FINAL DRAFT
APPROVED BY UDC
BOARD 2/92

EXHIBIT C

HISTORIC PRESERVATION GUIDELINES

A. PREAMBLE

A.1 Foreword

The theaters which line both sides of 42nd Street between Seventh and Eighth Avenues are important for the quality and variety of their historic architecture and for their role in the social history of American entertainment. It is the ultimate goal of the 42nd Street Project to revitalize the theaters by the introduction of lively and viable forms of new entertainment. Part of the process for realizing this goal is to balance the economic and operating constraints that any new use may present against the other goals of the Project.

The Historic Preservation Program described in Section B is designed to promote the preservation, restoration and reconstruction of the historically significant elements of each theater. The Program is intended to further the following objectives:

- the development of architectural proposals that are appropriate to and consistent with the historic architecture of each theater and that respects the role each has played in the history of American entertainment;

- the preservation of significant design and architectural features that are found within the theaters' principal spaces and historic facades, including the existing spatial relationships;

- preservation or restoration or proper protection of the significant architectural features.

A.2 Description of the Theaters

A.2.1 The Times Square Theater

The Times Square Theater, constructed in 1920, was designed by the architects DeRosa and Pereira. It was designed to share the 42nd Street facade with the Apollo Theater. Six colossal columns form the central element of the upper story of the neo-classical facade. The colonnade is flanked by wings

with large rounded Adam style windows. The ground floor was designed as a plinth for the colonnaded wings.

The interior of the Times Square Theater, originally designed for movies and vaudeville and subsequently used for legitimate theater and, most recently, movies again, is well preserved. The delicate decor is Adamesque throughout. Notable features include a flattened proscenium arch crowned by a cartouche and a flat ceiling arch supported by pilasters which also frame the boxes. The boxes are crowned by hemispherical canopies. The upper lobby is quite fine and consistent in decorative treatment with other interior spaces.

A.2.2 The Apollo Theater

The Apollo Theater, designed by DeRosa and Pereira, was built in 1920. Its 42nd Street facade is incorporated into that of the Times Square Theater (see above).

Like the Times Square, the Apollo interior, also originally designed for movies and legitimate theater, is Adamesque in style and is largely intact. It was most recently renovated in 1979. The proscenium arch, flat ceiling dome and ceiling arch are all notable. The side boxes, which are framed by arches on columns, form a dramatic Palladian motif.

A.2.3 The Lyric Theater

The Lyric Theater, designed by V. Hugo Koehler and built by the Shubert Organization between 1902 and 1904, offers an unusually fine facade on 43rd Street designed in a free, ornate Beaux-Arts style which remains largely intact. Little of the original interior remains.

A.2.4 The Selwyn Theater

The Selwyn Theater was designed by George Keister, and built by the Selwyn family between 1917 and 1919 for legitimate theater. It was converted to movie use in 1933. The Beaux-Arts style 42nd Street facade remains largely intact and is an interesting example of a mixed use (office and theater) facade. The 43rd Street facade is much more modest than that of 42nd Street, but does include a fine entrance with garlands.

Although some architectural interior elements, notably the murals painted by Reginald Marsh, have been lost to time, the Adamesque decoration which remains is quite fine.

A.2.5 The Victory Theater

The Victory Theater was designed by J.B. McElfatrick in 1899 for Oscar Hammerstein. It functioned as a legitimate theater until 1931, when it was converted to burlesque. It became a movie house in 1942. It has an interesting Italian Renaissance style palazzo facade, although it has been altered over time. The loss of the attic story and turrets, as well as the removal of the original entrance with its exterior stair has lessened the facade's impact. However, important architectural elements remain. For instance, the central door (which has been converted to a window) on the piano nobile, the flanking windows with pedimented heads and the bull's-eye windows survive today, though in somewhat deteriorated condition.

The interior of the Victory is one of the finest in the area. It is the oldest surviving theater on 42nd Street and the only one typical of 19th century theater design. The interior was redesigned for David Belasco in 1902 in the First Empire style. The architecturally significant 1902 interior remains well preserved today. Among the more notable features of the theater are: the boxes, the three-wreath cornices above the boxes, the flat dome and its decorated drum, and the upper side wall panels.

A.2.6 The Liberty Theater

The Liberty Theater was designed in 1902-1905 by Herts and Tallant, the same architects who designed the New Amsterdam Theater. It functioned as a musical comedy theater, and later a movie house. The original distinguishing details of the 42nd Street facade of the Liberty Theater -- a three story single bay elevation with an attic arch and a good cornice crowned by a spread eagle -- have been destroyed at the upper level. The portions of the lower two floors of the facade that are visible appear to be largely intact. On the 41st Street facade, the high blind arcade and gallery attic above, both in fine brick work, form an unusually good rear Theater facade, and as such contribute to the theatrical character of the area.

The Liberty Theater interior was designed in the early French Renaissance style and contains some very fine and unusual features. Most notable are the grand proscenium entablature and the richly carved arches on the side walls over the boxes. The central dome is surrounded by rhomboid coffers and a unique painted asbestos curtain hangs on the stage.

B. HISTORIC PRESERVATION PROGRAM

As used in this Historic Preservation Program, the terms "Preservation", "Restoration", "Reconstruction" and "As Needed"

shall have the following meanings:

"Preservation" or "Preserve" means stabilizing a building or element of a building by preventing further change or deterioration. Preservation, since it takes the structure as found, does not relate to a specific period of time.

"Restoration" or "Restore" means putting a building or element of a building as nearly as is physically practicable into the form it held at the particular date or period in time when it acquired its significance. This often requires the removal of work which is not "of the period".

"Reconstruction" or "Reconstruct" means the recreation of a building or element of a building to its original design based on historical evidence (archaeological, architectural, photographic , etc.). Except as otherwise provided below, this applies to existing elements that (i) have missing ornamental sections, e.g. missing section of a cornice, or (ii) are a missing section of a repeated ornamental series, e.g. a missing flower in a repeated pattern. All features which are restored and/or reconstructed shall be maintained in that state in perpetuity.

"As Needed" will be based on three criteria: (i) the architectural significance of each element, (ii) the physical

condition of each element and, (iii) consistency of the proposed treatment with a high quality restoration effort.

The Historic Preservation Program, which sets forth the applicable requirements and recommendations for each Theater, consists of the applicable Theater Specific Requirements and Guidelines in Section B.1, and the General Requirements in Section B.2.

B.1 Theater Specific Requirements and Guidelines

B.1.1 The Times Square Theater

An inspection shall be made to ascertain the condition and stability of architectural and decorative features including but not limited to the column capitals, the urns on the parapet, the string courses and the bas-relief frieze on the screen wall behind the colonnade. They shall be Restored. If any of the aforementioned elements are missing, they shall be Reconstructed as needed. The entire facade shall be cleaned. The marquee and shop signage shall be removed, and the facade behind shall be Restored, and Reconstructed as needed.

The ground floor shall appear as a solid base for the facade. The ground floor except for the Theater entrances may

be developed as retail space. The location and dimensions of openings in the base shall be in conformance with the building's original design. Any infill elements shall be removed and the base of the building shall be Reconstructed as needed and storefronts not in conformance with the original design shall be removed and the area behind shall be Reconstructed as needed. Best efforts shall be made to Reconstruct the iron grilles between the columns.

If fenestration of the screen wall in the 42nd Street facade is proposed, it shall include the following provisions: (a) retention of the string course and frieze above; (b) separation of individual windows with adequate molded surrounds; and (c) maintenance of the design relationship of window heights with the windows in the bays to either side.

In the interior of the Theater, the following shall be Preserved and Restored, and Reconstructed as needed: the boxes and their canopies, the proscenium arch, the ceiling arch and the ceiling dome. No partitions, subdivisions, or alterations which would interfere with the Preservation of these elements will be permitted. A more sensitive incorporation of the air handling equipment (specifically the ducts at the center of the dome and over the entrances to the boxes) is required.

In the auditorium, best efforts shall be made to Preserve, Restore, or Reconstruct the plaster ceiling and wall moldings; smaller domes and surrounding plasterwork beneath the balcony; the ornamental plasterwork on the balcony apron; the arch at concession stand; and original seating standards in orchestra and balcony.

In the lobby, best efforts shall be made to Preserve, Restore and Reconstruct the stone and false stone door moldings and surrounds; the pilasters, friezes, and ceiling ornament; and the gothic ceiling moldings, wainscot, and fireplace in former lower level lounge.

In the mezzanine, best efforts shall be made to Preserve, Restore or Reconstruct the ceiling vault and ornament and the frieze, pilasters, and wall moldings and the fireplace.

B.1.2 The Apollo Theater

For exterior requirements and guidelines, see the Times Square Theater above.

On the interior of the Theater, the original ornamental features of the auditorium (not including backstage, dressing room, cellar space, toilets or any other areas not used by the

public) shall be Preserved, and Restored and/or Reconstructed as needed, with special attention to the proscenium arch and the boxes in the auditorium. The chandeliers shall be removed, and a new architectural lighting scheme developed.

The original decorative elements in the 42nd Street lobby, including but not limited to, fluted pilasters and the plasterwork ceiling, shall be Preserved, and Restored as needed. If the Restoration work is needed, the later hung ceiling shall be removed.

B.1.3 The Lyric Theater

The 42nd Street facade shall be Preserved, Restored, and Reconstructed as needed. The existing marquee and cladding that have been added on to the facade shall be removed. Any facade Reconstruction shall develop a one-story entrance, maximum width of 10 feet and should recall elements of the original design. Best efforts shall be made to Reconstruct the cornice.

The entire decorative facade on 43rd Street shall be Preserved and Restored, and Reconstructed as needed. For purposes of this Theater's decorative facade, "Reconstruct" or "Reconstruction" shall not be limited only to missing elements of existing features or missing sections of a repeated series of

existing features, but shall include the entire facade. Particular attention shall be given to ensure stability of the balcony areas.

In the interior of the Lyric Theater, there are no requirements or guidelines.

B.1.4 The Selwyn Theater

The 42nd Street facade shall be Preserved, and Restored and Reconstructed as needed. Inspection shall be made of the terra-cotta elements and they shall be repaired where necessary. The second story windows shall be Restored. Recreation of the original sash configuration is strongly encouraged. Any cladding and storefront not in conformance with the original design shall be removed and the area behind shall be Preserved, and Reconstructed as needed.

The entire 43rd Street facade shall be Preserved.

In the interior, an inspection shall be made to ensure the stability of the interior decorative elements with special attention paid to: the proscenium arch, the flat dome with its moldings, the deep arches over the remaining side boxes, the S-scrolled modillions, the marble newell-post and balustrade in

the lobby. These elements shall be Preserved, and Restored and Reconstructed as needed.

In the auditorium, best efforts shall be made to Preserve, Restore or Reconstruct the plaster ceiling and wall moldings; domes and decorative plasterwork beneath balcony; decorative plasterwork at balcony apron; murals around and above the boxes and the proscenium (including an inspection to ascertain the presence of the original murals); marble grilles below stairs; decorated columns at orchestra level; decorative brackets and door surrounds.

In the lobby, best efforts shall be made to Preserve, Restore or Reconstruct the decorative pilasters, entablature, dome and frieze; and the marble table under the mirror.

B.1.5 The Victory Theater

On the 42nd Street exterior of the Theater, the entire facade shall be Preserved, and Restored and/or Reconstructed as needed. Elements such as the marquee, billboard and metal cladding at street level shall be removed. The grand central door, now a window, at the second floor level and other original elements that remain, such as the flanking windows with

pedimented heads, shall be retained and incorporated into the development of a street front sympathetic to the palazzo type facade. Best efforts shall be made to Reconstruct the original arcaded parapet and projecting cornice.

Plans for a new entrance to address existing circulation inadequacies will be evaluated in the context of the original style and composition of the facade.

On the interior, every element of the interior shall be Preserved, Restored and Reconstructed as needed. This does not include the existing lobby and concession stands, seats, backstage, dressing rooms, cellar space, toilets or any other area not used by the public. Special care shall be given to the putti at the edge of the drum of the flat dome, and the three-wreath cornices on the boxes.

Plans for a new lobby to address existing circulation inadequacies will be evaluated in the context of the original style as well as the lobby's relationship to the auditorium.

B.1.6 The Liberty Theater

The survival of the lower-story decorative details on the 42nd Street facade can not be verified and treatment of the

whole facade will depend on how much remains. If an inspection of the facade reveals the original flat arch motif flanked by headed stelae, these elements shall be Preserved, and Restored as needed, and a design shall be developed for the top, reconstructing the arch window crowned by spandrels and a cornice in keeping with the intent of the original design. If inspection reveals that the original flat arch motif flanked by headed stelae are not remaining, a proposal for the design of the lower portion shall be submitted to the Committee (as hereinafter defined) for its approval. This proposal shall be in keeping with the original design.

The 41st Street brick facade shall be Preserved and not altered by stucco, glass or paint.

In the interior, the grand proscenium, the flanking arches shall be inspected to ensure their structural viability. These elements shall be Preserved, Restored or Reconstructed as needed. The existing domed and paneled ceiling shall be Preserved, and Restored and Reconstructed as needed. The fire curtain shall be maintained on the stage where it forms part of the original design scheme, unless this conflicts with the use of the Theater, in which case the curtain shall be Preserved and either placed in another theater with a compatible use or removed to a place specified by the Committee (as hereinafter defined).

Best efforts shall be made to Preserve, and Restore as needed, the remaining elements in the lobby. The added-on materials on the lobby walls shall be removed to determine the extent to which the original features remain and their condition. If substantial portions of the original features are intact and are reasonably Restorable, best efforts shall be made to Restore these features and incorporate them into the decor of the lobby. Best efforts shall also be made to Preserve and Restore the existing boxes and Reconstruct the missing lower boxes.

B.2 General Requirements

The General Requirements described below shall apply to all Theaters, except where specifically noted:

1. The Committee (as hereinafter defined) shall approve all techniques and materials to be used to Preserve, Restore and/or Reconstruct the historic features described in Section B.1 (the "Historic Features").

2. In the event that a rake is altered in any of the Theaters, every effort shall be made to avoid permanent alteration.

3. All historic exterior and public areas of the interiors (except the Lyric) shall be cleaned in a manner that will not endanger the integrity of the surface of the Historic Features. No sandblasting or similar abrasive cleaning methods shall be permitted.

4. All architectural lighting and mechanical and safety systems, whether existing or proposed, shall be discreetly incorporated into the theater decor. Intrusive alterations made in the past to accommodate mechanical and other systems, or non-theatrical uses shall be removed.

5. All public areas (except the restrooms) shall be repainted with color schemes and finishes in keeping with the overall decor.

6. New seats, fabrics, curtains, etc. shall be compatible with the overall decor.

7. All existing marquees shall be removed and replaced with marquees that conform to the Lighting and Signage Program (Exhibit __). During the design process of a Theater's marquee, a review of the original marquee is strongly encouraged. Best efforts shall be made to incorporate original design elements into the new marquees.

C. SUBMISSIONS

C.1 Submission Requirements

Prior to commencing any demolition, alteration, construction, renovation or any other change to the exterior or interior of a theater, Tenant shall submit to the Committee (as defined herein) for approval or disapproval: an Inspection and Documentation Report, in accordance with Section C.2; a Preservation Plan, in accordance with Section C.3; and Final Plans and Specifications in accordance with Section C.4. The Committee shall consist of the Landlord, the New York City Economic Development Corporation ("EDC") representing the City of New York, and a reputable and experienced professional (who shall not be a Commissioner of the New York City Landmarks Preservation Commission) proposed by the Chair of the New York City Landmarks Preservation Commission subject to the approval of the Landlord and EDC.

Seven (7) copies of all submissions are required. All submissions shall be delivered by hand to the Landlord.

C.2 Inspection and Documentation Report

As promptly as possible after execution of the Lease, Tenant shall retain an architectural consultant who shall

thoroughly inspect and document each Theater's interior and exterior, using the most recent Historic American Building Survey photographic survey and documentation standards as published by the National Parks Department. This report shall include a structural analysis of all Historic Features described in Section B.1. The Committee shall be informed at least ten (10) days in advance of Tenant's inspection schedule and shall have the right to observe the inspection.

C.3 <u>The Preservation Plan</u>

Tenant shall submit written descriptions, plans, specifications and graphic materials prepared by the Architect in sufficient detail such that the Committee may determine compliance or non-compliance with the Historic Preservation Program (the "Preservation Plan"). The Preservation Plan shall include but not be limited to: (a) the Inspection and Documentation Report, unless such Report has been submitted and approved prior to the Preservation Plan; (b) a list of the Historic Features that are required to be Preserved, Restored or Reconstructed; (c) preliminary plans, specifications and other materials prepared by the Architect illustrating graphically the overall renovation plan with special attention to aspects relating to the Historic Preservation Program; (d) a description and test documentation or proposed techniques and materials to

be used in the Preservation, Restoration or Reconstruction of the Historic Features; (e) a description and test documentation with respect to safety and appropriateness of proposed techniques and materials to be used for cleaning of interior and exterior surfaces; (f) a description of all color schemes and finishes for exterior and interior surfaces and results of probes to determine the original color schemes; and (g) fabric samples and a description of new seats, curtains, etc. and other similar non-architectural interior decoration elements.

Tenant shall submit to Landlord the Preservation Plan so that the Committee may determine whether the Preservation Plan complies with the Historic Preservation Program. If the Committee determines that the Preservation Plan so complies, the Landlord shall notify Tenant. If the Committee determines that the Preservation Plan does not comply with the Historic Preservation Program, the Landlord shall so notify the Tenant, specifying in what respects the Preservation Plan does not comply. The Tenant shall revise the Preservation Plan to comply with Landlord's objections, and shall resubmit it to Landlord for review by the Committee for that purpose. No Preservation Plan shall be deemed not to comply with the Historic Preservation Program because it fails to comply with elements of the Program for which only best efforts are required.

The initial review of the Preservation Plan by the Committee shall be carried out within thirty (30) business days after the date of submission thereof by Tenant, and any subsequent review by the Committee of any revisions or receipt of additional information thereto shall be carried out within fifteen (15) business days of Tenant's submission of such review. If the Inspection and Documentation Report is submitted in advance of the Preservation Plan, the review for such submission shall be as described, except that the period for initial review shall be fifteen (15) days and for resubmissions or revisions, ten (10) days.

In the event that the Preservation Plan includes any proposed modifications to the Historic Preservation Program, Tenant shall submit to the Landlord in addition to the Preservation Plan, a detailed description of the proposed changes and the reasons why Tenant believes such changes are necessary. The Committee may modify the Historic Preservation Program, provided that the Committee shall consult with the LPC before acting to approve or disapprove. The Committee's review of proposed modifications shall be carried out within thirty (30) business days of receipt thereof, unless the proposed modifications substantially alter the Historic Preservation Program, in which event, so long as Landlord notifies Tenant within such thirty (30) day period that the Committee so regards the proposed modification, the Committee's review shall be

carried out within forty-five (45) business days of receipt thereof. In the event that a request for modifications is submitted for more than one theater simultaneously, these time periods shall be for each theater.

In the case of resubmissions or revisions, the Committee may not disapprove any matter previously submitted and approved except to the extent that such resubmission or revision affects any matter so approved or deemed approved.

It is recognized that the Landlord intends to consult with the New York State Historic Preservation Officer in connection with the review of the Preservation Plan.

C.4 Final Plans and Specifications

The final plans and specifications shall include the completed final drawings, plans and specifications prepared by the Architect as well as written descriptions setting forth in sufficient detail all the requirements for the construction or restoration of any aspects of the Theater relating to the approved Preservation Plan (the "Final Plans and Specifications").

Prior to Tenant's submission of final plans and specifications to the New York City Buildings Department, Tenant shall submit to Landlord the Final Plans and Specifications so that the Committee may determine whether they conform to the Preservation Plan as approved pursuant to Section C.3. If the Committee determines that the Final Plans and Specifications so conform, Landlord shall notify Tenant. If the Committee determines that the Final Plans and Specifications do not so conform, the Landlord shall so notify the Tenant, specifying in what respects the Final Plans and Specifications do not so conform. The Tenant shall revise the Final Plans and Specifications to so conform and shall resubmit the Final Plans and Specifications to Landlord for review for that purpose.

The initial review by the Committee shall be carried out within twenty (20) business days after the date of submission thereof by Tenant, and any subsequent review by the Committee of any revisions or receipt of additional information thereto shall be carried out within twenty (20) business days of Tenant's submission of such review.

In the case of resubmissions or revisions, the Committee may not disapprove any matter previously submitted and approved except to the extent that such resubmission or revision affects any matter so approved or deemed approved.

Under no circumstances will the Committee's required review period be waived unless the Committee agrees to do so. If Tenant demonstrates to the Committee's satisfaction the need to compress the review process, the Committee will consider shortening the review periods required. In this instance, review periods shall be established that are mutually agreeable to the Committee and Tenant.

With respect to all submissions under this Section C, Landlord's failure to notify Tenant of its determination within such applicable time period shall be deemed an approval of the proposed submission.

Tenant shall comply with the Preservation Plan in performing the work. Any changes to any exterior or interior features made subsequent to the completion of the Preservation, Restoration or Reconstruction work shall be submitted to the Committee for prior review and approval.

D. PROTECTION OF HISTORIC THEATERS DURING CONSTRUCTION

D.1 Protection Plan for Construction Work Within The Theaters

Tenant shall establish and carry out a construction procedure (the "Construction Plan") which will protect the structural integrity and individual building elements during all

times of demolition, excavation, construction, renovation and reconstruction ("the Construction Work"). The Construction Plan shall be based on an investigation by Tenant and Tenant's Engineer (hereinafter defined) of: (1) the structural supports and foundation systems, (2) structural condition of all areas of construction and (3) such other information as is necessary to determine how to protect the Theater during the Construction Work. The Construction Plan shall be prepared for each Theater and shall be accompanied by a photographic survey taken before any work on the Theater, including demolition, is commenced.

Tenant shall develop a proposal for the Construction Plan in consultation with a foundation and/or structural engineer approved by Landlord, which approval shall be granted if the engineer is experienced and reputable in his or her field ("Tenant's Engineer"). The proposed Construction Plan shall include, but not be limited to, a description of the following measures:

(1) a determination by Tenant's Engineer of whether Theaters located across the street from the Theater or adjacent to the Theater will be adversely affected by Construction Work, in which event such Theater shall be subject to the requirements in Section (F), in addition to the requirements outlined in this section;

(2) an assessment and inventory of vibration sensitive elements in the Theater and a description of measures to be taken to secure and protect those elements, including, but not limited to, establishing maximum particle velocity and frequency levels, location of tell tales and seismic monitoring devices, and schedule and methodology of seismic recordings and reporting;

(3) a site logistics plan, including, but not limited to, a description of the location of the following: site access and ramps to be used by dump trucks, unloading, hoisting and storage of materials and equipment, and, if applicable, location and reach of cranes and hoists. The Construction Plan shall also describe measures to be taken to avoid any damage to the Theater including, but not limited to, placements of guard rails, supervisory personnel, construction sheds, catchalls and other devices for the protection of the Required Historic Features from falling debris;

(4) use of hand tools for any demolition work;

(5) schedule of walk-throughs with Landlord and Landlord's Engineer of the Theaters during and at the conclusion of each construction phase (i.e., the demolition phase, and the renovation phase) and rephotographing the Theater at the completion of each construction phase;

(6) construction schedule indicating the order in which the Historic Features shall be either Preserved, Restored or Reconstructed as well as the overall schedule for the start and completion of all other work.

The Construction Plan must be submitted in writing to the Landlord and to its engineering firm, which is experienced and reputable in its field ("the Landlord's Engineer"). The timing requirements for approval by the Landlord and the Landlord's Engineer of the Construction Plan shall be the same as the requirements for approval of the Preservation Plan. In no event shall Tenant commence any Construction Work upon the Theater until the Construction Plan has been approved by the Landlord and the Landlord's Engineer, which approval shall be granted if the Construction Plan will protect the structural integrity and individual building elements. Any proposed modifications to an approved Construction Plan shall be submitted in writing to the

Landlord and Landlord's Engineer, and their review of proposed modifications to an approved Construction Plan shall be carried out within thirty (30) days of receipt thereof, unless the proposed modification substantially alters the previously approved Construction Plan, in which event, so long as Landlord notifies Tenant within such thirty (30) day period that the Landlord and the Landlord's Engineer so regards the proposed modification, the Landlord and the Landlord's Engineer's review shall be carried out within forty-five (45) days of receipt thereof. In the event that modified Construction Plans are submitted for more than one Theater simultaneously, these time periods shall be for each theater. Under no circumstances will the Landlord's required review periods be waived unless the Landlord agrees to do so. Landlord's failure to notify Tenant of its determination within such applicable time period shall be deemed an approval of the proposed submission or modification.

During any demolition and construction, and until the work in each Theater is substantially completed (as defined in the Lease), Tenant shall submit reports, prepared in consultation with Tenant's Engineer, reflecting the status of the construction and conformity with the Construction Plan to the Landlord and the Landlord's Engineer. Such reports shall be submitted twice monthly. Landlord's Engineer shall have the right to perform periodic site inspections and to consult with Tenant's Engineer, only after notifying Tenant, concerning the

results of such inspections. If any damage to the Theater or the Historic Features contained therein is found, Landlord's Engineer shall consult with Tenant's Engineer, after notifying Tenant, and the Landlord and Tenant shall mutually agree as to any remedial work to be performed to repair the damage or to stabilize a building element. If any seismic reading and/or frequency level exceed the levels referred to in the Construction Plan, Tenant and Tenant's Engineer shall promptly notify Landlord and Landlord's Engineer and all Construction Work shall immediately be halted. Tenant's Engineer shall determine the damage and determine if repair or stabilization or other remedial work to any element of the Theater is required. Tenant's Engineer shall also determine appropriate adjustments to the construction activities to bring seismic readings and/or frequency levels within the limits set forth in the Construction Plan. Tenant and Tenant's Engineer shall submit their determinations (the "Remediation Plan") to the Landlord and the Landlord's Engineer for approval, which approval shall be granted or denied within five (5) days after receipt thereof. If the Landlord and the Landlord's Engineer rejects the Plan, they shall state their reasons therefor and thereafter Tenant and Tenant's Engineer and Landlord and Landlord's Engineer shall work together as expeditiously as possible to prepare a mutually acceptable Remediation Plan. No construction work that could cause damage shall proceed until the Remediation Plan is approved. The Remediation Plan shall be approved if it protects

the structural integrity and Historic Features of the Theater. The Tenant shall be responsible for the Restoration and Reconstruction of any damage and the cost of such work, regardless of whether the damage involved a work stoppage.

D.2 Protection Plan for Construction Work on Building Adjacent to the Theaters

Tenant shall establish and carry out a Construction Plan which will protect the structural integrity and individual building elements of the Adjacent Historical Structures during all times of demolition, excavation and construction. The Construction Plan shall be based on an investigation by Tenant of: (1) the structural supports and foundation systems of Adjacent Historical Structures, (2) all subsurface data concerning rock, earth or water levels for areas of construction adjacent to such Adjacent Historical Structures. The Construction Plan shall be accompanied by a photographic survey of the Adjacent Historical Structures taken before any work on the Site, including demolition, is commenced. Landlord shall diligently endeavor to provide Tenant access to Adjacent Historical Structures both as soon as possible and prior to and during periods of demolition, excavation and construction. Tenant's Engineer shall develop a proposal for the Construction Plan, which shall include, but not be limited to, a description of the following measures:

(1) a determination by Tenant's Engineer of whether Theaters located across the street from the building or next door to the building will be adversely affected by Construction Work, in which event such Theaters shall be deemed Adjacent Historical Structures for purposes of this Section (F);

(2) an assessment and inventory of vibration sensitive elements in Adjacent Historical Structures and a description of measures to be taken to secure and protect those elements, including, but not limited to, controlled test blasting, establishing maximum particle velocity and frequency levels, location of tell tales and seismic monitoring devices, and schedule and methodology of seismic recordings and reporting;

(3) a site logistics plan, including, but not limited to, a description of the location of the following: site access and ramps to be used by dump trucks and excavation equipment, unloading, hoisting and storage of materials and equipment, and location and reach of cranes and hoists. The plan shall also describe

measures to be taken to avoid any damage to the Adjacent Historical Structures including, but not limited to, placements of bollards, guard rails, curbs, supervisory personnel, construction sheds, catchalls and other devices for the protection of the roof and walls of the Adjacent Historical Structure from falling debris, and protection from and isolation of sources of dust;

(4) a description of measures for protecting the Historic Features of Adjacent Historical Structures;

(5) use of hand tools for any demolition work which is contiguous to the wall of an Adjacent Historical Structure;

(6) protection and repair of any walls and foundations of Adjacent Historical Structures during demolition, excavation and construction, including, but not limited to, tie backs, bracing and underpinning of party walls and foundations, temporary supports of sidewalks and grade areas adjacent to Adjacent Historical Structures, and waterproofing and moisture protection of exposed party walls;

(7) test borings;

(8) channel drilling or equivalent protective technique and;

(9) schedule of walk-throughs with Landlord's Engineer of Adjacent Historical Structures during and at the conclusion of each construction phase (i.e., the demolition phase, the foundation and excavation phase, and the above-grade construction phase) and rephotographing the Adjacent Historical Structures at the completion of each Construction Phase.

If Tenant so desires, the Construction Plan may be submitted in three phases: the demolition phase plan, the foundation and excavation phase plan, and the above-grade construction phase plan. The timing requirements for approval by Landlord of the Construction Plan, whether or not it is submitted in three phases, shall be the same as the requirements for approval of the Preservation Plan. In no event shall Tenant commence any Construction Work upon the Site within any of the aforementioned phases until the Construction Plan for that phase has been approved by Landlord, which approval shall be granted

if the Construction Plan will protect the structural integrity and individual building elements of the Adjacent Historical Structures during all times of demolition, excavation and construction. Any proposed modifications to an approved Construction Plan shall be submitted in writing to Landlord and Landlord's Engineer, and Landlord's review of proposed modifications to an approved Construction Plan shall be carried out within thirty (30) days of receipt thereof, unless the proposed modification substantially alters the previously approved Construction Plan, in which event, so long as Landlord notifies Tenant within such thirty (30) day period that Landlord so regards the proposed modification, Landlord's review shall be carried out within forty-five (45) days of receipt thereof. In the event that modified construction plans are submitted for more than one parcel simultaneously, these time periods shall be for each theater. Under no circumstances will Landlord's required review periods be waived unless Landlord agrees to do so. Landlord's failure to notify Tenant of its determination within such applicable time period shall be deemed an approval of the proposed submission or modification.

During any demolition, excavation or construction and until the New Building is completely enclosed or the Theater renovation is completed, Tenant shall submit reports, prepared in consultation with Tenant's Engineer, reflecting the status of the construction and conformity with construction procedures as

required by the Construction Plan to Landlord. Such reports shall be submitted twice monthly, except that during any period in which explosives are used and for so long as the foundation is being poured, such reports shall be submitted every week. Landlord's Engineer shall have the right to perform periodic site inspections and to consult with Tenant's Engineer after notifying Tenant concerning the results of such inspections. If any damage to an Adjacent Historical Structure is found, Landlord's Engineer shall consult with Tenant and Tenant's Engineer and the two mutually shall agree as to any remedial work to be performed to repair the damage or to stabilize a building element. If any seismic reading and/or frequency level exceeds the levels referred to in the preceding clause (2), Tenant and Tenant's Engineer shall promptly notify Landlord and Landlord's Engineer and all Construction Work shall immediately be halted. Tenant's Engineer shall determine the damage and determine if repair or stabilization or other remedial work to any element of an Adjacent Historical Structure is required. Tenant's Engineer shall also determine appropriate adjustments to the construction activities to bring seismic readings and/or frequency levels within the limits set forth in clause (2). Tenant and Tenant's Engineer shall submit its Remediation Plan to Landlord's Engineer for approval, which approval shall be granted or denied within five (5) days after receipt thereof. If Landlord's Engineer rejects the Remediation Plan, Landlord's Engineer shall state its reasons therefor and thereafter Tenant and Tenant's Engineer and Landlord's Engineer shall work

together as expeditiously as possible to prepare a mutually acceptable Plan. No construction work that could cause damage shall proceed until the Plan is approved. The Plan shall be approved if it will protect the structural integrity and Historic Features of the Adjacent Historical Structures. The Tenant shall be responsible for the Restoration and Reconstruction of any damage to any Adjacent Historical Structure and the cost of such work, regardless of whether the damage involved a work stoppage.

E. MAINTENANCE PLAN

Tenant shall establish and carry out a maintenance plan which will ensure proper care and maintenance of the Historic Features ("the Maintenance Plan"). Tenant shall engage an architect with a background in historic preservation or engineer acceptable to the Landlord who shall conduct an annual inspection on the drainage system, roof, skylights and bulkheads and submit a detailed report on the condition of these items. The report shall identify any required repair work. An architect or engineer acceptable to the Landlord shall conduct an inspection once every three years to determine the condition of (i) features described herein, (ii) all exterior walls, (iii) mechanical systems and (iv) plumbing systems. A report shall be prepared describing the condition of the aforementioned

items and any work that is required to keep these items in a state of good repair. The Maintenance Plan shall be submitted with the Preservation Plan and will be subject to the same review process.

1228X/56-92

(2/13/92)

Times Square Theater CP 1382
& Interior 1387

Manhattan

(9)

LP Number 1382 & 1383

Date Heard

Proposed Landmark Times Square
215-23 West 42nd Street.

Site - Tax Map Block 1014 Lot 20

Owner Alfred R. Goldstein, Annbar Assoc % Elk Realty Inc., 685 Fifth Ave. NYC 10022

~~Representative~~ Lessee (of owner) Bernard B. Brandt, Brandt Theatres; 229 W. 42nd St NYC 10036

Community Board John Stricker, CB 5, Room C-54, 10 Rockefeller Plaza, NYC 10020

Department of Buildings
Borough Superintendent George Sakona, P.E, 20th floor Municipal Building; New York, NY 10007

Borough President Andrew Stein; Room 2050 Municipal Building; New York, NY. 10007

Council Member - at - large Henry J. Stern; City Council City Hall; New York, NY 10007

Council Member - at - large Edward Wallace, City Council City Hall; New York, N.Y. 10007

Congressman S. William Green, 110 East 45th Street, New York, N.Y. 10017

Council Member Carol Greitzer, 51 Chambers Street, New York, NY 10007

Senator Manfred Ohrenstein, 131 Waverly Place, New York, NY 10011

Assembly Member Richard L. Gottfried, 131 West 72nd St.
New York, New York 10023

Interested Party (ies)

Please attach "blurb" in final form and
forward to Marion Cleaver by _____.

LP- _____

Heard 6/14-6/15/82

ITEM NAME Times Square Theater

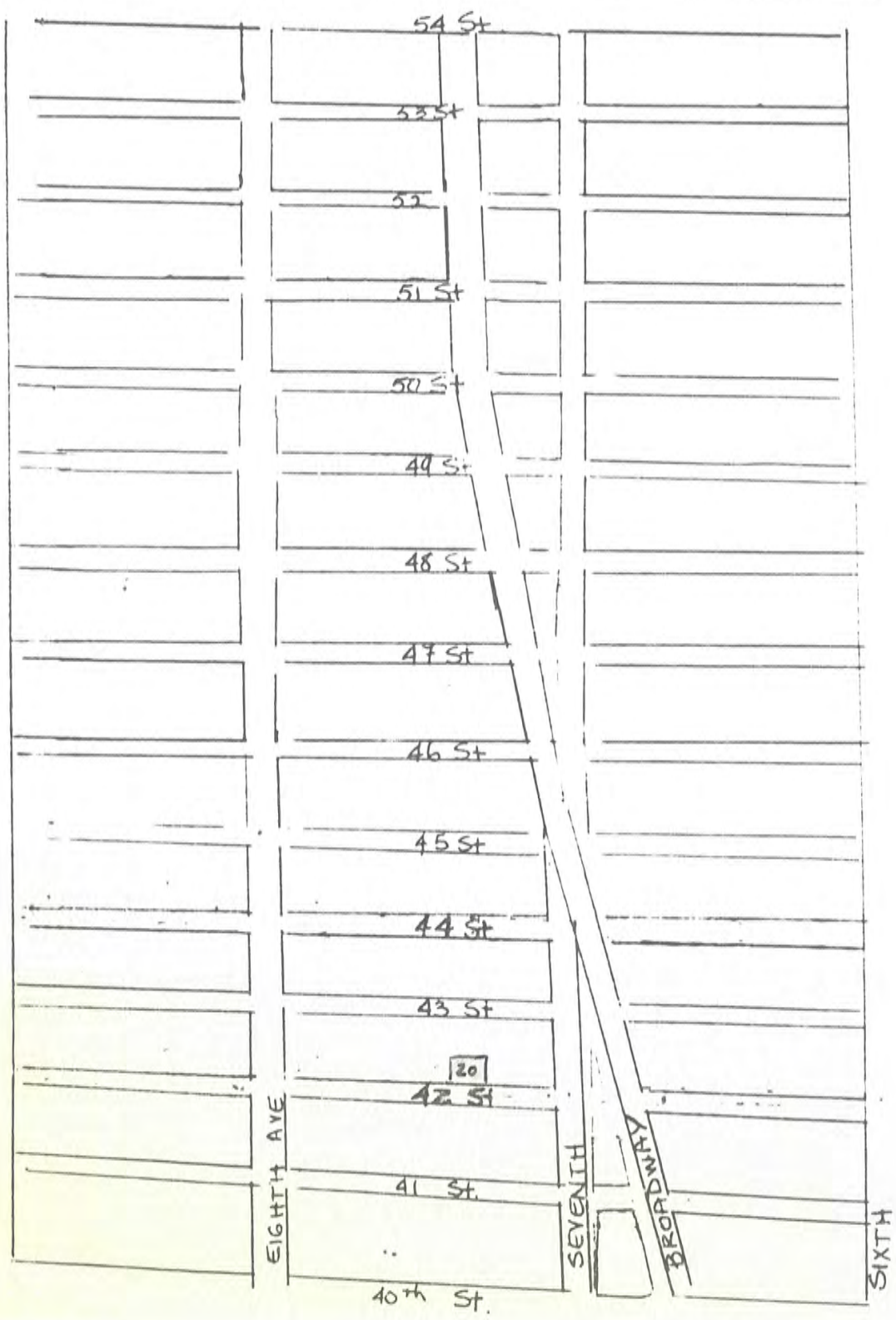
ADDRESS 215-223 West 42nd Street

BOROUGH Manhattan

OWNER Alfred E. Goldstein, Ambar Assoc.
c/o Elk Realty, 685 Fifth Ave. NYC 10022

Lessee: Marvin Levine, Pres, Brandt Theatres
229 West 42nd St; New York 10036.

TAX MAP BLOCK 1014, LOT 20



William C Shopsin, AIA

280 West 11 Street
New York NY 10014

Telephone
(212) 989-7009

Statement to the New York City Landmarks Preservation Commission - Public Hearing on Midtown Theaters: June 14 & 15, 1982

Re: Empire, Liberty Theaters
South Side, West 42d Street

Selwyn, New Apollo, Times Square,
Lyric, Victory Theaters
North Side, West 42d Street

The 42nd Street Theater Co. whom I represent today has the dubious distinction of owning seven of the forty-five midtown theaters proposed for designation. Even more selectively these seven are part of a core group of nine theaters grouped north and south of 42nd Street between Seventh and Eighth Avenues, included in a detailed study called the 42nd Street Development Project.

The studies by Cooper, Eckstut Associates for the 42nd Street Development Project June 1981, articulate a fascinating proposal to interweave the old and the new in the midst of the once prestigious theater row.

Clearly it is going to take more than nostalgia to resurrect these tired and shabby theater structures. Supplementing the planning studies, Adolf Placzek and Dennis McFadden's report, Recommendations for Historic Preservation in the Project Areas, (Parsons Brinkerhoff, May 1981) documents the exterior and interior of each of the theaters. Each has been meticulously described and significant details noted. The results have been tabulated into three categories. The Placzek report recommends designating only the exteriors of the Times Square-Apollo, the Empire, and the 43rd Street facade of the Lyric Theater. The combined facade of the Times Square and Apollo Theaters has been totally mutilated at the street level and retains virtually none of its original elements. Likewise the Empire "facade is in need of more than just a thorough cleaning to restore it to its full glamour," to quote Mr. Placzek. Of the three only the 43rd Street facade of the Lyric is fairly intact, but it is isolated in a monotonous street wall of theater exits on a clearly secondary thoroughfare.

Mr. Placzek seems determined to support Cooper-Eckstut 's planning proposals, and he valiantly attempts to justify the retention of many of the remaining theater facades while only seriously suggesting the restoration of one of the theater interiors, the Victory, the oldest and least commercially viable in the whole stock of Broadway's legitimate theaters. The net result is a sort of "Potemkin village" or "western false-front" flanking Forty-Second Street between the proposed new tower constructions at the corner intersections of Seventh and Eighth Avenues.

I believe that the Landmarks Preservation Commission is empowered to designate significant architecture and not stage sets. This probably explains why the preservation consultants extol the virtues of the blank brick walls on the rear stagehouses and alleyways of the theaters. One must seriously question the hyperbole of the preservation consultants, much of which exaggerates the merits of what has survived. Too often what the consultants remark "is well preserved" could better be described as "remains intact." Adolf Placzek is the librarian emeritus of Columbia University's Avery Architectural Library, a distinguished scholar and bibliophile. He is

not, however, a practicing architect. He seldom notes whether the missing decorative architectural elements he feels can be so easily restored are plaster, terra cotta, or stone. The technical and cost implications of these details are considerably more than academic distinctions.

Restoring what's left of the Victory Theater to "almost Venetian glamour," to quote Mr. Placzek, would cost a Doge's fortune. The APM (American Practice Management, Inc.) January 1981 report Assessing Market Feasibility of Ten Theaters on 42nd Street, notes that "for institutional use of this sort, the restoration grade renovation of the house, along with full stage equipment and systems (necessary because institutional companies never bring their own equipment as do Broadway shows), will require an investment of $3,022,000."

This prospect leaves the current owners considerably less enthusiastic and optimistic than the authors of the 42nd Street Development Project. The current entertainment may not meet everyone's sense of high culture or sophisticated entertainment, but it does pay taxes to the City. The proposed institutional or non-profit use would require perpetual subsidy and never produce any revenue. Let us pause to

remember the Harkness Ballet Theater launched with the same exalted purposes, backed by an indulgent angel, which did not last even a few seasons. It would be a tragedy to restore the Victory Theater out of existence!

Likewise to seriously consider the designation of the exterior of the Times-Square, Apollo, Lyric, and Empire theaters disembodied from an economically viable plan for the theaters they contain is a sham and an unrealistic burden to the property owners who are justly cynical about previously ambitious development schemes for improving 42nd Street, Times Square and the Broadway theater district.

Thus far gentrification may have reclaimed many of New York's run-down residential, commercial, and manufacturing districts generating the revenues to refurbish dilapidated older buildings. I don't believe that West 42nd Street is susceptible to the same formulae at present. I am concerned that facade designations at this juncture will exacerbate rather than accomplish the Landmarks Commission's stated preservation objectives.

Respectfully submitted,

William C. Shopsin, A.I.A.
Historic Preservation Consultant

OFFICE FOR METROPOLITAN HISTORY
Christopher Gray, *Director*

216 West 89th Street
New York, NY 10024
telephone 212-799-0520

6.14.1982

Hon. Kent Barwick, Chairman
Landmarks Preservation Commission
20 Vesey Street
New York City 10007

Dear Kent:

I have been retained by the owners of the Lyric, Victory, Times Square, Apollo, Liberty, Empire and Selwyn Theatres to prepare a report regarding the proposed Landmark designation of these properties; this report will be ready on or about July 5th. In advance of this report, please permit me to informally list those items for which, even at this early stage of my research, Landmark designation is clearly unwarranted:

Exterior*

Victory -even in its original state, this was not a successful work of architecture, and it has since been radically altered; contrary to many published statements, this was not the first theater on either side of 42nd Street, and was not, of course, the first Times Square theater

Liberty -a bare 1/3 of the facade of this theater remains, and in my opinion even the original design was inferior to other contemporary works

Selwyn -simply a conventional office building facade on top of a theater; if the Landmarks Preservation Commission were to consider an identical building removed from the theater district (whether a theater or not) the proposal would appear ludicrous

*includes only the principal facades; none of the rear or subsidiary elevations are architecturally distinguished

Interior

Lyric -substantially compromised, except for the ceiling detailing

Times Square, Apollo, Liberty, Empire, Selwyn -even in their original condition these were simply standard theater interiors, in no way especially significant, with mild Adam or Renaissance detailing

It is evident to me that, even in original condition, most of these items would not be eligible for Landmark designation.

Now that the Helen Hayes issue has been consigned to history (rather than to preservation), the proposed designations indicate that the Commission has, quite properly, chosen to review almost all the theater sites in the Times Square area. Whereas in most other cases this amounts to a prima facie finding of probable Landmark quality, it is apparent that in these hearings the tommission has merely calendared nearly any theater features which might conceivably be of Landmark quality, in order to comply with its mandate to identify significant structures.

That the proposed designations are not the usual type is underscored by the fact that most of the subject buildings are similiar, sometimes identical, to others in other parts of the city. It is, obviously, the proximity, the grouping of these buildings which tends to make them appear special, above and beyond their actual physical or historical characteristics. The National Register handles these related but discontinuous groups by means of its Thematic Group Nomination, with which I claim particular familiarity, since I filed the first such nomination for New York City.

Lacking this device, the Landmarks Commission has chosen to address such groups with the individual designation. The East 73rd Street stable designations (Lexington to Third Avenues) are an excellent and inspried example of this approach.

The several score proposed theater designations, if adopted, would be comparable in intent to the 73rd Street stable designations. However, several important issues mitigate against such a mass of theater designations, whereas the stable designations were quite appropriate; these issues also specifically pertain to most of the seven sites listed above. First, the condition of the seven properties ranges from fair to quite poor. Most have been radically altered in decoration, detailing, character and even plan. In contrast, the East 73rd Street properties were in comparatively mint condition.

Second, of the properties listed above, all are proposed for interior designation. It has clearly been Commission policy to require interior designations to meet a far higher test than exterior designations, and it has been only recently that the Commission has designated anything less than monumental, extremely old, or museum quality interiors. And yet in this group of proposals, if I

figure it correctly, more interior designations are proposed than the Commission has ever even considered up to this time. Clearly multiple interior designations here would be a radical departure from previous Commission policy, simply in terms of numbers.

Third, the original architectural character of the seven proposed designations was not particularly high. Most of the theater design seen in this group is relatively standard, filled with stock detailing and sometimes nearly identical to other theaters by the same architects.

Fourth, the prposal designations are run on a commercial basis, within a fundamentally different scheme than, say, the predominantly owner-occupied former carriage houses of East 73rd Street. The Commission has frequently acknowledged the special position of such properties, most recently with the Madison Avenue storefronts in the East Side Historic District.

Fifth and finally, the proposed designations are all special-use structures upon which Landmark designation falls with most severity, due to the more limited opportunities for re-use. The Commission has responded quite cautiously, and properly so, to the Landmark protection of such special-use structures, notably with the cases of All Angel's Church, the Helen Hayes Theater, and the old Airlines Building.

As stated, I feel that the designation of the seven structures as listed and identified above would be unwarranted, even based solely upon architectural and historical grounds. Furthermore, it appears clear to me that the designation of the structures, for the five reasons listed above, would also be inconsistent with the broader policies of the Landmarks Preservation Commission. In advance of a longer report on these items, I urge the Commission <u>not</u> to designate at least the exteriors of the Victory, Liberty and Selwyn, and the interiors of the Lyric, Times Square, Apollo, Liberty, Empire and Selwyn.

Yours very truly,

Christopher Gray

jfm

Times Square
P350 751 623

1382/83

LANDMARKS PRESERVATION COMMISSION

20 VESEY STREET, NEW YORK, NEW YORK 10007

566-7577

August 20, 1982

Alfred R. Goldstein
Annbar Association
c/o Elk Realty Inc.
685 Fifth Avenue
New York, New York 10022

Re: Please see enclosed list

Dear Mr. Goldstein:

The public hearing on the proposed designation of the above named properties was continued to Tuesday, October 19,1982 at 9:30 A.M. in the Board of Estimate Chambers, City Hall. You or your representative are invited to attend the proceedings and offer any additional testimony or written information.

Public notice of the hearing identifying the proposed landmarks and their sites will appear in the City Record of October 4, 1982, and on each day (other than Saturdays, Sundays and holidays) thereafter until and including October 19, 1982.

Please contact me at 566-7577 if you have any questions.

Sincerely,

Lenore Norman

Lenore Norman
Executive Director

LN:MC:hoh

Times Square
13 [illegible]

LANDMARKS PRESERVATION COMMISSION

20 VESEY STREET, NEW YORK, NEW YORK 10007

566-7577

[illegible], 1982

Bernard B. Brandt
Brandt Theatres
229 West 42nd Street
New York, New York 10036

Re: Les Attachés [illegible]

Dear Mr. Brandt:

The Landmarks Preservation Commission is the New York City Agency mandated to designate and preserve individual buildings, historic districts, interiors and scenic sites that have special historic, architectural, cultural or aesthetic significance.

In accordance with Section 207-12.0 of Chapter 8-A of the Administrative Code of the City of New York, as lessee of the above named property(ies), you are hereby notified that public hearings will be held on Monday, June 14, 1982 and Tuesday, June 15, 1982 beginning at 9:30 A.M. in the Lamb's Theatre in the Lamb's Manhattan Church of the Nazarene located at 130 West 44th Street, Manhattan, with respect to the proposed designation of your property(ies). You or your representative are invited to attend the public hearing and present any information or testimony relating to the proposed designation(s). Public hearings are intended to provide a forum for concerned interests such as owners of potential landmarks, affected community groups, and members of the general public, to voice their opinions concerning proposed designations. The vote to designate does not usually occur on the same day as the public hearing. We hope you will participate in these proceedings.

Public notice of the hearings identifying the proposed landmark(s) and its/their site(s) will appear in the City Record of May 28, 1982 and on each day (other than Saturdays, Sundays and holidays) thereafter until and including June 15, 1982.

Please contact the Commission at 566-7577 by June 1, 1982 to arrange for speaking time for yourself or your representative.

Sincerely,

Lenore Norman

Lenore Norman
Executive Director

LN:MC:hoh

Victory Theater and interior
207-11 West 42nd Street,
Manhattan
Tax Map Block 1014, Lot 25

Times Square Theater and interior
215-23 West 42nd Street
Manhattan
Tax Map Block 1014, Lot 20

Liberty Theater and interior
234 West 42nd Street
Manhattan
Tax Map Block 1013, Lot 49

New Apollo Theater and interior
228-38 West 43rd Street a/k/a
215-23 West 42nd Street
Manhattan
Tax Map Block 1014, Lot 20

Lyric Theater and interior
213 West 42nd Street a/k/a
214-26 West 43rd Street
Manhattan
Tax Map Block 1014, Lot 39

Selwyn Theater and interior
229-31 West 42nd Street
Manhattan
Tax Map Block 1014, Lot 17

Empire Theater and interior
236-42 West 42nd Street
Manhattan
Tax Map Block 1013, Lot 50

Times Square Theater & interior — LP 1382, 1383

See LP 1331/2 or 1344/5 for a copy of Mr Shapsin's report on the Brandt Theater

Hearings closed 10/19/82

Record open for 30 days.

CALENDAR

of the

LANDMARKS PRESERVATION COMMISSION

of

The City of New York

OCTOBER 19, 1982

Meeting at 9:30 A.M.

in the

BOARD OF ESTIMATE CHAMBERS

at

CITY HALL

Edward I. Koch, *Mayor*

Volume 13 Number 8