CITY PLANNING COMMISSION

February 4, 2015/Calendar No. 10 C 130066 ZSM

IN THE MATTER OF an application submitted by Goose Mountain NYC, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use regulations of Section 42-00 to allow Use Group 2 uses (residential use) on portions of the ground floor, the 2nd – 5th floors and the proposed penthouse of an existing 5-story building, on property located at 498 Broome Street (Block 487, Lot 6), in an M1-5A District, within the SoHo Cast-Iron Historic District, Borough of Manhattan, Community District 2.

The application for the special permit was filed by Goose Mountain NYC, LLC on September 5, 2012, for a special permit pursuant to Section 74-711 of the Zoning Resolution to develop residential use at 498 Broome Street. The project site is located in SoHo, within Manhattan Community District 2.

BACKGROUND

The applicant is seeking approval of a City Planning Commission special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use regulations of M1-5A districts to allow Use Group 2 residential uses on portions of the ground floor, the 2nd – 5th floors and the proposed penthouse of an existing 5-story building located at 498 Broome Street (Block 487, Lot 6), within the SoHo Cast-Iron Historic District. The application includes a report from the Landmarks Preservation Commission stating that a continuing maintenance program has been established that will result in the preservation of 498 Broome Street and that the proposed use modification contributes to a preservation purpose.

498 Broome Street is located on the north side of Broome Street between West Broadway and Wooster Street. It is an existing five-story building with a recently constructed 6th floor penthouse. The building has 20 feet of frontage on Broome Street and has a lot depth of 75 feet. The site also has 1,500 square feet of lot area. Built in 1885, as described in the LPC Certificate of Appropriateness, the subject building has the style, scale, age and materials of the buildings that contribute to the special architectural and historic character of the SoHo Cast Iron Historic District.

The building has been vacant for approximately three years. There is no Certificate of Occupancy for this building. The cellar and first floor were previously occupied by Use Group 6 retail uses; the upper floors were used as an artist studio by the former owner but were not officially listed as a Joint Living Work Quarters for Artist (JLWQA) use.

The project site is within a M1-5A zoning district, which permits light industrial and commercial uses as-of-right up to 5.0 FAR and community facility uses up to 6.5 FAR. In M1-5A districts, special use regulations apply that restrict the location, size and types of commercial and manufacturing uses, and allow Joint Living Work Quarters for Artists (JLWQA) units under specified circumstances. Except for certain exemptions, JLWQA units must be occupied and used by certified artists and their families. Residential uses (Use Group 2) are not permitted as-of-right. In M1-5A zoning districts, Use Group 6 retail uses are permitted in buildings occupying less than 3,600 square feet of lot area; the zoning lot has 1,500 square feet of lot area. Regarding bulk, in M1-5A zoning districts, the street wall may rise 85 feet or six stories, whichever is less, above which the building envelope is controlled by a sky exposure plane.

The requested action would allow residential use (Use Group 2) on the second through sixth floors. With penthouse, the building is built to 4.96 FAR. The building would have four residential units, with one unit on each of the second through fourth floors and a duplex unit on the fifth and sixth floors. The penthouse is set back 33 feet from the street line (to create a roof-top terrace for the duplex unit) and would extend approximately 35 feet in depth. The building's ground and cellar floors would be used for retail use (Use Group 6). There would be no JLWQA units in the building. The proposed residential and retail uses would be accessible by separate ground floor building entrances on Broome Street. Aside from the requested action, the proposed project complies in all other respects with the Zoning Resolution, including maximum height, required setbacks and compliance with the sky exposure plane.

Broome Street is developed with loft-style buildings with ground floor retail space and JLWQA and residential units on the upper floors. The surrounding area is characterized by five- to twelve-story loft-style former industrial buildings that have been converted to a mix of uses.

Most of the buildings in the area contain ground floor retail uses with residential, JLWQA, or office uses above.

The special permit requires that a finding be met related to the proposed use modifications having a minimal adverse effect on conforming uses within the building and in the surrounding area.

ENVIRONMENTAL REVIEW

This application (C 130066 ZSM) 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 13DCP024M. The lead is the City Planning Commission.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on September 29, 2014.

UNIFORM LAND USE REVIEW

This application (C 130066 ZSM) was certified as complete by the Department of City Planning on September 29, 2014, and was duly referred to Community Board 2 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

Community Board Public Hearing

Community Board 2 held a public hearing on this application on November 20, 2014, and on that date, by a vote of 49 in favor, 0 opposed with 0 abstentions, adopted a resolution recommending conditional approval of the application with the following comments:

1. Recommends APPROVAL of the use modification to allow Use Group 2 but only if appropriate additional conditions are prescribed to compensate for the loss of JLWQA units;
2. Recommends that the proposal be modified to retain at least one JLWQA unit.

Borough President Recommendation

On December 22, 2014, the Borough President recommended conditional approval of the subject application with the following comments:

1. Maintaining a JLWQA unit in the building or providing some form of studio, work or show space for artists in the building;
2. Demonstrating that all necessary building permits were appropriately applied for and obtained;
3. Clarifying the requirements of the LPC's Certificate of Appropriateness regarding the exterior materials on the penthouse and making any necessary changes; and
4. Reviewing the application with CPC to ensure its accuracy.

City Planning Commission Public Hearing

On December 17, 2014, (Cal. No. 7), the City Planning Commission scheduled January 7, 2015, for a public hearing on this application (C 130066 ZSM). The hearing was duly held on January 7, 2015 (Cal. No. 20). There were two speakers in favor of the application and none in opposition.

The attorney for the project described the proposed build program and stated that it met the requisite findings. In response to questions from the Commission, the attorney commented that the subject property has been vacant for over three years; that the former owner was not a certified artist and that the building never had any JLQWA units. In response to concerns raised by the Borough President regarding the penthouse, the applicant's attorney stated that all floor plans were filed with the Buildings Department (DOB) and building permits were issued for the proposed conversion, including plans/permits for the 6th floor penthouse. The proposed

conversion also received a Certificate of Appropriateness from the Landmarks Preservation Commission. He further stated that a set of DOB-submitted plans would be sent to City Planning staff.

A representative of the Borough President reiterated the Borough President's conditional approval of the application and underscored the need for the applicant to include one (1) JLQWA unit or artist studio work or show space in the proposed build program.

There were no other speakers and the hearing was closed

CONSIDERATION

The Commission believes that the grant of this special permit is appropriate.

The applicant seeks the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to develop residential use at 498 Broome Street. The requested action would facilitate the conversion of the 2nd – 6th floors of the subject building to residential use (Use Group 2). The cellar and ground floor would contain Use Group 6 retail space.

The Commission notes that the subject building has been vacant for approximately three years and has no Certificate of Occupancy. The cellar and first floor were previously occupied by Use Group 6 retail uses; the upper floors were used as an artist studio by the former owner but were not officially listed as a Joint Living Work Quarters for Artist (JLWQA) use. On the building's upper floors, the proposed conversion would develop four (4) residential units. Since the building is vacant, the proposed conversion would not displace any active commercial use or occupied JLWQA units.

The Commission believes that this application is consistent with prior approvals of Section 74-711 special permits to allow the conversion to Use Group 2 residential uses in SoHo (including most recently, the application for 102 Greene Street (C 140353 ZSM, approved by the

Commission on January 21, 2015). These approvals reflect the Commission's acknowledgement of changing neighborhood conditions. Broome Street is developed with loft-style buildings with ground floor retail space and JLWQA and residential units on the upper floors. The surrounding area is characterized by five- to twelve-story loft-style former industrial buildings that have been converted to a mix of uses. Most of the buildings in the area contain ground floor retail uses with residential, JLWQA, or office uses above.

However, the Commission cautions that its approval of such applications, which have each been considered on a case by case basis, should not be viewed as a signal of an abandonment of the current zoning framework. This special permit mechanism cannot be a vehicle by which live-work spaces that contribute to the rich mixed-use character of Soho are irrevocably converted to residential use. The Commission believes that it is essential for property owners to develop their spaces to conforming uses to reinforce the mix of uses that satisfies the provisions of the zoning and historic conditions of the neighborhood.

The Commission acknowledges the Community Board and Borough President's request to restrict occupancy in a portion of the subject building to provide a JLWQA unit or artist's studio space. The Commission understands that zoning on the subject site permits a range of uses from JLWQA occupancy to office or manufacturing use. As such, the Commission does not believe it appropriate to restrict use within the building to a subset of allowable uses and furthermore believes it not feasible to prescribe occupancy by certified artists, as the definition of JLWQA requires.

In response to concerns raised by the Borough President regarding the 6th floor penthouse and proposed building floor area, the applicant has demonstrated that the proposed conversion on floors 2- 5, the 6th floor penthouse and ground floor/cellar retail space were approved by the Department of Buildings on April 28, 2014 (DOB Job No. 121059861) and that the proposed floor area and FAR are below the maximum permitted floor area and FAR for this site.

The Commission is in receipt of a report from the Landmarks Preservation Commission stating that a continuing maintenance program has been established that will result in the preservation of 498 Broome Street and that the proposed conversion to residential use contributes to a preservation purpose. Furthermore, the Commission believes that the proposed use modification would have a minimal adverse effect on conforming uses within the building and in the surrounding area.

The Commission believes that the zoning in the M1-5A and M1-B districts of Soho and Noho merits additional attention. The points raised by the Community Board and Borough President in their resolution for this application, as well as for similar applications reviewed by the Commission, speak to the complexity of issues in Soho, including those of affordability, the evolving nature of the community, and the importance in recognizing the historic conditions that have resulted in today's vibrant, mixed-use neighborhood. Further, the Commission recognizes that the analysis required to shed light on the many questions raised is formidable and brings forth concerns regarding the method of accurately identifying existing JLWQA tenants, privacy of existing residents and planning resources. The Commission supports ongoing staff efforts to study these issues in concert with partner agencies and the local community, as it examines proposed future conversions and development.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-711 (Landmark preservation in all districts) of the Zoning Resolution:

(1) such bulk modifications shall have minimal adverse effects on the structures or open space in the vicinity in terms of scale, location and access to light and air.

(2) such use modifications shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.

RESOLUTION

RESOLVED, that the City Planning Commission finds that the actions described herein will have no significant impact on the environment; and be it further

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by Goose Mountain NYC, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use regulations of Section 42-00 to allow Use Group 2 uses (residential use) on portions of the ground floor, the 2nd – 5th floors and the proposed penthouse of an existing 5-story building, on property located at 498 Broome Street (Block 487, Lot 6), in an M1-5A District, within the SoHo Cast-Iron Historic District, Borough of Manhattan, Community District 2, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 130066 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 Umberto Squarcia Designs, Inc., filed with this application and incorporated in this resolution:

Dwg. No.	Title	Last Date Revised
A-010.00	Site Plan	06/28/2014
A-101.00	Proposed First Floor Plan	06/28/2014
A-102.00	Proposed Second Floor Plan	12/30/2014
A-103.00	Proposed Third Floor Plan	12/30/2014
A-104.00	Proposed Fourth Floor Plan	12/30/2014
A-105.00	Proposed Fifth Floor Plan	12/30/2014
A-106.00	Proposed Penthouse Floor Plan	06/28/2014

Dwg. No.	Title	Last Date Revised
A-200.00	Proposed Longitudinal Section	06/28/2014
Z-001.00	Floor Area and Zoning Calculations	06/28/2014
Z-002.00	Floor Area and Zoning Calculations	12/30/2014

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

3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.

4. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this resolution and the restrictive declaration described below and any subsequent modifications to either document 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.

5. 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.

6. 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 City Register, New York County. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.

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 attached restrictive declaration whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted or of the attached restrictive declaration.

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

The above resolution (C130066 ZSM), duly adopted by the City Planning Commission on February 4, 2015 (Calendar No. 10), 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.

CARL WEISBROD, Chairman
KENNETH J. KNUCKLES, ESQ., Vice Chairman
IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, III,
MICHELLE R. DE LA UZ, JOSEPH I. DOUEK, RICHARD W. EADDY,
CHERYL COHEN EFFRON, ANNA HAYES LEVIN,
ORLANDO MARIN, LARISA ORTIZ, Commissioners

Exhibit A

GOOSE MOUNTAIN NYC LLC

RESTRICTIVE DECLARATION

Dated: , 2015

Location: 498 Broome Street
New York, New York 10013
Block 487, Lot 6

Record & Return to:

LAW OFFICE OF FREDRICK A. BECKER
122 East 42nd Street Suite 2100
New York, New York 10168

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DECLARATION

DECLARATION made as of the ____ day of _____, 2015 by GOOSE MOUNTAIN NYC LLC, a New York Limited Liability Company having an office c/o Nesenoff & Miltenberg, LLP, 363 Seventh Avenue, 5th floor, New York, New York 10001 (the "Declarant"):

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of certain real property located in the Borough of Manhattan, City, County and State of New York, which property is designated as Block 487, Lot 6 on the Tax Map of the City of New York and by the street address 498 Broome Street, and is more particularly described on **Exhibit A** attached hereto (the "Subject Property") and on which is located a five story building ("Designated Structure"); and

WHEREAS, Declarant proposes to renovate the Designated Structure;

WHEREAS, the Subject Property together with the Designated Structure constitute the Subject Premises (the "Subject Premises"); and

WHEREAS, _____ Title Company has certified, in the certification dated _____, which is annexed hereto as **Exhibit B**, that, as of the date hereof, Declarant is the only "party-in-interest" of the Subject Premises, as such term is defined in Section 12-10 of the Zoning Resolution of City of New York (the "Zoning Resolution"); and

WHEREAS, pursuant to the provisions of Section 3020 of the New York City Charter and Title 25, Chapter 3 of the Administrative Code of the City of New York (the "Landmark Preservation Law"), the Landmarks Preservation Commission (the "LPC") has designated the Subject Property as a landmark structure because of its special character or historical or aesthetic interest or value and it's location within the Soho Cast Iron Historic District; and

WHEREAS, Declarant at the public hearing on June 28, 2012 requested the LPC to issue a report to the City Planning Commission of the City of New York (the "CPC") for an application

under Section 74-711 of the Zoning Resolution for a special permit to modify Section 42-10 of the Zoning Resolution, with respect to the creation of new Residential Use Group 2 use within an M1-5A zoning district; and

WHEREAS, at the public meeting on July 24, 2012, following said public hearing, the LPC voted to issue a report to the CPC as requested, and to grant a Certificate of Appropriateness ("C of A"), which allows the alteration of the Designated Structure in accordance with Section 25-307 of the Administrative Code of the City of New York. A copy of the C of A is annexed hereto as **Exhibit C**; and

WHEREAS, Declarant submitted an application, designated No. 130066ZSM dated September 5, 2012 for the grant of a special permit pursuant to Section 74-71 of the Zoning Resolution (the "Special Permit") as follows: (1) To modify the use requirements of Section 42-10 to allow Residential Use Group 2 use on floors 2-5 of the Designated Structure and within the enlarged portions of the Designated Structure.

WHEREAS, Section 74-711 requires, inter alia, that a program has been established for continuing maintenance (the "Continuing Maintenance Program") that will result in preservation of the Designated Structure by Declarant; and

WHEREAS, Declarant has agreed to certain obligations and restrictions contained in this Declaration for the protection, preservation, repair and maintenance of the Designated Structure; and

WHEREAS, Declarant desires to restrict the manner in which the Subject Premises may be developed, restored, and operated in order to assure the protection, preservation, repair and maintenance of the Designated Structures; and

WHEREAS, Declarant represents and warrants that there are no restrictions, liens, obligations, covenants, easements, limitations or encumbrances of any kind, the requirements of which have not been waived or subordinated, which would prevent or preclude, presently or

potentially, the imposition of the restrictions, covenants, obligations, easements and agreements of this Declaration;

NOW, THEREFORE, Declarant does hereby declare and agree that the Subject Premises shall be held, sold, transferred, conveyed and occupied subject to the following restrictions, covenants, obligations, easements, and agreements, all of which are for the purpose of protecting the Subject Premises, which shall inure to the benefit of the City of New York, and which shall run with the Subject Premises and bind Declarant and its heirs, successors and assigns so long as they have a right, title or interest in the Subject Premises or any part thereof.

ARTICLE I.

DEFINITIONS

The following words, when used in this Declaration, shall have the following meanings:

1.1 "Application" shall mean the application to the City Planning Commission for the Special Permit.

1.2 "Buildings Department" shall mean the New York City Department of Buildings, or any successor to the jurisdiction thereof.

1.3 "Chairperson of the CPC" shall mean the Chairperson of the City Planning Commission of the City of New York or any successor to the jurisdiction thereof.

1.4 "Chairperson of the LPC" shall mean the Chairperson of the Landmarks Preservation Commission of the City of New York or any successor to the jurisdiction thereof.

1.5 "City" shall mean the City of New York.

1.6 "City Council" shall mean the New York City Council or any successor to the jurisdiction thereof.

1.7 "CPC" shall mean the New York City Planning Commission, or any successor to the jurisdiction thereof.

1.8 "Declarant" shall mean the named Declarant and the heirs, successors and assigns of the named Declarant including, without limitation, any owner of a condominium unit within the Designated Structure, except that Declarant shall not be deemed to include (i) a mortgagee of all or any portion of the Subject Property until it succeeds to the interest or obligation of Declarant by purchase, assignment, foreclosure or otherwise, or (ii) a tenant of the Subject Premises, unless such tenant holds a lease to all or substantially all of the Subject Premises.

1.9 "DCP" shall mean the New York City Department of City Planning or any successor to the jurisdiction thereof.

1.10 "Designated Structure" shall mean the structure located on Tax Block 487, Lot 6 in Manhattan, which is a landmark structure.

1.11 "Force Majeure" shall mean: (a) strike, lockout or labor dispute(s); (b) inability to obtain materials or reasonable substitutes therefor unless due to any act or failure to act by Declarant; (c) acts of God; (d) unforeseen governmental restrictions, regulations, omissions or controls; (e) enemy or hostile government actions; (f) civil commotion, insurrection, revolution or sabotage; (g) fire or other casualty; (h) inclement weather of such a nature as to make performance or completion of the Landmark Work not feasible unless due to any act or failure to act by Declarant; (i) any damage to the Subject Premises of such a nature as to make completion of the Landmark Work not feasible; (j) a taking of the Subject Premises, or a portion thereof, by condemnation or eminent domain; (k) failure of a public utility to provide power, heat or light; (l) unusual delay in transportation; (m) material delays by the City, State or United States Government, or any agency or instrumentality thereof, in the performance of any work or processing or approval of any applications required in order to permit Declarant to carry out its obligations pursuant to this Declaration unless due to any act or failure to act by Declarant; (n) denial to Declarant by any owner of an enforceable interest in adjoining real property, including any private fee owner or ground lessee of adjoining real property, or any agency of the City or State having an enforceable interest in adjoining real property, including sidewalk or streets, of a

right to access to such adjoining real property, if such access is required to accomplish the obligations of the Declarant pursuant to this Declaration; (o) the pendency of a litigation not initiated by Declarant or similar proceeding which suspends or materially and adversely affects the ability of the Declarant to accomplish the obligations of the Declarant pursuant to this Declaration; or (p) other conditions similar in character to the foregoing which are beyond the control of Declarant. No event shall constitute a Force Majeure unless Declarant complies with the procedures set forth in Sections 2.1 and 6.2 hereof.

1.12 "Landmark Work" shall refer to the restoration work on the Designated Structure as described in the C of A which is attached hereto as Exhibit C.

1.13 "LPC" shall mean the Landmarks Preservation Commission of New York City or any successor to the jurisdiction thereof.

1.14 "Party(ies) in Interest" shall mean any party-in-interest listed in Exhibit B and any other party-in-interest to the Subject Premises who has given written notice of its name and address to the CPC and the LPC.

1.15 "Special Permit" shall mean the special permit described on page 2 hereof.

1.16 "Zoning Resolution" shall mean the Zoning Resolution of the City of New York.

ARTICLE II.

DEVELOPMENT, PRESERVATION, REPAIR AND MAINTENANCE OF THE SUBJECT PROPERTY

2.0 Plans. Declarant covenants and agrees to develop the Subject Property substantially in accordance with the plans prepared by Umberto Squarcia Designs Inc. attached hereto as **Exhibit D.**

2.1 Certificate of Occupancy. (a) The issuance of the Special Permit is premised on, inter alia, the performance of the construction of the following restoration work on the Designated Structure in conformity with the C of A and the requirements thereof (which restoration work shall be referred to as the "Landmark Work"):

Front Facade

Remove paint from brick, terra cotta, and stone with ProSoCo Enviro Klean Safety Peel 1 Paint Stripper, or equal, testing first and following manufacturer's instructions. Rinse using a fan-shaped tip and no more than 500 psi clean water rinse.

Remove non-historic aluminum cap at cornice, rebuild and restore original corbelled brick and top stone cap to match existing in profile, detail, and dimension. New brick, if necessary, shall match existing in dimension, color and texture.

Repoint brick as necessary to match existing in color, texture, composition, and tooling. Rake mortar joints by hand and repoint as required to match existing old mortar in color, texture, and tooling, recipe: 1 part cement ASTM C150 (1 part white Portland cement, Type 1), 2 ½ parts hydrated lime, Type S ASTM C207, 5-6 parts aggregate (sand plus other mix to match existing).

Patch small holes, chips, and cracks in brick and terra cotta as necessary with Jahn M100 repair mortar, or equal, matching existing brick or terra cotta in color, texture and detail.

Replace brick as necessary to match existing in dimension, color, and texture.

Repair severely deteriorated sandstone lintels and sills if possible with cementitious material to match underlying sandstone, composition: 1 part cement ASTM C150 (1 part white Portland cement, Type 1), 1 part hydrated lime, Type S ASTM C207, 5-6 parts aggregate (sand plus other mix to match existing), tint to match existing underlying sandstone.

Replace stone lintels as required with cast stone to match existing in dimension, color, texture, and tooling.

Restore missing pier cap at 2nd floor, east end, with new cast-iron cap to match existing cap on west end in dimension, texture and detail.

Restore missing part of cast-iron ground floor cornice with cast-iron cornice to match existing in dimension, detail and profile.

Scrape and repaint cast-iron storefront in approved color, retain and repair the cast-iron vault light bulkhead, weld cracks as required, add historically appropriate approved wooden storefront infill and doors.

Replace diamond plate at hatch with new diamond plate, replace concrete sidewalk with new concrete sidewalk.

Replace metal windows with windows in the original material and configuration - wood, 2/2, double hung windows - in original masonry openings.

Fix as necessary, scrape and paint fire escape.

Rear Facade

Patch existing stucco coating where required to match existing.

Restore window openings and install 1/1 double-hung windows.

Repoint corbelled brick cornice as necessary to match existing in color, texture, composition, and tooling. Rake mortar joints by hand and repoint as required to match existing old mortar in color, texture, and tooling, recipe: 1 part cement ASTM C150 (1 part white Portland cement, Type 1), 2 ½ parts hydrated lime, Type S ASTM C207, 5-6 parts aggregate (sand plus other mix to match existing); replace brick as necessary to match existing in dimension, color, and texture.

Remove fire escape, patch resulting holes, chips, and cracks in brick as necessary with Jahn M100 repair mortar, or equal, matching existing brick cotta in color, texture, and detail.

Replace broken or severely damaged brick as necessary to match existing in dimension, color, and texture.

Rear Skylight

Replace 1st floor skylight at rear with metal and glass skylight to match existing.

East Side Facade

Repoint brick as necessary to match existing in color, texture, composition, and tooling. Rake mortar joints by hand and repoint as required to match existing old mortar in color, texture, and tooling, recipe: 1 part cement ASTM C150 (1 part white Portland cement, Type 1), 2 ½ parts hydrated lime, Type S ASTM C207, 5-6 parts aggregate (sand plus other mix to match existing).

Patch small holes and cracks in brick as necessary with Jahn M100 repair mortar, or equal, matching existing brick in color and texture.

Replace brick as necessary to match existing in dimension, color, and texture.

Reopen bricked-up arch opening openings and install single-paned sash.

Roof

Remove non-historic aluminum cap at cornice, rebuild and restore original corbelled brick and top stone cap to match existing in profile, detail, and dimension. New brick, if necessary, shall match existing in dimension, color, and texture.

Repair severely deteriorated coping sandstone at parapet if possible with cementitious material to match underlying sandstone, composition: 1 part cement ASTM C150 (1 part white Portland cement, Type 1), 1 part hydrated lime, Type S ASTM C207, 5-6 parts aggregate (sand plus other mix to match existing), tint to match existing underlying sandstone.

Replace coping stone as required with cast stone to match existing in dimension, color, texture, and tooling.

(b) Written notice that the Declarant is seeking a temporary certificate of occupancy ("TCO") or permanent certificate of occupancy ("PCO") shall be provided to the LPC seven days prior to the Declarant applying for a TCO or PCO. No TCO or PCO which permits a Special Permit Use shall be granted by the Buildings Department or accepted by Declarant until the Chairperson of the LPC shall have given written notice to the Buildings Department that (i) the Landmark Work has been satisfactorily completed by Declarant or (ii) the Chairperson of the LPC has certified in writing, as provided in Section 2.1(d) hereof, that (y) a Force Majeure has occurred and (z) the Chairperson of the LPC has no objection to the issuance of a TCO or PCO for, as appropriate, all or part of the Subject Property. The Chairperson of the LPC shall issue said notice reasonably promptly after Declarant has made written request to the Chairperson of the LPC and has provided documentation to support such request, and the Chairperson of the LPC shall in all events endeavor to issue such written notice to the Buildings Department, or inform Declarant in writing of the reason for not issuing said notice, within twenty-one (21) calendar days after Declarant has requested such written notice. Upon receipt of the written notice from the Chairperson of the LPC that (i) the Landmark Work has been satisfactorily completed or (ii) the Chairperson of the LPC has certified that a Force Majeure has occurred and that the Chairperson

of the LPC has no objection to the issuance of a TCO or PCO, the Buildings Department may grant, and Declarant may accept, a TCO or PCO for the Designated Structure.

(c) Declarant shall permit inspection of the Designated Structures by the Chairperson of the LPC and representatives designated by the Chairperson of the LPC in connection with the notice described in Section 2.1(b) hereof.

(d) (i) Upon application by Declarant, notwithstanding anything contained in any other provision of this Declaration, the Chairperson of the LPC, in the exercise of his or her reasonable judgment, may certify that the performance or completion of the Landmark Work is delayed due to a Force Majeure as provided in paragraph (ii) below.

(ii) In the event that Declarant reasonably believes that full performance of its obligations to complete the Landmark Work has been delayed as a result of a Force Majeure, Declarant shall so notify the Chairperson of the LPC as soon as Declarant learns of such circumstances. Declarant's written notice shall include a description of the condition or event, its cause (if known to Declarant), its probable duration, and in Declarant's reasonable judgment, the impact it is reasonably anticipated to have on the completion of the Landmark Work. The Chairperson of the LPC shall, within twenty-one (21) calendar days of its receipt of Declarant's written notice, (A) certify in writing that a Force Majeure has occurred, including a determination of the expected duration of such delay (the "Delay Notice"), and grant Declarant appropriate relief for such delay, including certifying in writing to the Buildings Department that the Chairperson of the LPC has no objection to the issuance of a TCO or PCO for, as appropriate, all or part of the Subject Property, or (B) notify Declarant that it does not reasonably believe a Force Majeure has occurred. With respect to any claim that a Force Majeure has delayed the Declarant's performance or completion of the Landmark Work, the LPC may require that Declarant post a bond or other security in a form and amount acceptable to the Chairperson of the LPC in order to ensure that the Landmark Work is completed. Such alternative security could include, without limitation,

alternative or additional conditions on the issuance of any PCO or TCO. Any delay caused as the result of a Force Majeure shall be deemed to continue only as long as the Declarant shall be using reasonable efforts to minimize the effects thereof. Upon cessation of the events causing such delay, the Declarant shall promptly recommence the Landmark Work.

(e) Notwithstanding anything else to the contrary contained herein, this Declaration shall not be deemed to prohibit or restrict Declarant from (i) applying for or receiving a TCO or a PCO for any floor area in the Designated Structure which is not to be used for a Special Permit Use; or (ii) obtaining permits or building notices from the Building's Department to perform work, including tenant work, in the Designated Structure prior to the completion of the Landmark Work; or (iii) entering into agreements affecting all or any portions of the space in the Designated Structure prior to completion of the Landmark Work.

2.2 Preservation, Repair and Maintenance. Declarant hereby covenants and agrees to preserve, repair and maintain the Designated Structure in sound first-class condition, at its own cost and expense, in accordance with this Declaration, the C of A and the Landmarks Preservation Law. It is understood that certain obligations and duties set forth in this Declaration are above and beyond the requirements of the Landmarks Preservation Law and do not in any way diminish Declarant's obligation and responsibility to comply with all provisions of the Landmarks Preservation Law.

2.3 Continuing Maintenance Program. Declarant shall comply with the obligations and restrictions of the continuing maintenance program (the "Continuing Maintenance Program") as set forth below:

(a) Periodic Inspections. Declarant shall establish and carry out a cyclical inspection and maintenance program for the Designated Structure which shall include, without limitation, the following:

(i) At Declarant's expense, an inspection (the "Periodic Inspection") shall be made every five years, on or within two weeks of the anniversary date of the issuance by the LPC of the Notice of Compliance pursuant to the C of A. If a TCO or PCO is obtained prior to issuance of a NOC, the periodic inspection shall be done within two weeks of the five year anniversary of issuance of the TCO or PCO. The Periodic Inspection shall be done by a preservation architect, engineer or other qualified person knowledgeable about the preservation of historic structures (the "Preservation Architect") selected by Declarant from a list prepared by Declarant and approved by the Chairperson of the LPC as to their credentials, which approval shall not be unreasonably withheld or delayed. Declarant shall update such listing upon the request of the Chairperson of the LPC. In addition, Declarant may periodically supplement the list of Preservation Architects, subject to the approval of the Chairperson of the LPC as to their credentials. The Preservation Architect shall make a thorough inspection of the exterior of the Designated Structure and those portions of the interior, as well as those portions of the mechanical systems that are accessible to and under the control of the building management, which if not properly maintained, could affect the condition of the exterior. The Periodic Inspection shall include (but not be limited to) the following portions of the Designated Structures: general facade shall be re-inspected; window caulking shall be inspected and maintained as required; historic skylight to be inspected and repaired as needed; masonry and pointing shall be inspected and maintained to provide stable continuous building fabric; wood window frames shall be inspected and maintained to provide continuous well-adhered paint coatings; historic skylight to be inspected and repaired as needed; and window glazing shall be inspected and maintained and repaired or replaced, as required.

(ii) The Preservation Architect shall, at the expense of Declarant, submit a report on each Periodic Inspection (the "Periodic Report") to Declarant and the LPC within 45 days after each Periodic Inspection. The Periodic Report shall outline the existing conditions of the Designated Structure and detail the work which should be performed in order to maintain the

Designated Structure, including all architectural features and elements, in a sound first-class condition, including but not limited to caulking, painting, cleaning, repair of architectural features and elements, checking for rust and repointing of masonry.

(iii) Submission of Local Law 10 & 11 Facade Inspection Report. If the Designated Structure is subject to the Facade Inspection Report Requirements of Title 1 RCNY §32-03 et seq., a copy of any such Facade Inspection Report which is submitted to the New York City Department of Buildings, shall also be provided at the same time to the Landmarks Preservation Commission. In the event that the building is found to be unsafe pursuant to such inspection, the Declarant shall notify the Landmarks Preservation Commission simultaneously with the owner and the Department of Buildings, pursuant to Title RCNY §32-03(b)(2)(vii).

(iv) Except as set forth below, Declarant shall perform all work which a Periodic Report, Facade Inspection Report or Emergency Incident Report (as defined below) identifies as necessary to maintain the Designated Structures, including architectural features and elements, in sound first-class condition. No work shall be performed except pursuant to a permit from the LPC if a permit is required under the Landmarks Preservation Law. If the LPC determines that a specific item of work or method of work as set forth in a Periodic Report, Facade Inspection Report or Emergency Incident Report would be inappropriate or inadequate, the determination of the LPC shall control and Declarant need not and shall not have such specific item performed. Declarant shall have the right to contest in a hearing before the LPC any work called for in a Periodic Report or Emergency Incident Report. Declarant's obligation to perform such contested work or to perform it by a method acceptable to the LPC shall be stayed pending a decision in any such proceeding at the LPC. Declarant shall proceed with all work which is uncontested during the stay pursuant to a permit.

(v) Unless Declarant has notified the LPC in writing that it contests any work as set forth in the preceding paragraph, Declarant shall apply for all necessary permits or

certificates from the LPC within 45 days of receiving the completed report from the Preservation Architect. Declarant shall use its best efforts to assure that all repairs, rehabilitation, repointing and restoration work detailed in the Periodic Report or Emergency Incident Report shall be completed at the earliest possible date, but no later than within nine months of the date of issue of the certificate or permit from the LPC, or, if no such certificate or permit is required, within nine months of the date of the Periodic Report or Emergency Incident Report. If for reasons beyond Declarant's control, as determined by the Chairperson of the LPC, such work cannot be completed within nine months, Declarant shall apply to the LPC for an extension of time within which to complete such work. Such extensions shall be for a stated additional period of time to be related to the period of delay and shall not be unreasonably withheld.

(b) Emergency Protection Program. Declarant shall establish and be prepared to carry out an emergency protection program for the Designated Structure which shall include at the minimum, the following:

(i) If a fire, the elements or any other cause whatsoever damages or destroys the Designated Structure or any part thereof (the "Emergency Incident"), Declarant shall use all reasonable means to save, protect and preserve the Designated Structure at the time of and following the Emergency Incident, including, but not limited to, acting with an approval from the Chairperson of the LPC or his or her designated representatives to stabilize and prevent further damage to or deterioration of the structure, and to secure the Subject Premises from unauthorized access. Declarant shall not remove from the Subject Premises any debris consisting of exterior features of the Designated Structure without an approval from the Chairperson of the LPC or his or her designated representative. Unless necessitated as a safety precaution as ordered by the Departments of Buildings, Health, Fire or Police, or as an action taken in response to a life-threatening situation, the Declarant shall not remove any other debris or otherwise clear the Subject Premises without the approval of the LPC or its Chairperson.

(ii) Declarant shall give immediate written notice of such Emergency Incident to the LPC. Declarant shall also give timely notice to the LPC of the time or times when the New York City Departments of Buildings, Health and Fire will inspect the Subject Premises following the Emergency Incident, in order that the LPC may have a representative present during such inspections.

(iii) Within sixty days of such Emergency Incident, a Preservation Architect shall, at the expense of Declarant, make a thorough inspection of the Designated Structure and submit a report (an "Emergency Incident Report") to Declarant and to the LPC outlining the condition of the structure, assessing the extent of damage, and recommending (A) work, if any, which must be undertaken immediately, upon receipt of proper permits, in order to stabilize and prevent further damage to the Designated Structure, and (B) work that should be performed to repair and restore the Designated Structure to a sound, first-class condition or, alternatively to (A) and (B), that Declarant make an application to the LPC for permission to demolish the remaining portions of the Designated Structure.

(iv) With regard to the work to be performed pursuant to subparagraph (iii)(A), Declarant shall immediately upon receipt of the Emergency Incident Report request and vigorously pursue all necessary permits and upon their issuance, shall undertake all such work with alacrity. If no permits are required, work shall be undertaken as soon as possible after receipt of the Emergency Incident Report.

(v) With regard to the work to be performed pursuant to subparagraph (iii)(B), within ninety days of receiving the report of the Preservation Architect, Declarant shall apply for all necessary permits and certificates from the LPC to repair and restore or to demolish. No work on the exterior of the Designated Structure, and no work on the interior of the Designated Structure which would affect the exterior or which would require the issuance of a permit from the Department of Buildings shall be performed except pursuant to a permit from the LPC. If the LPC

determines that a recommendation to demolish or to perform a specific item of work or method of work set forth in the report would be inappropriate, using the criteria set forth in the Landmarks Preservation Law, the determination of the LPC shall control and the Declarant shall not have such specific work performed or be entitled to have the Designated Structure demolished unless Declarant is obligated to perform such work or demolish the structure in accordance with an "Unsafe Building Notice" issued by the Department of Buildings. All repair, restoration, rehabilitation, repointing, and other work provided for in a certificate or permit shall be completed within nine months of the date of issue of such certificate or permit by the LPC. If such work cannot be completed within nine months for reasons beyond Declarant's control, as determined by the Chairperson of the LPC, Declarant shall apply in writing to the LPC for an extension of time within which to complete such work. Such extensions shall be for a stated additional period of time which is related to the period of the delay and shall not be unreasonably withheld.

(c) Access to Designated Structures. Declarant agrees to provide access to the Designated Structures to the LPC and its designated representatives at reasonable times and upon reasonable written notice, except in cases of emergency, in which event the LPC or its representatives shall have access, if feasible, immediately and without notice, in order to insure that the preservation, repair and maintenance of the Designated Structures is carried out in accordance with this Declaration.

(d) Failure to Perform. In the event that the preservation, repair, or maintenance of the Designated Structures is not performed in accordance with the provisions of this Article, the LPC shall give written notice of such failure to perform to the Declarant. In the event that Declarant, its successors or assigns, fails after sixty days from receipt of written notice from the LPC to perform or shall commence to perform but fail diligently to prosecute to completion, any such repair and/or maintenance, or any obligations of Declarant set forth in this Declaration, the City of New York may perform all of the necessary work at the sole cost and expense of the Declarant

and shall have the right to enter onto the Subject Property and to charge said Declarant for all the actual cost of such work, together with actual administrative and legal fees incurred in the collection thereof. Such actual costs shall include, but not be limited to, payments by the City of New York to any lawyers, consultants, contractors, painters, engineers, architects and skilled artisans required to be hired to perform or supervise such work. To the extent such actual costs are expended by the City of New York, the LPC shall have a lien on the Subject Premises as if a lien had been filed, perfected and enforced for materials and labor under Article 2 of the Lien Law of the State of New York. Notwithstanding the foregoing, in the event that the Designated Structures are converted to a condominium, Declarant's right to notice and cure provided in this subsection shall apply only to the condominium board and to any owner of space occupied by retail uses in the Designated Structures; provided that the LPC has received notice by said parties in accordance with Section 6.2.

ARTICLE III.

CONDOMINIUM BOARD

3.1 General. In the event that the Designated Structure is converted to a condominium in accordance with Article 9B of the New York State Real Property Law ("RPL"), the condominium board ("Board") shall have the responsibility to carry out all of Declarant's obligations and the authority to exercise all of Declarant's rights under this Declaration and upon such assumption, The New York Society Library shall be released from its liability thereunder.

The following provisions of this Article 3 shall be operative only in the event that the Board is formed as described in this Section 3.1.

3.2 Board. The Board shall require that each owner of a condominium unit (the "Unit Owner") appoint the Board as his Attorney-in-Fact with respect to modification, amendment, or cancellation of the Declaration.

3.3 Condominium Declaration. Every deed conveying title to, or a partial interest in, the Subject Premises and every lease of all or substantially all of the Subject Premises shall contain a recital that the grantee is bound by the terms of the Condominium Declaration and By-laws which shall incorporate an obligation by the Board to comply with the provisions of Article 3 of this Declaration. In addition, every deed, lease, the offering, and by-laws shall include the following language: This building is obligated by a restrictive declaration to be maintained in a sound, first class condition in perpetuity. This obligation includes a thorough inspection of the building every five years and the preparation of an existing condition report that shall be submitted to the Landmarks Preservation Commission. All work identified in the existing conditions report as necessary to maintain this building in a sound, first class condition must be expeditiously undertaken.

ARTICLE IV.

EFFECT AND ENFORCEMENT

4.1 Effective Date. (a) This Declaration shall have no force and effect unless and until the occurrence of one of the following, to be referred to as the "Effective Date": (a) the expiration of 21 days after the Special Permit has been approved if no review is undertaken by the City Council pursuant to Section 197-d of the New York City Charter or (b) final approval of the Special Permit pursuant to Section 197-d of the New York City Charter. The Declaration shall become immediately effective upon the Effective Date. If, before the Effective Date, Declarant

requests or causes the application for the Special Permit to be withdrawn or abandoned, or if final action has been taken having the effect of denying the Special Permit, then, upon notice to CPC and LPC, this Declaration shall not become effective, shall be automatically cancelled and shall be of no force and effect.

(b) If the Special Permit is at any time declared invalid or is otherwise voided by final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such entry, as the case may be, this Declaration shall be automatically canceled without further action by Declarant and shall be of no further force or effect and the CPC shall, if requested by Declarant, provide Declarant with a letter in recordable form stating that the Declaration has been so canceled and is of no further force and effect. In the event that Declarant has obtained a certificate of occupancy allowing any Special Permit Use in the Designated Structure, Declarant shall promptly, after receipt of such letter, obtain a revised certificate of occupancy from the Buildings Department reflecting the cessation of any such Special Permit Use in the Designated Structure.

4.2 Filing and Recording. Declarant shall file and record at its sole cost and expense this Declaration in the Register's Office, indexing it against the Subject Property, immediately upon the Effective Date. Declarant shall promptly deliver to the CPC and the LPC duplicate executed originals, promptly following the Effective Date and, following recording, a true copy of this Declaration as recorded, as certified by the Register. If Declarant fails to so record this Declaration, the City may record this Declaration, at the sole cost and expense of Declarant, who shall promptly pay to the City such costs together with fees for purchase of a reasonable number of certified copies of the recorded Declaration.

4.3 Additional Remedies. Declarant acknowledges that the City is an interested party to this Declaration, and consents to enforcement by the City, administratively or at law or equity,

of the restrictions, covenants, easements, obligations and agreements contained herein. 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, the seeking of a mandatory injunction compelling Declarant, its heirs, successors or assigns, to comply with any provision, whether major or minor, of this Declaration.

4.4 Notice and Cure. (a) Before any agency, department, commission or other subdivision of the City of New York institutes any proceeding or proceedings to enforce the terms or conditions of this Declaration because of any violation hereof, it shall give Declarant forty-five (45) days written notice of such alleged violation, during which period Declarant shall have the opportunity to effect a cure of such alleged violation. If Declarant commences to effect a cure during such forty-five (45) day period and proceeds diligently towards the effectuation of such cure, the aforesaid forty-five (45) day period shall be extended for so long as Declarant continues to proceed diligently with the effectuation of such cure. In the event that title to the Subject Premises, or any part thereof, shall become vested in more than one party, the right to notice and cure provided in this subsection shall apply equally to all parties with a fee interest in the Subject Property, or any part thereof, including ground lessees; provided the LPC has received notice by said parties in accordance with Section 6.2. Notwithstanding the foregoing, in the event that the Designated Structure are converted to a condominium, the right to notice and cure provided in this subsection shall apply only to the condominium board and to any owner of space occupied by retail uses in the Designated Structure; provided that the LPC has received notice by said parties in accordance with Section 6.2.

(b) If Declarant fails to observe any of the terms or conditions of this Declaration, and the Declarant fails to cure such violation within the applicable grace period provided in subparagraph 4.4(a) of this Declaration, then prior to the institution by any agency or department of the City of any action, proceeding, or proceedings against Declarant in connection

with such failure, a Mortgagee who has given written notice of its name and address to the CPC and the LPC shall be given thirty (30) days written notice of such alleged violation, during which period such Mortgagee shall have the opportunity to effect a cure of such alleged violation. If such Mortgagee commences to effect a cure during such thirty (30) day period and proceeds diligently towards the effectuation of such cure, the aforesaid thirty (30) day period shall be extended for so long as such Mortgagee continues to proceed diligently with the effectuation of such cure.

(c) If after due notice as set forth in this Section 4.4, Declarant and the Mortgagee fail to cure such alleged violations, the City may exercise any and all of its rights, including those delineated in this Section and may disapprove any amendment, modification, or cancellation of this Declaration on the sole grounds that Declarant is in default of any material obligation under this Declaration.

4.5 Acknowledgment of Covenants. Declarant acknowledges that the restrictions, covenants, easements, obligations and agreements in this Declaration, which are an integral part of the Special Permit, will protect the value and desirability of the Subject Premises as well as benefit the City of New York and all property owners within a one-half mile radius of the Subject Premises. Those restrictions, covenants, easements, obligations and agreements shall be covenants running with the land, and shall bind Declarant and its successors, legal representatives, and assigns.

4.6 No Other Enforceable Restrictions. Declarant represents and warrants that there are no enforceable restrictions of record on the use of the Subject Property or the Designated Structure, nor any present or presently existing future estate or interests in the Subject Property or the Designated Structure, nor any lien, obligation, enforceable covenant, limitation or encumbrance of any kind which precludes, directly or indirectly, imposition on the Subject Premises of the restrictions, covenants, easements and obligations of this Declaration.

4.7 Governance. This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

4.8 Severability. In the event that any provision of this Declaration shall be deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction and the judgment of such court shall be upheld on final appeal, or the time for further review of such judgment on appeal or by other proceeding has lapsed, such provision shall be severable, and the remainder of this Declaration shall continue to be of full force and effect.

4.9 Applicability to other City Agencies. Declarant covenants to include a copy of this Declaration as part of any application submitted to the LPC, CPC, Buildings Department, Board of Standards and Appeals ("BSA"), New York State Attorney General (in the event of a proposed conversion of the Designated Structure to condominium ownership) or any agency succeeding to their respective jurisdictions. The restrictions and obligations contained herein are a condition of any permit or Certificate of Occupancy to be issued by the Building Department and Declarant will take all reasonable steps to ensure that they are so listed. Failure to carry out such obligation beyond any applicable grace period shall constitute sufficient cause for the Commissioner of the Buildings Department to revoke any building permit issued pursuant to the Special Permit or to apply to the BSA or to a court of competent jurisdiction for revocation of the Certificate of Occupancy or any permit issued by the Buildings Department.

4.10 Limitation of Liability. (a) Declarant shall be liable in the performance of any term, provision or covenant in this Declaration, subject to the following sentences and subject to Section 4.12 below. The liability of any Unit Owner under this Declaration shall be limited to the amount of such Unit Owner's prorated share, based on such Unit Owner's interest in the common elements of the Condominium, of the costs of compliance with this Declaration. For the purposes of this Section 4.10, "Declarant" shall mean "Declarant" as defined in Article I hereof, as well as

any principals, disclosed or undisclosed, partners, affiliates, officers, employees, shareholders or directors of Declarant.

(b) The restrictions, covenants and agreements set forth in this Declaration shall be binding upon the Declarant and any successor-in-interest only for the period during which Declarant and any successor-in-interest is the holder of a fee interest in or is a party-in-interest of the Subject Premises and only to the extent of such fee interest or the interest rendering Declarant a party-in-interest. At such time as the named Declarant has no further fee interest in the Subject Premises and is no longer a party-in-interest of the Subject Premises, Declarant's obligations and liability with respect to this Declaration shall wholly cease and terminate from and after the conveyance of Declarant's interest and Declarant's successors-in-interest in the Subject Premises by acceptance of such conveyance automatically shall be deemed to assume Declarant's obligations and liabilities here-under to the extent of such successor-in-interest's interest.

4.11 Subordination. Declarant shall cause every individual, business organization or other entity that between the date hereof and the date of recording of this Declaration becomes a Party-in-Interest to the Subject Property, to execute this Declaration or to subordinate such interest to the Declaration and waive its right to execution. Any mortgage or other lien encumbering the Subject Property after the recording date of this Declaration shall be subject and subordinate hereto.

4.12 Right to Convey. Nothing contained herein shall be construed as requiring the consent of the CPC, the LPC, the City, any agency thereof or any other person or entity to any sale, transfer, conveyance, mortgage, lease or assignment of any interest in the Subject Property or the Designated Structure.

ARTICLE V.

AMENDMENTS, MODIFICATIONS AND CANCELLATIONS

5.1 Amendment or Cancellation. Except as provided in paragraphs 4.1, 5.4 and 5.5 herein, this Declaration may be amended or cancelled only upon application by LPC on behalf of Declarant and only with the express written approval of the CPC and of the City Council, but only in the event that the City Council reviewed the Special Permit pursuant to Section 197-d, and no other approval or consent shall be required from any public body, private person or legal entity of any kind.

5.2 Minor Modification. The Chairperson of the LPC and the Chairperson of the CPC may, by express written consent, administratively approve modifications to the Declaration that the CPC has determined to be minor. Such minor modifications shall not be deemed amendments requiring the approval of the CPC, the LPC, the City Council or any other agency or department of the City of New York.

5.3 Recording and Filing. Any modification, amendment or cancellation of this Declaration, except pursuant to paragraph 5.4, shall be executed and recorded in the same manner as this Declaration. Following any modification, amendment or cancellation, Declarant shall immediately record it and provide one executed and certified true copy thereof to each of the CPC and the LPC and upon failure to so record, permit its recording by the CPC or the LPC at the cost and expense of Declarant.

5.4 Modification of Landmark Work. In the event that the Landmark Work is modified, pursuant to a future approval by the LPC, and provided that such modification does not require changes to the special permit plans attached hereto as Exhibit D, a notice indicating such modification, subject to approval by counsel for the LPC and the CPC respectively, may, in lieu

of a modification of the Declaration, be recorded in the City Register's Office. Such recordation shall be in accordance with section 5.3 of the Declaration, and proof of recordation shall be provided to CPC and LPC.

5.5 Surrender or Nullification. In the event that Declarant does not use the Special Permit Restricted Space pursuant to the Special Permit, Declarant may surrender the Special Permit to the CPC and proceed with any use permitted by the Zoning Resolution and in accordance with the Landmarks Preservation Law as if such Special Permit had not been granted. This Declaration shall be rendered null and void upon recording of an instrument filed by Declarant discharging it of record, with copies to LPC and CPC, the recording of which instrument shall constitute a waiver of the right to use the Subject Property pursuant to the Special Permit.

ARTICLE VI.

MISCELLANEOUS

6.1 Exhibits. Any and all exhibits, appendices, or attachments referred to herein are hereby incorporated fully and made an integral part of this Declaration by reference.

6.2 Notices. All notices, demands, requests, consents, waivers, approvals and other communications which may be or are permitted, desirable or required to be given, served or deemed to have been given or sent hereunder shall be in writing and shall be sent if intended for Declarant to Goose Mountain NYC LLC c/o Nesenoff & Miltenberg, 363 Seventh Avenue, 5th floor, New York, New York 10001; with copies to The Law Office of Fredrick A. Becker, Attn: Fredrick A. Becker, Esq., 122 East 42nd Street, Suite 2100, New York, New York 10168; if intended for the CPC, to the CPC at 22 Reade Street, New York, New York 10007-1316 (or then-official address), Attn: Chairperson, if intended for the LPC, to the LPC at One Centre Street,

9 North, New York, New York 10007 (or then-official address), Attn: Chairperson and (d) if intended for the City Council, to the City Council at the Office of the Speaker, City Council, City Hall, New York, New York 10007. Declarant, or its representatives, by notice given as provided in this paragraph 6.2, may change any address for the purposes of this Declaration. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, or delivered by hand, and shall be deemed sufficiently given, served or sent for all purposes hereunder five (5) business days after it shall be mailed, or, if delivered by hand, when actually received.

6.3 Indemnification. Provided that Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration after having received written notice of such default and opportunity to cure as provided above, and such finding is upheld on final appeal, or the time for 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 City's enforcement of Declarant's obligations under this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

Goose Mountain NYC LLC

_____

By:

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

On the day of in the year 2015 before me the undersigned a Notary Public in and for said State personally appeared _____ personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument the person or the entity upon behalf of which the person acted executed the instrument.

_____

Notary Public

SCHEDULE OF EXHIBITS

Exhibit A	-	Metes and Bounds of Subject Property
Exhibit B	-	Zoning Lot Certification
Exhibit C	-	Certificate of Appropriateness
Exhibit D	-	Plans

David Gruber, *Chair*
Bo Riccobono, *First Vice Chair*
Terri Cude, *Second Vice Chair*
Bob Gormley, *District Manager*

Antony Wong, *Treasurer*
Susan Kent, *Secretary*
Keen Berger, *Assistant Secretary*

COMMUNITY BOARD NO. 2, MANHATTAN

3 WASHINGTON SQUARE VILLAGE
NEW YORK, NY 10012-1899
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Greenwich Village ❖ Little Italy ❖ SoHo ❖ NoHo ❖ Hudson Square ❖ Chinatown ❖ Gansevoort Market

November 21, 2014

Carl Weisbrod, Director
City Planning Commission
22 Reade Street
New York, NY 10007

Dear Mr. Weisbrod:

At its Full Board meeting on November 20, 2014, CB#2, Manhattan (CB#2-Man.), adopted the following resolution:

498 Broome St. Application 130066ZSM to the City Planning Commission by Goose Mountain NYC LLC for a special permit pursuant to ZR 74-711 to modify use regulations of 42-10 to facilitate a proposal to convert 6,295 gross square feet of floor area located on floors 2 through 6 of an existing six story vacant building from Joint Living Work Quarters for Artists (JLWQA) to Use Group 2 Residential. The building is located on Block 487, Lot 6, in an M1-5A district in the SoHo Cast Iron Historic District. The ground floor will be occupied by as-of-right Use Group 6 commercial uses.

A resolution recommending approval of the application if modified.

Whereas,

1. The application was presented to the committee by Frederick Becker of The Law Office of Frederick A. Becker, representing the applicant;
2. The existing five-story building, currently vacant, is located in an M1-5A zone in the SoHo Cast Iron Historic District;
3. Floors 2-5, prior to being vacated more than three years ago, were occupied by an artist's studio belonging to the building owner;
4. The application proposes Use Group 2 residential use on Floors 2-5 and new penthouse;
5. This application meets conditions required for a special permit under 74-711 including certifications from the Landmark Preservation Commission pertaining to permanent preservation of the building and having minimal adverse effects on the structures and open space in the vicinity;
6. The application also meets conditions regarding the maximum number of units in the building, in this case providing only four units when seven would be allowed;

7. The application states that the use modification will have minimal adverse effects on the conforming uses with the building and the surrounding area, but the application does not discuss the impact of the loss of JLWQA units;
8. The applicant refused a request from the committee to consider retention of JLWQA apartments or inclusion of affordable housing units;
9. The applicant assured the committee that rooftop air conditioning units would be mini-split units that run almost silently;
10. The stock of affordable housing in the district is in decline, with the continued loss of rent stabilized units;
11. JLWQA housing is a conforming use in the zone that when legally occupied provides residential units for artists with the rent and purchase levels reduced by the more limited market;
12. The loss of JLWQA units represents a loss of affordable housing for the district;
13. The loss of affordable units and artists housing has had a harmful impact on the character of the area by reducing the diversity of the residential population;
14. City policy now recognizes the negative impact of the loss of affordable housing causing a burden on residents and threatening the long term viability of the economy as well a diminishing the diversity in many neighborhoods;
15. In response to changing conditions in the neighborhood, CB2 favors mandatory inclusion of affordable units in all developments requiring special permits or variances;
16. Per 74-711, use modifications shall have minimal adverse effects on the conforming uses with the building and the surrounding neighborhood;
17. The development as proposed will cause the loss of conforming JLWQA units in the building and will promote and encourage continuation of the harmful trend that reduces the affordability of artists housing in the neighborhood and thereby harms the successful character of SoHo;
18. Per ZR 74-711, the City Planning Commission may prescribe appropriate additional conditions to enhance the character of the development.
19. The building floor plate is too small to allow for multiple units on one floor;

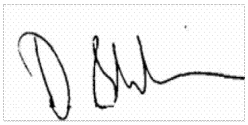
Therefore it is resolved that CB#2, Man.

1. **Recommends APPROVAL of the use modification to allow Use Group 2 but only if appropriate additional conditions are prescribed to compensate for the loss of JLWQA units;**
2. **Recommends that the proposal be modified to retain at least one JLWQA unit.**

Vote: Unanimous, with 49 Board members in favor.

Please advise us of any decision or action taken in response to this resolution.

Sincerely,



David Gruber, Chair
Community Board #2, Manhattan

Tobi Bergman, Chair
Land Use & Business Development Committee
Community Board #2, Manhattan

DG/EM

c: Hon. Jerrold L. Nadler, Congressman
Hon. Sheldon Silver, Assembly Speaker
Hon. Deborah Glick, Assembly Member
Hon. Daniel Squadron, NY State Senator
Hon. Brad Hoylman, NY State Senator
Hon. Gale A. Brewer, Manhattan Borough President
Hon. Margaret Chin, Council Member
Hon. Rosie Mendez, Council Member
Hon. Corey Johnson, Council Member
Edwin Marshall, Dept. of City Planning

NYCPLANNING
DEPARTMENT OF CITY PLANNING CITY OF NEW YORK

Community/Borough Board Recommendation

Pursuant to the Uniform Land Use Review Procedure

Application #: **C 130066 ZSM**	Project Name: **498 Broome Street**
CEQR Number: 13DCP024M	Borough(s): Manhattan Community District Number(s): 2

Please use the above application number on all correspondence concerning this application

SUBMISSION INSTRUCTIONS

1. Complete this form and return to the Department of City Planning by one of the following options:
   - **EMAIL (recommended):** Send email to **CalendarOffice@planning.nyc.gov** and include the following subject line: (CB or BP) Recommendation + (6-digit application number), e.g., "CB Recommendation #C100000ZSQ"
   - **MAIL:** Calendar Information Office, City Planning Commission, Room 2E, 22 Reade Street, New York, NY 10007
   - **FAX:** (212) 720-3356 and note "Attention of the Calendar Office"
2. Send one copy of the completed form with any attachments to the applicant's representative at the address listed below, one copy to the Borough President, and one copy to the Borough Board, when applicable.

Docket Description:

IN THE MATTER OF an application submitted by Goose Mountain NYC, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use regulations of Section 42-00 to allow Use Group 2 uses (residential use) on portions of the ground floor, the 2nd - 5th floors and the proposed penthouse of an existing 5-story building, on the property located at 498 Broome Street (Block 487, Lot 6), in an M1-5A District, within the SoHo Cast-Iron Historic District, Borough of Manhattan, Community District 2.

Plans for this proposal are on file with the City Planning Commission and may be seen in Room 3N, 22 Reade Street, New York, N.Y. 10007.

Applicant(s):	Applicant's Representative:
Goose Mountain NYC, LLC c/o Nesenoff & Miltenberg 363 Seventh Avenue, 5th Floor New York, NY 10001	Frederick A. Becker, Esq. Law Office of Frederick A. Becker 122 East 42nd Street, Suite 2100 New York, NY 10168

Recommendation submitted by: COMMUNITY BOARD #2, MANHATTAN

Date of public hearing: 11/12/14 Location: NYU Meyer Hall, 46 Washington Pl., NY

Was a quorum present? YES [X] NO [ ] *A public hearing requires a quorum of 20% of the appointed members of the board, but in no event fewer than seven such members.*

Date of Vote: 11/20/14 Location: SCHOLASTIC BLDG., 557 BROADWAY, AUDITORIUM

RECOMMENDATION

- [ ] Approve
- [ ] Disapprove
- [X] Approve With Modifications/Conditions
- [ ] Disapprove With Modifications/Conditions

Please attach any further explanation of the recommendation on additional sheets, as necessary.

Voting

# In Favor:	# Against:	# Abstaining:	Total members appointed to the board:
49	0	0	50

Name of CB/BB officer completing this form	Title	Date
ROBERT GORMLEY	DISTRICT MANAGER	11/21/14

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

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Gale A. Brewer, Borough President

December 22, 2014

Recommendation on ULURP Application No. C 130066 ZSM – 498 Broome Street
By Goose Mountain NYC, LLC

PROPOSED ACTION

Goose Mountain NYC LLC ("the applicant") seeks a special permit pursuant to Section 74-711 of the New York City Zoning Resolution ("ZR") to modify use regulation 42-10 to allow residential use (Use Group 2) on the second through fifth floors of an existing building and to legalize the enlargement of the building by the addition of a sixth floor penthouse for additional residential use (Use Group 2) at 498 Broome Street (Block 487, Lot 6), located in an M1-5A zoning district in the SoHo-Cast Iron Historic District in Community District 2, Manhattan.

Pursuant to ZR § 74-711, applicants may request a special permit to modify the use regulations of zoning lots that contain landmarks or are within historic districts as designated by the Landmarks Preservation Commission ("LPC"). In order for the City Planning Commission ("CPC") to grant use modifications, the applicant must first meet the following conditions:

1) LPC has issued a report stating that the applicant will establish a continuing maintenance program for the preservation of the building and that such modification or restorative work will contribute to a preservation purpose;[1]
2) the application shall include a Certificate of Appropriateness, other permit, or report from LPC stating that such bulk modifications relate harmoniously to the subject landmark building in the Historic District[2]; and
3) the maximum number of permitted dwelling units is as set forth in ZR § 15-111.[3]

Further, in order to grant a special permit, the CPC must find that:

1) the modifications shall have minimal adverse effects on the structures or open space in the vicinity in terms of scale, location and access to light and air; and
2) such modifications shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.

PROJECT DESCRIPTION

The applicant has restored the building in a manner that the LPC has determined to be appropriate to the

[1] The LPC issued a report on August 20, 2012.
[2] The LPC issued a Certificate of Appropriateness on August 20, 2012.
[3] Pursuant to ZR § 15-111, up to seven dwelling units would be permitted in the building. As proposed, this building will have four dwelling units. This is less than the maximum number of dwelling units.

building and to the SoHo-Cast Iron Historic District. According to the applicant, the building had been allowed to seriously deteriorate under previous ownership. The project incorporated a restoration of the building's three exposed façades, including the storefront, and significant work on architectural details as well as the roof. In addition, the applicant stated that the building had significant structural issues that were addressed as part of the restoration work. The restoration work was completed pursuant to a restrictive declaration between LPC and the applicant, which also ensures the continued maintenance of the building.

In addition, the applicant enlarged the existing five-story building by adding a sixth floor penthouse. The penthouse on top of the fifth floor is set back 33 feet from the street line and, according to the Certificate of appropriateness from LPC, was to be constructed with a brick which would blend in with the existing side wall.

Following the restoration and expansion of the building, the applicant seeks to convert the existing vacant space on floors two through five to, and allow the newly constructed penthouse to be used as, residential use (Use Group 2). According to the applicant, floors two through five were occupied approximately three years ago by the former owner as an artist studio but never officially listed as JLWQA; the owner had lived there for decades and had never been certified by the New York City Department of Cultural Affairs (see below).

Area Context

The project site is located in the SoHo-Cast Iron Historic District in Manhattan, in an M1-5A zoning district. M1-5A districts permit a maximum floor area ratio (FAR) of 5.0, with 6.5 FAR for community facility use. Buildings are allowed a front wall height of the lesser of 85 feet or six stories, after which buildings must setback 20 feet from a narrow street. In M1-5A zoning districts, buildings that occupy less than or equal to 3,600 SF of lot area are allowed to have commercial and manufacturing uses below the floor of the second story.[4] M1-5A and M1-5B districts are distinct from other manufacturing districts as they provide for Joint Live-Work Quarters for Artists (JLWQA), which is a program that allows for the residential conversion of manufacturing floor area in buildings constructed prior to December 15, 1961, to be used by "Certified Artists."[5]

Over the last thirty years, the area's land use has shifted from light manufacturing to a mix of retail, office space, multi-family residential buildings, JLWQA, and community facilities. In the last several years, it appears that the nature of certified and approved special permit applications in CB2 has changed from an expansion of JLWQA in existing buildings to a new pattern of converting the artist housing to Use Group 2 Residential ("UG2"). A search through the Department of City Planning's Land Use & CEQR Application Tracking System ("LUCATS") reveals that beginning in 2011 with Application No. C 120039 ZSM, 70 Greene Street, residential conversions have come at the expense of existing JLWQA units. Prior to that, LUCATS shows that all special permits to create new UG2 floor area came as a result of either new construction or substantial reconstruction of vacant properties. Existing buildings such as 115 Wooster Street, 200 Lafayette Street, 150 Lafayette Street, and 149 Wooster Street were the subjects of special permit applications that were certified by the Department of City Planning to expand the number of JLWQA units. In 2005, an application for 96 Spring Street was modified from a request to convert newly added floor area to UG2 to a request to establish the new floor area as JLWQA.

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[4] Restrictions to specific commercial use groups within M1-5A zoning districts are enumerated in ZR § 42-14D.
[5] Artist certification is administered by the New York City Department of Cultural Affairs. The application for certification can be found at http://www.nyc.gov/html/dcla/html/about/artist.shtml.

Since the beginning of 2014, only two other applicants have sought to convert JLWQA into UG2. In one application, C 140114 ZSM, also known as 37 Great Jones Street, the Borough President recommended approval until new information appeared that the formerly vacant JLWQA units that were proposed to be converted to UG 2 were filled with a tenant before the Special Permit was granted by the City Planning Commission. Upon learning of the premature change in use, the Borough President immediately wrote to the City Planning Commission to rescind the recommendation of approval. The application was ultimately withdrawn. Just last month, in application C 140353 ZSM, also known as 102 Greene Street, the Borough President recommended that the application for residential conversion be denied with conditions as the two JLWQA units proposed for conversion were occupied as of the time of the initial filing of the application.

COMMUNITY BOARD RECOMMENDATION

At its Full Board meeting on November 20, 2014 Manhattan Community Board 2 ("CB2") recommended an approval with conditions of this application by a unanimous vote of 49 in favor and none opposed. CB2 wrote that the loss of JLWQA was akin to losing affordable housing units and the loss of affordable artist housing would negatively impact the character of the district. CB2 voted to approve the application with the conditions that CPC prescribe conditions that compensate for the loss of JLWQA units and that at least one such unit be maintained.

BOROUGH PRESIDENT'S COMMENTS

The establishment of Joint Live-Work Quarters for Artists was a tool that legalized an existing artist community that had thrived within a blighted manufacturing district. For decades, these units have existed to provide a means to occupy industrial lofts for their unique qualities as spacious and inspiring work environments. When properly enforced, the restrictive nature of JLWQA units makes them less attractive to buyers than residential units of comparable size that are not bound by vocational restrictions.[6] For this reason JLWQA units are viewed by CB2 and many others as what had been historically affordable housing for artists. By the same token, property owners see JLWQA units as an impediment to achieving what they feel to be the full value of their buildings.

The continued use of special permits to eliminate JLWQA in favor of residential use will have an adverse effect on the conforming uses in the surrounding area as there will be a systematic reduction in affordable artist housing in SoHo. The applicant's discussion of the findings notes that the immediately adjacent building at 500 Broome Street has a Certificate of Occupancy for JLWQA as does 494 Broome Street, located two buildings east of the applicant's property. Greater amount of oversight over existing and future JLWQA units by the Department of Cultural Affairs and the Department of Buildings to limit their use to artists will deepen their affordability and preserve them for future generations of artists who wish to live and work in SoHo.

CB2 in its recommendation equates JLWQA units as a form of affordable housing and asks that the community be compensated for the loss of this type of affordable housing and that one JLWQA unit be maintained in the new development. The provision of affordable housing units at this site, however, would require a program by the Department of Housing Preservation and Development that could manage affordable units in buildings of this size which does not currently exist. Though this building is small, the aggregate effect of affordable units in small multi-family buildings across the City could be quite large, and the City should seriously explore the feasibility of such a program. Alternatively, the City could

[6] "In a Changed SoHo, Legal Pentimento" by Nadine Brozan. The New York Times. June 8, 2003

create a program whereby developers of small buildings could mitigate the loss of affordable housing by seeding an affordable housing fund.

The Borough President continues to believe that the SoHo community should not be forced to choose between historic preservation and affordable housing for artists, as both are essential to the character of the neighborhood. The Borough President does not believe that the remaining JLWQA units in SoHo should be eliminated and SoHo turned into a de facto residential district by special permit. If City Planning and the Community Board believe that SoHo should be rezoned, proposals for such a rezoning should be put forward for discussion. If JLWQA is to be phased out in the neighborhood, then alternative programs for artist housing should be discussed.

However, the current application differs from the application at 102 Greene Street considered last month. Here, the JLWQA unit has not been inhabited for approximately three years. Indeed, for decades it has not been a rental property but rather an owner occupied building with the owner, who was not certified as an artist, apparently using it as studio space. Finally, according to the applicant, it was during the owner/artist's period of ownership that the building deteriorated to such an extent. These factors, in the absence of the specific problems with this application discussed in the following paragraphs, potentially mitigate against disapproval of the application. Nevertheless, the Manhattan Borough President believes that continued elimination of JLWQA and approval of residential use by special permit can and will have adverse impacts on the uses and character of SoHo. Thus, the Manhattan Borough President requests that the applicant work with the Community Board and CPC to mitigate against these adverse impacts. This office is ready to work with everyone involved to explore options for affordable and artist housing in smaller projects, especially if new residential units are added or existing JLWQA units are proposed for elimination.

The application for 498 Broome Street appears to have some problems, most of which stem from the proposed enlargement of the building, which has already been constructed by the applicant. In the application materials, the penthouse enlargement is described as a proposed action because any new floor area would need to conform with the M1-5A zoning of the lot. The only reference in the application materials to the already-built enlargement appears in the Environmental Quality Review materials which states that the building has been enlarged to five stories and a penthouse, pursuant to Department of Buildings ("DOB") and LPC approval.

The Borough President's Office visited the site to confirm and photograph the existence of the penthouse addition. Staff of the Borough President also reviewed DOB permit application no. 121059861, which self-certified approval "to obtain new certificate of occupancy for mixed use building." The adjoining ZD1 Zoning Diagram for job 121059861 (Scan Code SC141487494) provides a site plan, section diagram, and axonometric diagram that depict a five story building. The Schedule A, however, shows a five story building with an additional penthouse floor. This schedule shows floors two through five and the penthouse addition with proposed JLWQA (Use Group 17D) additions. This office could not locate the permit approval for the construction of the penthouse addition.

In the Certificate of Appropriateness, the directions concerning the penthouse addition appear to be conflicting. The second paragraph of the Certificate of Appropriateness states that the addition, as approved, "would be clad in beige stucco." Two paragraphs later the Certificate states that the addition would be "clad with a brick which blends with the existing eastern side wall, causing it to recede from view." The applicant has clad the penthouse addition with a beige stucco, which, when viewed from the street, is clearly distinct from the brick of the existing building and does not appear to blend with the side facade. Clarification of the Certificate of Appropriateness should be sought, and the enlargement should be re-clad in a brick that matches the existing building, if this was the intent of the LPC.

Lastly, the floor area calculations and the zoning calculations do not match. Page Z-001.00 shows a total proposed zoning floor area of 7,450. In the Zoning Analysis on page Z-002.00, the applicant states that proposed zoning floor area would be 7,440. The Description of Proposal describes the prosed building as utilizing 7,498 square feet of floor area, just two square feet short of the maximum allowable amount. Additionally, the mechanical rooms that are supposedly exempt from the zoning calculations also contain what appears to be space for a washer and dryer, appliances that should not be exempted from floor area calculations.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends <u>conditional approval</u> of ULURP Application No. C 130066 ZSM, to grant a Special Permit pursuant to ZR § 74-711, contingent on the applicant:

1. **Maintaining a JLWQA unit in the building or providing some form of studio, work or show space for artists in the building;**
2. **Demonstrating that all necessary building permits were appropriately applied for and obtained;**
3. **Clarifying the requirements of the LPC's Certificate of Appropriateness regarding the exterior materials on the penthouse and making any necessary changes; and**
4. **Reviewing the application with CPC to ensure its accuracy.**

Gale A. Brewer
Manhattan Borough President