CITY PLANNING COMMISSION
CITY OF NEW YORK

OFFICE OF THE CHAIR

April 25, 2011

NEGATIVE DECLARATION

Project Identification
CEQR No. 10DCP004M
ULURP Nos. 100063ZMM, 100064ZSM, N110285ZRY
SEQRA Classification: Unlisted

Lead Agency
City Planning Commission
22 Reade Street
New York, NY 10007
Contact: Robert Dobruskin
(212) 720-3423

Name, Description and Location of Proposal:

West 28th Street Rezoning
The New York City Department of City Planning (DCP) and 249 W. 28th Street Properties, LLC, are seeking actions affecting portions of two blocks within the Chelsea neighborhood in Manhattan, Community District 5. The area affected by the proposed actions is roughly bounded by West 30th Street to the north, Seventh Avenue to the east, West 28th Street to the south, and Eighth Avenue to the west.

The proposed actions include three components:

1. A zoning text amendment (ULURP No. N110285ZRY) proposed by the New York City Department of City Planning to create a new zoning district (M1-6D). The proposed text amendment would include the area proposed to be rezoned within an Inclusionary Housing designated area and modify street wall requirements on the properties located within 100 feet of Seventh Avenue, that are zoned (and will remain) M1-6;

2. A zoning map amendment (ULURP No. 100063ZMM) sought by 249 W. 28th Street Properties, LLC to rezone the midblock portion of two blocks bounded by West 28th Street, West 30th Street, Seventh Avenue and Eighth Avenue from M1-5 to the newly created M1-6D district; and

3. A special permit (ULURP No. 100064ZSM) sought by 249 W. 28th Street Properties, LLC pursuant to Zoning Resolution Sections 13-562 and 74-52 to allow for the development of a public parking garage containing 325 parking spaces (including 218 monthly spaces).

In addition, it should be noted that future development utilizing the Inclusionary Housing provisions of the proposed actions may involve discretionary City or State financing subject to environmental review. However, there are no applications for such financing at this time. Consequently an uncoordinated review is being conducted.

The proposed zoning map amendment and special permit would facilitate a proposal by 249 W. 28th Street Properties, LLC to construct a mixed use development consisting of two new 20-story mixed use buildings containing a total of 407 residential units (including 81 affordable dwelling units pursuant to the Inclusionary Housing Program), 11,390 square feet of commercial office uses and 4,685 square feet of retail uses on a through-block site fronting W. 28th and W. 29th Streets (Block 778, Lots 13, 16, 18 and 66, a.k.a. the "Proposed Development Site" which includes "Building A" fronting W. 28th Street and "Building B" fronting W. 29th Street). Additionally, the development would contain a public parking facility with a maximum capacity of 325 spaces (including spaces for 218 monthly parkers) occupying portions of the ground floor, cellar and sub-cellar levels and accessed via two curb cuts located on West 28th and West 29th Streets. The Proposed Development Site is currently developed with a 240-space public parking garage and a 131-space public parking lot.

In addition to facilitating development on the Proposed Development Site, the proposed actions are expected to result in further development on properties not under the control of 249 W. 28th Street Properties, LLC. Under the Reasonable Worst Case Development Scenario, nine additional projected development sites (Projected Development Sites 1 – 9) and four potential development sites (Potential Development Sites A – D) have been identified. New development on the projected development sites is expected to include mixed use buildings with ground floor retail or community facility space with residential use on upper floors; a hotel; and residential conversions.

In total, anticipated development on the Proposed Development Site and nine projected development sites would result in a net increase of approximately 1,134 dwelling units (of which 220 would be affordable under the Inclusionary Housing program); 42,206 square feet of retail space; and 7 accessory parking spaces. Further, there would be a net decrease of approximately 15,153 square feet of commercial office uses; 8,596 square feet of industrial, manufacturing, warehousing, and wholesale uses; 189 hotel rooms; and 146 public parking spaces.

The area to be rezoned is currently zoned for medium-density (M1-5) commercial and light manufacturing uses, which are allowed up to a 5.0 FAR; residential uses are not permitted in manufacturing zones. The proposed rezoning to an M1-6D zoning district would create a unique set of use regulations that would: (1) allow the full range of commercial uses and light manufacturing

uses appropriate in a mixed-use environment; (2) provide protections for existing concentrations of commercial and light industrial uses in a building; (3) allow infill residential development; (4) allow a broad range of community facility uses; (5) require ground floor retail uses and transparency to enliven the street; (6) require a special permit for hotels with more than 100 rooms (to ensure that the hotel development does not preclude the goal of encouraging residential uses and affordable housing) and (7) eliminate size restrictions for local food stores. The district would increase the FAR for commercial, community facility, and manufacturing uses to 10.0 and establish controls governing the conversion from commercial and/or industrial uses to residential and/or community facilities with sleeping accommodations in buildings containing more than 50,000 square feet of floor area. It would also permit residential uses as-of-right at a density of 9.0 FAR, which could be increased to 12.0 FAR pursuant to the Inclusionary Housing Program.

The proposed M1-6D district would be appropriate in areas that have high-density manufacturing and commercial uses, presently have significant concentrations of affordable office space, and could benefit from the introduction of new investment and complementary uses, including residential. Outside of the area being rezoned as part of the proposed actions, there are no known plans to map the M1-6D district in the foreseeable future.

The zoning text amendment also includes new street wall requirements for zoning lots in the M1-6 district within 100 feet of the west side of Seventh Avenue between West 28th and West 30th Streets. On these lots, the proposed text would require a minimum street wall height of 125 feet and a maximum height of 150 feet before setback, with the sky exposure plane commencing at a height of 150 feet above the street line; the alternate front setback provisions of ZR Section 43-44 would not apply. Currently, standard M1-6 height and setbacks regulations apply in this area. The proposed text is intended to ensure that any future development in the affected portion of the M1-6 district would be contextual with surrounding structures in the newly mapped M1-6D district.

The analysis year for the proposed actions is 2019.

To avoid the potential for significant adverse hazardous materials impacts, 249 W. 28th Street Properties, LLC agrees via a restrictive declaration recorded against the Proposed Development Site (Block 778, Lots 13, 16, 18 and 66) on March 14, 2011 to prepare a hazardous materials sampling protocol, including a health and safety plan, which would be submitted to the New York City Department of Environmental Protection (DEP) for approval. The declaration establishes a covenant that runs with the land to test and identify any potential hazardous material impacts pursuant to the approved sampling protocol and, if any such impact is found, submit a hazardous materials remediation plan including a health and safety plan to DEP for approval, prior to any ground disturbance (i.e., site grading, excavation, demolition, or building construction). If necessary, remediation measures would be undertaken pursuant to the remediation plan.

In addition, to avoid the potential for significant adverse air quality, noise, and hazardous materials impacts an (E) designation affecting the Projected and Potential Development Sites has been incorporated into the proposed actions, as described below.

The (E) designation requirements related to air quality would apply to the following development sites:

Projected Development Sites:
Block 778, Lots 13, 16, 18, 66 (Proposed Development Site)
Block 778, Lots 29, 30, 31 (Projected Development Site 1)
Block 778, Lot 25, 27 (Projected Development Site 3)
Block 779, Lots 25, 26, 27, 28, 53, 55, 56 (Projected Development Site 5)
Block 779, Lot 31 (Projected Development Site 6)
Block 779, Lot 69 (Projected Development Site 7)
Block 778, Lot 46 (Projected Development Site 8)
Block 779, Lot 52 (Projected Development Site 9)

Potential Development Sites:
Block 778, Lot 47 (Potential Development Site A)
Block 779, Lot 12 (Potential Development Site B)
Block 778, Lot 34 (Potential Development Site D)

The (E) designation text related to air quality is as follows:

Projected Development Sites:
Block 778, Lots 13, 16, 18, 66 (Proposed Development Site, Building A)
Any new residential and/or commercial development on the above-referenced properties must ensure that the heating, ventilating and air conditioning stack(s) are located at least 41 feet for fuel oil No.4/2 from the building line facing W. 29th Street or use natural gas as the type of fuel for space heating and hot water (HVAC) systems, to avoid any potential significant adverse air quality impacts.

Block 778, Lots 13, 16, 18, 66 (Proposed Development Site, Building B)
Any new residential and/or commercial development on the above-referenced properties must ensure that the heating, ventilating and air conditioning stack(s) are located at least 46 feet for fuel oil No.4/2 from the building line facing W. 28th Street or use natural gas as the type of fuel for space heating and hot water (HVAC) systems, to avoid any potential significant adverse air quality impacts.

Block 778, Lots 29, 30, 31 (Projected Development Site 1)
Any new residential and/or commercial development on the above-referenced properties must ensure that the heating, ventilating and air conditioning stack(s) are

located at least 28 feet for fuel oil No.4/2 from the lot lines facing W. 29th Street and 7th Avenue and 30 feet from lot line facing W. 29th Street or use natural gas as the type of fuel for space heating and hot water (HVAC) systems, to avoid any potential significant adverse air quality impacts.

Block 778, Lot 25, 27 (Projected Development Site 3)
Any new residential and/or commercial development on the above-referenced properties must ensure that the heating, ventilating and air conditioning stack(s) are located at least 31 feet for fuel oil No.4/2 from the lot line facing W. 29th Street or use natural gas as the type of fuel for space heating and hot water (HVAC) systems, to avoid any potential significant adverse air quality impacts.

Block 779, Lots 25, 26, 27, 28, 53, 55, 56 (Projected Development Site 5)
Any new residential and/or commercial development on the above-referenced properties must ensure that the heating, ventilating and air conditioning stack(s) are located at least 20 feet for fuel oil No.4/2 from the lot line facing 7th Avenue or use natural gas as the type of fuel for space heating and hot water (HVAC) systems, to avoid any potential significant adverse air quality impacts.

Block 779, Lot 31 (Projected Development Site 6)
Any new residential and/or commercial development on the above-referenced property must ensure that the heating, ventilating and air conditioning stack(s) are located at least 22 feet for fuel oil No.4/2 from the lot line facing 7th Avenue and 18 feet from the lot line facing W.30th Street or use natural gas as the type of fuel for space heating and hot water (HVAC) systems, to avoid any potential significant adverse air quality impacts.

Block 779, Lot 69 (Projected Development Site 7)
Any new residential and/or commercial development on the above-referenced property must ensure that the heating, ventilating and air conditioning stack(s) are located at least 22 feet for fuel oil No.4/2 from the lot line facing W. 29th Street, and 19 feet from lot line facing 8th Avenue, and 20 feet from lot line facing 7th Avenue or use natural gas as the type of fuel for space heating and hot water (HVAC) systems, to avoid any potential significant adverse air quality impacts.

Block 778, Lot 46 (Projected Development Site 8)
Any new residential and/or commercial development on the above-referenced property must use natural gas as the type of fuel for space heating and hot water (HVAC) systems, to avoid any potential significant adverse air quality impacts.

Block 779, Lot 52 (Projected Development Site 9)
Any new residential and/or commercial development on the above-referenced property must use natural gas as the type of fuel for space heating and hot water (HVAC) systems, to avoid any potential significant adverse air quality impacts

Potential Development Sites:
Block 778, Lot 47 (Potential Development Site A)
Any new residential and/or commercial development on the above-referenced property must ensure that the heating, ventilating and air conditioning stack(s) are located at least 13 feet for fuel oil No.4/2 from the lot line facing W. 28th Street and 11 feet from the lot line facing 8th Avenue or use natural gas as the type of fuel for space heating and hot water (HVAC) systems, to avoid any potential significant adverse air quality impacts.

Block 779, Lot 12 (Potential Development Site B)
Any new residential and/or commercial development on the above-referenced property must ensure that the heating, ventilating and air conditioning stack(s) are located at least 12 feet for fuel oil No.4/2 from the lot line facing 7th Avenue or use natural gas as the type of fuel for space heating and hot water (HVAC) systems, to avoid any potential significant adverse air quality impacts.

Block 778, Lot 34 (Potential Development Site D)
Any new residential and/or commercial development on the above-referenced property must ensure that the heating, ventilating and air conditioning stack(s) are located at least 30 feet for fuel oil No.4/2 from the lot line facing 7th Avenue or use natural gas as the type of fuel for space heating and hot water (HVAC) systems, to avoid any potential significant adverse air quality impacts.

The (E) designation requirements related to noise would apply to the following development sites:

Projected Development Sites:
Block 778, Lots 13, 16, 18, 66 (Proposed Development Site)
Block 778, Lots 29, 30, 31 (Projected Development Site 1)
Block 778, Lot 55 (Projected Development Site 2)
Block 778, Lot 25, 27 (Projected Development Site 3)
Block 779, Lots 7 and 8 (Projected Development Site 4)
Block 779, Lots 25, 26, 27, 28, 53, 55, 56 (Projected Development Site 5)
Block 779, Lot 31 (Projected Development Site 6)
Block 779, Lot 69 (Projected Development Site 7)

Block 778, Lot 46 (Projected Development Site 8)
Block 779, Lot 52 (Projected Development Site 9)
Potential Development Sites:
Block 778, Lot 47 (Potential Development Site A)
Block 779, Lot 12 (Potential Development Site B)
Block 779, Lot 62 (Potential Development Site C)
Block 778, Lot 34 (Potential Development Site D)

The (E) designation text related to noise is as follows:

Projected Development Sites:
Block 778, Lots 13, 16, 18, 66 (Proposed Development Site)
In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed window condition with a minimum of 28 dBA window/wall attenuation on the north, east and west façades and 31 dBA window/wall attenuation on the south façades in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning.

Block 778, Lots 29, 30, 31 (Projected Development Site 1)
In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed window condition with a minimum of 28 dBA window/wall attenuation on all façades in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning.

Block 778, Lot 55 (Projected Development Site 2)
In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed window condition with a minimum of 31 dBA window/wall attenuation on all façades in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning.

Block 778, Lot 25, 27 (Projected Development Site 3)
In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed window condition with a minimum of 28 dBA window/wall attenuation on all façades in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not

limited to, central air conditioning.

Block 779, Lots 7 and 8 (Projected Development Site 4)
In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed window condition with a minimum of 28 dBA window/wall attenuation on all façades in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning.

Block 779, Lots 25, 26, 27, 28, 53, 55, 56 (Projected Development Site 5)
In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed window condition with a minimum of 31 dBA window/wall attenuation on the south, east and west façades and 33 dBA window/wall attenuation on the north façade in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning.

Block 779, Lot 31 (Projected Development Site 6)
In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed window condition with a minimum of 31 dBA window/wall attenuation on all façades in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning.

Block 779, Lot 69 (Projected Development Site 7)
In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed window condition with a minimum of 31 dBA window/wall attenuation on all façades in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning.

Block 778, Lot 46 (Projected Development Site 8)
In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed window condition with a minimum of 31 dBA window/wall attenuation on all façades in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not

limited to, central air conditioning.

Block 779, Lot 52 (Projected Development Site 9)
In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed window condition with a minimum of 33 dBA window/wall attenuation on all façades in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning.

Potential Development Sites:
Block 778, Lot 47 (Potential Development Site A)
In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed window condition with a minimum of 31 dBA window/wall attenuation on all façades in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning.

Block 779, Lot 12 (Potential Development Site B)
In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed window condition with a minimum of 28 dBA window/wall attenuation on all façades in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning.

Block 779, Lot 62 (Potential Development Site C)
In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed window condition with a minimum of 31 dBA window/wall attenuation on all façades in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning.

Block 778, Lot 34 (Potential Development Site D)
In order to ensure an acceptable interior noise environment, future residential/commercial uses must provide a closed window condition with a minimum of 28 dBA window/wall attenuation on the south, east and west façades and 31 dBA window/wall attenuation on the north façade in order to maintain an interior noise level of 45 dBA. In order to maintain a closed-window condition, an alternate means of

ventilation must also be provided. Alternate means of ventilation includes, but is not limited to, central air conditioning.

The (E) designation requirements related to hazardous materials would apply to the following development sites:

Projected Development Sites:
Block 778, Lots 29, 30, 31 (Projected Development Site 1)
Block 778, Lot 55 (Projected Development Site 2)
Block 778, Lot 25, 27 (Projected Development Site 3)
Block 779, Lots 7 and 8 (Projected Development Site 4)
Block 779, Lots 25, 26, 27, 28, 53, 55, 56 (Projected Development Site 5)
Block 779, Lot 31 (Projected Development Site 6)
Block 779, Lot 69 (Projected Development Site 7)
Block 778, Lot 46 (Projected Development Site 8)
Block 779, Lot 52 (Projected Development Site 9)

Potential Development Sites:
Block 778, Lot 47 (Potential Development Site A)
Block 779, Lot 12 (Potential Development Site B)
Block 779, Lot 62 (Potential Development Site C)
Block 778, Lot 34 (Potential Development Site D)

The (E) designation text related to hazardous materials is as follows:

Task 1
The applicant submits to OER, for review and approval, a Phase 1 of the site along with a soil and groundwater testing protocol, including a description of methods and a site map with all sampling locations clearly and precisely represented.

If site sampling is necessary, no sampling should begin until written approval of a protocol is received from OER. The number and location of sample sites should be selected to adequately characterize the site, the specific source of suspected contamination (i.e., petroleum based contamination and non-petroleum based contamination), and the remainder of the site's condition. The characterization should be complete enough to determine what remediation strategy (if any) is necessary after review of sampling data. Guidelines and criteria for selecting sampling locations and collecting samples are provided by OER upon request.

Task 2
A written report with findings and a summary of the data must be submitted to OER after completion of the testing phase and laboratory analysis for review and approval. After

receiving such results, a determination is made by OER if the results indicate that remediation is necessary. If OER determines that no remediation is necessary, written notice shall be given by OER.

If remediation is indicated from the test results, a proposed remediation plan must be submitted to OER for review and approval. The applicant must complete such remediation as determined necessary by OER. The applicant should then provide proper documentation that the work has been satisfactorily completed.

An OER-approved construction-related health and safety plan would be implemented during evacuation and construction and activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil and/or groundwater. This plan would be submitted to OER for review and approval prior to implementation.

All demolition or rehabilitation would be conducted in accordance with applicable requirements for disturbance, handling and disposal of suspect lead-paint and asbestos-containing materials. For all projected and potential development sites where no E-designation is recommended, in addition to the requirements for lead-based paint and asbestos, requirements (including those of NYSDEC) should petroleum tanks and/or spills be identified and for off-site disposal of soil/fill would need to be followed.

Statement of No Significant Effect:

The Environmental Assessment and Review Division of the Department of City Planning, on behalf of the City Planning Commission, has completed its technical review of the Environmental Assessment Statement, dated April 21, 2011, prepared in connection with the ULURP Application (Nos. 100063ZMM, 100064ZSM, N110285ZRY). The City Planning Commission has determined that the proposed action will have no significant effect on the quality of the environment.

Supporting Statement:

The above determination is based on an environmental assessment which finds that:

1. 249 W. 28th Street Properties, LLC agrees via a restrictive declaration recorded against the Proposed Development Site (Block 778, Lots 13, 16, 18 and 66) on March 14, 2011 to prepare a hazardous materials sampling protocol, including a health and safety plan, which would be submitted to the New York City Department of Environmental Protection (DEP) for approval. The declaration establishes a covenant that runs with the land to test and identify any potential hazardous material impacts pursuant to the approved sampling protocol and, if any such impact is found, submit a hazardous materials remediation plan including a health and safety plan to DEP for approval, prior

to any ground disturbance (i.e., site grading, excavation, demolition, or building construction). If necessary, remediation measures would be undertaken pursuant to the remediation plan.

A Phase I Environmental Site Assessment (ESA) was prepared in January 2009 for the Proposed Development Site. The Phase I ESA was reviewed by DEP's Office of Environmental Planning and Assessment, and a restrictive declaration was recommended by DEP for the Proposed Development Site, due to the potential presence of hazardous materials on the site as a result of past and present onsite land uses. The declaration requires the preparation of a hazardous materials sampling protocol, including health and safety plan, for DEP's review and approval. The restrictive declaration is binding upon the property's successors and assigns. The declaration serves as a mechanism to assure the potential for hazardous material contamination that may exist in the sub-surface soils and groundwater on the Proposed Development Site would be characterized prior to any site disturbance (i.e., site grading, excavation, demolition, or building construction).The restrictive declaration was executed on March 2, 2011, submitted for recording on March 7, 2011, and recorded on March 14, 2011. Pursuant to a letter from DEP dated April 13, 2011 DEP is in receipt of a signed copy of a DEP-approved restrictive declaration with proof of recording for the site.

2. The (E) designation for air quality, noise and hazardous materials would ensure that the proposed actions would not result in significant adverse impacts.

3. No other significant effects on the environment which would require an Environmental Impact Statement are foreseeable.

This Negative Declaration has been prepared in accordance with Article 8 of the Environmental Conservation Law 6NYCRR part 617.

Should you have any questions pertaining to this Negative Declaration, you may contact Olga Abinader at (212) 720-3493.

Robert Dobruskin

Date: April 22, 2011

Robert Dobruskin, AICP, Director
Environmental Assessment & Review Division
Department of City Planning

Date: April 25, 2011

Amanda M. Burden, FAICP, Chair
City Planning Commission