the

facility's Title V permit by modification thereof approved by DEC; and (cc) the Con Edison Modifications are operational and in effect.

(3) Balconies. Dwelling units located on the north façade of the New Building shall not have balconies.

(d) Innovation; Alternatives; Modifications Based on Further Assessments.

In complying with Sections 3(a) through 3(c) of this Declaration, Declarant may, at its election, implement innovations, technologies or alternatives that are or become available, including replacing any equipment, technology, material, operating system or other measure previously located on the Subject Property or used within the Large Scale Development Project which Declarant demonstrates to the satisfaction of DCP would result in equal or better methods of achieving the relevant PCRE, than those set forth in this Declaration.

(e) Modifications Based on Further Assessments.

In the event that Declarant believes, based on changed conditions, that an Environmental Measure required under this Section should not apply or could be modified without diminishment of the environmental standards which would be achieved by implementation of the Environmental Measure, it shall set forth the basis for such belief in an analysis submitted to DCP. In the event that, based upon review of such analysis, DCP determines that the relevant Environmental Measure should not apply or could be modified, Declarant may eliminate or modify the Environmental Measure consistent with the DCP determination, provided that Declarant records a notice of such change against the Subject Property in the office of the City Register.

(f) Process for Innovations, Alternatives and Modifications Pursuant to Section 3(d) and 3(e).

Following the delivery of a Notice to DCP requesting an Innovation, Alternative or Modification pursuant to Sections 3(d) and 3(e) of this Declaration (the “Section 3(d) and 3(e) Request”), Declarant shall meet with DCP (and at DCP’s option for matters relating to Identified CEMS, the Monitor as defined below) to respond to any questions or comments on such request and accompanying materials, and shall provide additional information as may reasonably be requested by DCP or the Monitor in writing in order to allow DCP, acting in consultation with the Monitor and City agency personnel as necessary in relation to the subject matter of the Section 3(d) and 3(e) Request, to make a determination.

(g) Appointment and Role of Independent Monitor.

(A) (i) Declarant shall, with the consent of DCP, retain an independent third party (the “Monitor”) reasonably acceptable to DCP to oversee, on behalf of DCP, the implementation and performance by Declarant of the CEMs required under Section 3(b) of this Declaration and set forth in Exhibit H (the “Identified CEMs”). The Monitor shall be a licensed engineer, architect, general contractor or environmental consultant with significant experience in environmental management and construction management (or multiple persons or a firm employing such persons), including familiarity with the means and methods for implementation of the CEMs.

(ii) The “Scope of Services” described in any agreement between Declarant and the Monitor pursuant to which the Monitor is retained (the “Monitor Agreement”) shall be subject to prior review by and approval of DCP, such approval not to be

unreasonably withheld, conditioned or delayed. Such agreement shall include provisions in a form acceptable to DCP that, among others, shall: (i) ensure that the Monitor is independent of Declarant in all respects relating to the Monitor's responsibilities under this Declaration (provided that the Monitor shall be responsible to Declarant with regard to practices generally applicable to or expected of consultants and independent contractors of Declarant) and has a duty of loyalty to DCP; (ii) provide for appropriate DCP management and control of the performance of services by the Monitor; (iii) authorize DCP to direct the termination of services by the Monitor for unsatisfactory performance of its responsibilities under the Monitor Agreement; (iv) allow for the retention by the Monitor of sub-consultants with expertise appropriate to assisting the Monitor in its performance of its obligations to the extent reasonably necessary to perform its obligations under this Declaration and the Monitor Agreement; and (v) allow for termination by Declarant for cause, but only with the express written concurrence of DCP, which concurrence shall not be unreasonably withheld or delayed. If DCP shall fail to act upon a proposed Monitor Agreement within twenty (20) days after submission of a draft form of Monitor Agreement, the form of Monitor Agreement so submitted shall be deemed acceptable by DCP and may be executed by Declarant and the Monitor. The Monitor Agreement shall provide for the commencement of service by the Monitor by the date a building permit is filed with the Building Department for construction of the New Building in accordance with the 2012 Land Use Review Approvals (which filing may be an amendment to an existing building permit) and for the termination of the Monitor's services upon issuance of a temporary certificate of occupancy with respect to the New Building.

(iii) The Monitor shall: (i) assist and advise DCP as set forth herein with regard to review of plans and measures proposed by Declarant for purposes of satisfying the Identified CEMs in connection with determinations required under this Declaration as a prerequisite to commencement of construction or the issuance or acceptance by Declarant of an amended building permit for the New Building, or the earlier of TCO or PCO as the case may be; (ii) provide reports of Declarant's compliance with the Identified CEMs during any period of construction on a schedule reasonably acceptable to DCP, but not more frequently than once per month; and (iii) review records or perform field inspections of the portion of the Subject Property then being developed as reasonably necessary to confirm that Declarant is complying with the Identified CEMs. The Monitor may at any time also provide Declarant and DCP with notice of a determination that an Identified CEM has not been implemented, accompanied by supporting documentation establishing the basis for such determination, provided that any such notice shall be delivered to both parties. The Monitor shall: (x) have full access to the portion of the Subject Property then being developed (as referenced in the Monitor Agreement), subject to compliance with all generally applicable site safety requirements imposed by law, pursuant to construction contracts, or imposed as part of the site safety protocol in effect for the Subject Property (the "Site Safety Requirements"); (y) on reasonable notice and during normal business hours, be provided with access to records of Declarant pertaining to construction on the applicable portion of the Subject Property, either on or outside the Subject Property, which is necessary to carry out the Monitor's duties, including the preparation of periodic reports; and (z) be entitled to conduct any tests on the Subject Property the Monitor reasonably identifies as necessary to verify Declarant's implementation and performance of the Identified CEMs,

subject to compliance with the Site Safety Requirements and provided further that any such additional testing shall be (q) coordinated with Declarant's construction activities; and (r) conducted in a manner that will minimize any interference with the Large Scale Development Project. The Monitor Agreement shall provide that Declarant shall have the right to require Monitor to secure insurance customary for such activity and may hold the Monitor liable for any damage or harm resulting from the Monitor's activities.

(iv) Subject to compliance with all generally applicable site safety requirements imposed by all applicable laws, statutes and ordinances, and all orders, rules, regulations, interpretations, directives and requirements, of any Governmental Authority having jurisdiction over the Subject Property, pursuant to construction contracts or insurance requirements, or insurance requirements, or imposed as part of the Site Safety Requirements, DCP, or any other applicable City agency, may, upon prior written or telephonic notice to Declarant, enter upon the Subject Property during business hours on business days for the purpose of conducting inspections to verify Declarant's implementation and performance of the CEMs; provided, however, that any such inspections shall be (i) coordinated with Declarant's construction activities, and (ii) conducted in a manner that will minimize any interference with the Large Scale Development Project. Declarant shall cooperate with DCP (or such other applicable City agency) and its representatives, and shall not delay or withhold any information or access to the Subject Property reasonably requested by DCP (or such other applicable City agency).

(v) Declarant shall be responsible for payment of all fees and expenses due to the Monitor in accordance with the terms of the Monitor Agreement.

(vi) If DCP determines, based on information provided by the Monitor and/or others, or through its own inspection of the Subject Property during construction, as applicable, that there is a basis for concluding that Declarant has failed to implement or to cause its contractors to implement a CEM, DCP may thereupon give Declarant written notice of such alleged violation (each, a "CEM Default Notice"), transmitted by hand or via overnight courier service to the address for Notices for Declarant set forth in Section 7 hereof. Following receipt of a CEM Default Notice, Declarant shall: (i) effect a cure of the alleged violation within three (3) business days, or if DCP reasonably determines that the nature of the violation poses an immediate threat to public health and safety, within such shorter period as DCP's notice shall direct (such three (3) business day period or such shorter period, as applicable, the "Cure Period"); (ii) seek to demonstrate to DCP in writing within two (2) business days of receipt of the CEM Default Notice (or if DCP has reasonably determined that the nature of this violation poses an immediate threat to public health and safety, then within the Cure Period established therefor) why the alleged violation did not occur and does not then exist; or (iii) seek to demonstrate to DCP in writing within two (2) business days of receipt of the CEM Default Notice (or if DCP has reasonably determined that the nature of this violation poses an immediate threat to public health and safety, then within the Cure Period established therefor) that a cure period greater than three (3) business days would not be harmful to the environment or that the required cure cannot be accomplished within three (3) business days (such longer cure period, a "Proposed Cure Period"). If DCP accepts within two (2) business days of receipt of a writing from Declarant that the alleged violation did not occur and does not then exist, DCP shall withdraw the CEM Default Notice and Declarant shall have no obligation to cure. If

DCP accepts a Proposed Cure Period in writing within two (2) business days of receipt of a writing from Declarant, then this shall become the applicable cure period for the alleged violation (the "New Cure Period"), provided that if DCP does not act with respect to a Proposed Cure Period within two (2) business days after receipt of a writing from Declarant with respect thereto, the New Cure Period shall apply. If Declarant fails to: (i) effect a cure of the alleged violation within the Cure Period; (ii) cure the alleged violation within the New Cure Period, if one has been established; or (iii) demonstrate to DCP's satisfaction that a violation has not occurred, then representatives of Declarant shall, promptly at DCP's request, and upon a time and date convene a meeting at the Subject Property with the Monitor and DCP representatives. If Declarant is unable reasonably to satisfy the DCP representatives that no violation exists or is continuing or the Declarant, the Monitor and DCP are unable to agree upon a method for curing the violation within a time period acceptable to DCP, DCP shall have the right to exercise any remedy available at law or in equity or by way of administrative enforcement, to obtain or compel Declarant's performance under this Declaration, including seeking an injunction to stop work on the Subject Property, as necessary, to ensure that the violation does not continue, until the Declarant demonstrates either that the violation does not exist or that it has cured the violation. Nothing herein shall be construed as a waiver of any legal or equitable defense that Declarant may have in any enforcement action or proceeding initiated by DCP in accordance with this provision.

(h) Circumstances Beyond the Control of Declarant. Notwithstanding any provision of Section 8 of this Declaration to the contrary, where an obligation of this Declaration as to which Circumstances Beyond the Control of the Declarant (hereinafter

defined) apply is a PCRE set forth in this Section 3 of this Declaration, Declarant may not be excused from performing such PCRE that is affected by Circumstances Beyond the Control of the Declarant unless and until the City, based on consultation with the Monitor, has made a determination in its reasonable discretion that not implementing the PCRE during the period of Circumstance Beyond the Control of the Declarant, or implementing an alternative proposed by the Declarant, would not result in any new or different significant adverse environmental impact not addressed in the FSEIS.

(i) DCP Review

- (i) Not less than twenty (20) days prior to the date that Declarant anticipates obtaining a building permit or an amended building permit (either such permit, a "Building Permit") from the Buildings Department for commencement of construction of the New Building, Declarant shall send written notice to DCP, with a copy to the Monitor if DCP has previously requested in writing that Declarant copy the Monitor, advising of Declarant's intention to undertake construction pursuant to such Building Permit (a "Permit Notice"). Any Permit Notice shall be accompanied by: (i) a summary of the provisions of this Declaration imposing conditions or criteria that must be satisfied as a condition to or in conjunction with construction pursuant to such Building Permit; (ii) materials or documentation demonstrating compliance with such requirements or criteria to

the extent Declarant believes that compliance has been achieved by the date of the Permit Notice; and (iii) to the extent that Declarant believes that compliance with any condition or criteria has not been achieved by the date of the Permit Notice, an explanation of why compliance has not yet been achieved to date, the steps that are or will be taken prior to issuance of the Building Permit to achieve compliance and the method proposed by Declarant to assure DCP that the elements will be achieved in the future. Materials or documentation from any Governmental Authority, certifying the implementation of a CEM set forth in this Section 3, shall be accepted as compliance with the relevant PCRE.

- (ii) Following the delivery of a Permit Notice to DCP in accordance with Paragraph (j)(i) hereof, Declarant shall, at DCP's option, meet with DCP (and at DCP's option, the Monitor) to respond to any questions or comments on the Permit Notice and accompanying materials, and shall provide additional information as may reasonably be requested by DCP or the Monitor in writing in order to allow DCP to determine, acting in consultation with the Monitor and any City agency personnel as necessary in relation to the subject matter of the Permit Notice, that the conditions and criteria for Construction Commencement or

issuing the Building Permit have been or will be met in accordance with the requirements of this Declaration. Declarant shall not accept any Building Permit subject to review pursuant to this Section 3 until DCP has certified to Declarant and the Buildings Department that the conditions and criteria set forth in this Declaration for issuance of the Building Permit have been met. Notwithstanding the foregoing, in the event that DCP has failed to (x) respond in writing to Declarant within twenty (20) days of receipt of the Permit Notice, (y) respond in writing to Declarant within five (5) business days of receipt of additional materials provided to DCP under this Paragraph (ii), DCP shall be deemed to have accepted the Permit Notice and any subsequent materials related thereto under this Paragraph (ii) as demonstrating compliance with the requirements for issuance of the Building Permit and Declarant shall be entitled to Commence Construction or accept the Building Permit and to undertake any and all activities authorized thereunder.

- (iii) Not less than twenty (20) days prior to the date that Declarant anticipates obtaining the first TCO or PCO for the New Building on the Subject Property, Declarant shall send written notice to DCP, with a copy to the Monitor if DCP has previously requested in writing that Declarant copy the Monitor, advising of

Declarant's intention to obtain such TCO or PCO (each such notice, a "CO Notice"). DCP shall inspect the Building and review construction plans and drawings, as necessary to confirm that the PCRE required to be incorporated into the Building have been installed in accordance with the plans initially submitted as part of a Building Permit. Within twenty (20) days of delivery of any CO Notice, the Buildings Department shall not issue, and Declarant shall not accept, a TCO or PCO if DCP has provided written notice to Declarant, copied to the Buildings Department, within five (5) business days following any such inspection (x) advising that Declarant has failed to include a required PCRE within the Building, or has failed to fully satisfy the PCRE, and (y) specifying the nature of such omission or failure. In the event that DCP provides such notice, Declarant and DCP shall meet within five (5) business days of such written notice to review the claimed omission or failure, develop any measures required to respond to such claim, and Declarant shall take all steps necessary to remedy such omission or failure. Upon the completion of such steps to the satisfaction of DCP, the Buildings Department may issue and Declarant shall be entitled to obtain the TCO or PCO as the case may be. If DCP has failed to inspect the Building or review the plans or drawings or issue written

notice within the respective time periods set forth above, then the Buildings Department may issue and Declarant may accept a TCO or PCO.

- (iv) In the event of a continued disagreement between DCP or other City agency and Declarant under this Paragraph 3 as to whether any PCRE has been included or fully satisfied or will be included or fully satisfied by the measures proposed by Declarant, Declarant shall have the right to appeal such matter to the Deputy Mayor of Planning and Economic Development, or any successor Deputy Mayor, and to seek resolution within thirty (30) days of Declarant's appeal thereto.

“Commencement of construction” for purposes of this Declaration shall refer to the commencement of any construction under a Building Permit, it being acknowledged that excavation and certain other activities at the Subject Property commenced prior to the date hereof pursuant to permits issued prior to the 2012 Land Use Approvals.

“Government Authority” for purposes of this Declaration shall refer to any governmental authority (including any Federal, State, City or County governmental authority or quasi-governmental authority, or any political subdivision of any thereof, or any agency, department, commission, board or instrumentality of any thereof) having jurisdiction over the matter in question.

4. 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 large-scale general development as set forth herein.

5. 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 ground leasehold interest in all or any portion of the Subject Property and only to the extent of such interest in the Subject Property. At such time as a Declarant or any successor to a Declarant no longer holds a ground leasehold 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 fee or ground leasehold interest in the Subject Property.

6. Effective Date and Recordation.

(a) This Declaration and the provisions and covenants hereof shall become effective on the date of the Final Approval (hereinafter defined) of the 2012 Land Use

Applications (the “Effective Date”). Declarant shall deliver to DCP one (1) original of this Declaration for review and approval within ten (10) business days after the Effective Date, and shall file and submit for recording this Declaration in the Office of the City Register, County of New York, indexing it against the Subject Property within three (3) business days after such approval. Declarant shall deliver to City Planning two (2) duplicate executed originals of this Declaration as submitted for recording, in addition to such evidence of recording required by City Planning. If Declarant fails to so record this Declaration, the City may record a duplicate original of this Declaration, but all costs of recording, whether undertaken by Declarant or by the City, shall be borne by Declarant. “Final Approval” shall mean approval or approval with modifications of the 2012 Land Use Applications by the City Council, or, if the City Council disapproves the decision of the Commission, and the Mayor of the City of New York (the Mayor) files a written disapproval of the City Council’s action pursuant to New York City Charter Section 197-d(e), and the City Council does not override the Mayor’s disapproval, “Final Approval” shall mean the Mayor’s written disapproval of the City Council’s action pursuant to such New York City Charter Section 197-d(e). Notwithstanding the above, “Final Approval” shall not be deemed to have occurred for any purpose of this Declaration if the final action taken pursuant to New York City Charter Section 197-d is disapproval of the 2012 Land Use Applications.

(b) Notwithstanding the foregoing, if any administrative, judicial, or other action or proceeding is brought challenging the final approval of any one or more of the 2012 Land Use Applications by the Commission or the Council or any action related to the 2012 Land Use Applications or the Final Approval, then Declarant, in Declarant’s sole discretion

may, by notice to the Commission in accordance with Section 7 defer the Effective Date to the date the final resolution of such action or proceeding upholding in all respects the validity of the Final Approval or such related action, including any appeals.

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:
Carol E. Rosenthal, Esq.
Fried, Frank, Harris, Shriver & Jacobson LLP
1 New York Plaza
New York, NY 10004

- (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 Party-in-Interest and every Mortgagee of whom CPC has notice, and no Notice shall be deemed properly given to Declarant without such notice to such Parties-in-Interest and Mortgagee. 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. Circumstances Beyond the Control of Declarant.

(a) "Circumstances Beyond the Control" of Declarant for purposes of this Declaration shall refer to any and all causes beyond Declarant's reasonable control, including, without limitation, delays resulting from (i) governmental restrictions, limitations, regulations or controls (provided that such are other than ordinary restrictions, limitations, regulations or controls), (ii) orders of any court of competent jurisdiction (including, without limitation, any litigation which results in an injunction or a restraining order prohibiting or otherwise delaying the construction on any portion of the Subject Property), (iii) labor disputes (including strikes, lockouts not caused by Declarant, slowdowns and similar labor problems), (iv) accident,

mechanical breakdown, shortages or inability to obtain labor, fuel, steam, water, electricity, equipment, supplies or materials (for which no substitute is readily available at a comparable price), (v) acts of God (including inordinately severe weather conditions), (vi) removal of hazardous substances that could not have been reasonably foreseen, (vii) war, sabotage, hostilities, invasion, insurrection, riot, acts of terrorism, mob violence, malicious mischief, embargo, quarantines, national, regional or local disasters, calamities or catastrophes, national emergencies, enemy or hostile governmental action, civil disturbance or commotion, or earthquake, flood, fire or other similar casualty of which Declarant has given DCP notice, (xiii) a taking of the whole or any relevant portion of the Property by condemnation or eminent domain; (ix) unforeseen soil conditions substantially delaying construction of any relevant portion of the Property; (x) denial to Declarant by any party of a right of access to any adjoining real property which right is vested in Declarant, by contract or pursuant to applicable law, if such access is required to accomplish the obligations of Declarant pursuant to this Declaration; (xi) inability of a public utility to provide power, heat or light or any other utility service, despite reasonable efforts by Declarant to procure same from the utility; and (xii) unusual delays in transportation.

(b) In the event that, as the result of Circumstances Beyond the Control of the Declarant, Declarant is unable to perform or complete any of its obligations hereunder (i) at the time or times required by this Declaration; (ii) at the date set forth in this Declaration for such action, if a specific date for such requirement is set forth herein; or (iii) prior to submitting an application for an amended building permit for the New Building or other permit or certificate of occupancy (TCO or PCO) which is tied to the completion of such requirement,

where applicable, Declarant shall promptly after the occurrence of Circumstances Beyond the Control of the Declarant becomes apparent so notify the Chair in writing. Such notice (the "Delay Notice") shall include a description of the Circumstances Beyond the Control of the Declarant, and, if known to Declarant, their cause and probable duration. In the exercise of his or her reasonable judgment the Chair shall, within thirty (30) days of its receipt of the Delay Notice (i) certify in writing that the Circumstances Beyond the Control of the Declarant have occurred; or (ii) notify Declarant that it does not reasonably believe that the Circumstances Beyond the Control of the Declarant have occurred. Upon a certification that Circumstances Beyond the Control of the Declarant have occurred, the Chair may grant Declarant appropriate relief and, as a condition thereto, may require that Declarant post a bond, letter of credit or other reasonable security in a form reasonably acceptable to the City in order to ensure that the Obligation will be completed in accordance with the provisions of this Declaration.

(c) Any delay caused as the result of Circumstances Beyond the Control of the Declarant shall be deemed to continue only as long as the Circumstances Beyond the Control of the Declarant continue. Upon cessation of the Circumstance Beyond the Control of the Declarant causing such delay, Declarant shall promptly recommence the work or implement the measure needed to complete the Obligation, in accordance with any applicable directive of the Chair previously issued in connection with a grant of relief, unless an alternative has been specified and agreed to in accordance with this Section 8.

9. 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 Section 9(b) and 9(c) 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 the Large-Scale Development Project on the Subject Property subject to the 2012 Land Use Approvals; 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; provided that a Mortgagee or Party-In-Interest which is curing an alleged violation pursuant to Section 9(c) hereof shall have the right to enforce the provisions of Section 9(c) 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 2012 Land Use Approvals.

(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, every mortgagee of all or any portion of the Property or an interest therein ("Mortgagee") and every Party-in-Interest thirty (30) business days written notice of such alleged violation, during which period Declarant, any Party-in-Interest and Mortgagee shall have the opportunity to effect a cure of such alleged violation or to demonstrate to City why the alleged violation has not occurred. If a Mortgagee or Party-in-Interest performs any obligation or effects any cure Declarant is required to perform or cure pursuant to this Declaration, such performance or cure shall be deemed performance on behalf of Declarant and shall be accepted by any person or entity benefited hereunder, including CPC and City, as if performed by Declarant. If Declarant, any Party-in-Interest or Mortgagee commences to effect such cure within such thirty (30) day period (or if cure is not capable of being commenced within such thirty (30) day period, Declarant, any Party-in-Interest or Mortgagee commences to effect such cure when such commencement is reasonably possible), and thereafter proceeds diligently toward the effectuation of such cure, the aforesaid thirty (30) day period (as such may be extended in accordance with the preceding clause) shall be extended for so long as Declarant, any Party-in-Interest or Mortgagee continues to proceed diligently with the effectuation of such cure. 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 City has received notice in accordance with Section 8 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, Mortgagee or a Party-in-Interest shall fail to cure the alleged violation, the City may exercise any and all of its rights, including without limitation those delineated in this Section 9 and may disapprove any amendment, modification or cancellation of this Declaration on the sole ground that Declarant is in default of a material obligation under this Declaration.

10. Applications.

(a) Declarant shall include a copy of this Declaration with any application from and after the Effective Date 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 subject to the 2012 Land Use Approvals. 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.

11. 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 or consent shall be required from any other public body, private person, or legal entity of any kind.

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

(c) Notwithstanding any of the foregoing, if the rezoning application that is part of the 2012 Land Use Approvals (Application #C120396 ZMM) is not approved or is declared invalid or otherwise voided by a judgment of a court of competent jurisdiction, then, notwithstanding anything else herein to the contrary, Declarant shall only have the right to proceed with use and development of the Subject Property pursuant to the 2001 Land Use Approvals as modified by the 2004 Minor Modifications and subject to the terms of the Original Declaration and any environmental conditions of the 2001 Land Use Approvals. In the case where the 2012 Large Scale Special Permits are not approved and Application #C120396 ZMM is approved, the provisions of Section 2(d) herein shall apply.

(d) Certificates. The City will at any time and from time to time upon not less than thirty (30) days' prior notice by Declarant, a Mortgagee, or a Party-in-Interest execute, acknowledge and deliver to Declarant or such Mortgagee or Party-in-Interest, as the case may be, a statement in writing certifying (a) that this Declaration is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect, as modified, and stating the modifications), (b) whether or not to the best knowledge of the signer of such certificate Declarant is in default in the performance of any obligation contained in this Declaration, and, if so, specifying each such default of which the signer may have knowledge, and (c) as to such further matters as Declarant or such Mortgagee or Party-in-Interest may reasonably request.

12. Parties in Interest. Notwithstanding anything to the contrary in this Declaration, this Declaration creates no obligations or restrictions on any Party-in-Interest holding a fee interest in the Property (other than Declarant and Declarant's successors and assigns in the event Declarant or a successor or assign to Declarant acquires a fee interest in the Property after the date of this Declaration), and none of the remedies set forth in Paragraph 9(d) hereof or restrictions set forth in this Declaration may be enforced against any Party-in-Interest holding a fee interest in Property or against any successor or assign of any Party-in-Interest holding a fee interest in the Property (other than Declarant and Declarant successors and assigns in the event Declarant or a successor or assign to Declarant acquires a fee interest in the Property after the date of this Declaration).

13. Liability.

(a) Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the estate and interest of Declarant in the Property on an *in rem* basis only, for the collection of any money judgment recovered against Declarant, and no other property of Declarant, and no property of any other party, shall be subject to any levy, execution or other enforcement proceedings for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration; and (ii) neither Declarant nor any other party shall have personal liability under this Declaration. For purpose of this Paragraph only, "Declarant" shall be deemed to include Declarant's mortgagees, principals (disclosed and undisclosed), partners, affiliates, agents, officers, and employees and the heirs, successors, and assigns of each of the foregoing. Notwithstanding the foregoing, nothing herein shall be deemed to preclude, qualify, limit or prevent any of the City's governmental rights, powers or remedies, including, without limitation, with respect to the satisfaction of the remedies of the City under any laws, statutes, codes or ordinances.

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

14. 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.

15. Cooperative or Condominium Ownership.

(a) Nothing herein shall preclude (1) cooperative or condominium ownership of the nonresidential floor area or (2) residential cooperative or condominium units where the cooperative or condominium unit or units are each comprised of multiple residential dwelling units, provided the individual residential dwelling units remain rental units.

(b) With respect to any portion of the Property which shall be subject to a cooperative, condominium or similar form of ownership, for the purposes of this Declaration, the board of directors or managers of the cooperative, condominium, or similar association (such entity, a "Board") or a master association (an "Association") selected by the Board and authorized by underlying organizational documents to act on behalf of the individual cooperative shareholders, condominium or similar owners, shall have the sole right to assess a lien for any costs incurred under this Declaration or to otherwise act with respect to this Declaration, to the extent such action is required for any purpose under this Declaration, and the consent of any individual cooperative unit owner, condominium unit owner, or other similar owner who may be considered a party in interest shall not be required. For purpose of this Declaration, the Board or the Association, as the case may be, shall be deemed the sole Party in Interest with respect to the property interest subjected to the cooperative, condominium, or similar ownership arrangement.

In the event that the Subject Property or any portion thereof is developed as, sold, or

converted to cooperative or condominium ownership requiring the approval of the Attorney General of the State of New York (the "Attorney General"), a copy of this Declaration and any subsequent modification hereof shall be provided to the Attorney General with the offering documents at the time of application for approval of any such cooperative or condominium offering plan. Declarant shall include in the offering plan for such cooperative or condominium this Declaration or any portions hereof which the Attorney General determines shall be included and, if so included in the offering plan, shall make copies of this Declaration available to cooperative shareholders and condominium purchasers.

16. 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 this ____ day
of _____, 2012.

DURST DEVELOPMENT L.L.C,
a New York limited liability company

By: the Durst Manager LLC, a New York limited
liability company, its Manager

By: SRDA Manager, LLC, a New York limited
liability company, its Managing Member

By: _____
Jonathan Durst, President

STATE OF NEW YORK)

) ss.:

COUNTY OF NEW YORK)

On the ____ day of _____ in the year 2012 before me, the undersigned, personally
appeared _____, personally known to me or proved to me on the basis of
satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the
person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public