



IN THE MATTER OF an application submitted by 42 West 18th Realty Corp. 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 height and setback requirements of Section 23-663, 35-24 & 23-692, the rear yard requirements of Section 23-532, the permitted obstructions in rear yards requirements of Section 33-23, and the minimum distance between buildings requirements of Section 23-711, to facilitate a mixed-use development on property located at 38-42 West 18th Street (Block 819, Lots 14, 15 & 66), in a C6-4A District, within the Ladies Mile Historic District, Borough of Manhattan, Community District 5.*

*197-d (2)(B) eligible

This application for a special permit, pursuant to Section 74-711 of the Zoning Resolution, was filed by 42 West 18th Realty Corp on December 24, 2016, to modify the height and setback requirements of Sections 23-663, 35-24 and 23-692, the rear yard requirements of Section 23-532, the permitted obstructions in rear yards requirements of Section 33-23, and the minimum distance between buildings requirements of Section 23-711 to facilitate development at 38-42 West 18th Street.

BACKGROUND

The applicant, 42 West 18th Realty Corp., seeks to construct a new mixed-use development on a zoning lot (Block 819, Lots 14, 15 & 66), in a C6-4A District within the Ladies Mile Historic District. The zoning lot consists of three tax lots (Lots 14, 15 & 66), and the proposed new development would be located at 38-42 West 18th Street (Lot 15). Lot 66 is proposed to be modestly enlarged and no construction is proposed for Lot 14. Upon completion, the zoning lot will contain a total of 118,831 square feet of development (8.61 FAR), less than the permitted maximum floor area of 138,000 square feet allowed by zoning.

Lot 15 is a 7,100 square-foot, “L” shaped through-block lot, with frontage on both 17th and 18th streets. It is currently operated as an open parking lot with a licensed capacity of 54 spaces. The lot generates about 71,000 square feet of floor area. The applicant intends to construct an

approximately 84,024 square foot mixed-use building including 68,097 square feet of residential use and 15,296 square feet of commercial use. The building will comprise three stories of commercial development covering the entirety of lot 15 with a northern residential portion, on 18th Street, rising 170 feet and 17 stories and a southern residential portion, on 17th Street, rising 166 feet and 16 stories. The building would use approximately 13,024 square feet of unused development rights from elsewhere on the zoning lot. The building would contain below-grade, one-level parking garage for 17 accessory parking spaces and 39 bicycle parking spaces proposed. The development would contain approximately 66 units of new market-rate housing.

Lot 66, a 2,100 square-foot lot with frontage on West 18th Street, is developed with a four-story historic building. The 34,555 square foot structure was originally built as a residence in 1865, but has been used for commercial uses since 1890. Under this application, the existing building located on Lot 66 will be altered to remove 184 square feet of floor area from the ground floor, of which 38 zoning square feet are in fact located on Lot 15. A three-story rear enlargement would be constructed, such that the building on Lot 66 would fully occupy the entire tax lot. The enlargement to the building on Lot 66 will total 438 square feet and will result in a net increase in 292 zoning square feet of retail and storage space floor area in the existing building

Lot 14 is a 4,600 square-foot through lot with frontage on both 17th and 18th streets. It is developed with a six-story historic building containing 26,534 square feet of floor area that has been used for commercial purposes since its construction in 1907. Under this application, the building on Lot 14 will remain unchanged and will continue to contain commercial uses.

The zoning lot (Block 819, Lots 14, 15 and 66) is midblock between Fifth Avenue to the east and Sixth Avenue to the west. It is located within a five block area that was rezoned in 2004 from a M1-6M to a C6-4A District that allows for a mix of commercial and residential uses with an FAR of 10, bonusable to 12 with Inclusionary Housing. The C6-4A district is bounded by Sixth Avenue to the west, West 22nd Street to the north, Fifth Avenue to the east, and the midblock of West 16th and West 17th Streets to the south.

The C6-4A District is located within the Ladies Mile Historic District. A C6-4A District allows a

street wall height of 125 feet and an overall building height of 185 feet. Section 35-24(e)(6) modifies these basic regulations with respect to this lot to allow a street wall height of up to 150 feet, a typical street wall height in the area.

The eclectic mix of building types on West 17th and West 18th streets is characteristic of the Ladies Mile Historic District. They range from two-to-four-story commercial buildings, including former residential brownstones, to five-to-six-story commercial buildings and taller bulkier loft buildings. The loft buildings range in height from 140 to 185 feet and are built with street walls that begin at the street line and rise without setback for the full building height.

Pursuant to Section 74-711 of the Zoning Resolution, the applicant is seeking to modify the height and setback requirements of Sections 23-663, 35-24, and 23-692. In C6-4A Districts, Section 23-663 requires a 10-foot rear setback from the rear yard line above the maximum base height. The rear portion of the south wing of the proposed development rises 166 feet without setback. Therefore the applicant seeks modification to this requirement to facilitate the proposed development. In C6-4A Districts, Section 35-24 requires a front setback of 15 feet above the maximum street wall height. The street wall of the south wing of the proposed development rises 166 feet without setback. Therefore the applicant seeks modification of this requirement to facilitate the proposed development. Section 23-692 limits the height of portions of buildings with street walls less than 45 feet in width to a height equal to the width of the street on which such street walls front or 100 feet, whichever is less. The north wing of the proposed development has a street wall width of 25 feet, a height of 170 feet, and fronts on a narrow street 60 feet wide. Therefore the applicant seeks modification of this requirement to facilitate the proposed development.

The applicant seeks modifications pursuant to Section 74-711 for Sections 23-532 (rear yard requirements) and 33-23 (permitted obstructions in rear yards). Section 23-532 requires a rear yard of 60 feet on through lots exceeding 110 feet in depth. The applicant proposes a rear yard of only 50 feet on a through lot 184 feet in depth and therefore seeks to modify this requirement to facilitate the proposed development. Section 33-23 lists permitted obstructions in required yards or rear yard equivalents in commercial buildings in commercial districts. Pursuant to Section 33-281, no rear

yard regulations shall apply to any commercial buildings on a through lot in C6 Districts. Because there is no required rear yard for the commercial portion of the proposed development, Section 33-23 does not apply and no modification is required.

Under Section 23-711, the minimum distance required between buildings or portions of buildings with legally required windows on a single zoning lot is 60 feet for buildings above 50 feet in height. The building's north and south wings will have a distance of 50 feet between them, therefore the applicant seeks to modify these requirements to facilitate the proposed development.

The applicant intends to restore and repair the facades of the two historic buildings on Lots 66 and 14 pursuant to the Certificate of No Effect continuing maintenance plan as described in the modification of use agreement issued by the Landmarks Preservation Commission on September 25, 2015.

As originally certified on March 7, 2016, the applicant sought modifications to six sections of the Zoning Resolution pursuant to Section 74-711: Sections 23-663, 35-24, 23-692, 23-532, 33-23, and 23-711, as described above. On March 22, 2016, after certification of this application but prior to the Commission vote, the Commission adopted the Zoning for Quality and Affordability ("ZQA") text amendment, necessitating revision of the application as follows. ZQA eliminated Section 23-663 (Rear setback requirements), and therefore modification of this provision is no longer required. Section 35-24(e)(6), which limits street wall height to 150 feet, was relocated to 35-655(f). The requirements of the provision remained the same and the requested modification is still required. Section 23-692 (Height limits for narrow buildings and enlargements) remained unchanged and the requested modification is still required. Section 23-532 (Rear yard equivalents) was relocated to Section 23-533. The requirements of the provision remained unchanged and the requested modification is still required. As described above, Section 33-23 (Permitted obstructions in required rear yards) was deemed inapplicable to the proposed development and the requested waiver was removed from the application. Section 23-711 (Minimum distance between buildings) remained unchanged and the requested modification is still required.

ENVIRONMENTAL REVIEW

This application (C 160082 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 16DCP106M. The lead is the City Planning Commission

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on March 7, 2016.

UNIFORM LAND USE REVIEW

This application (C 160082 ZSM) was certified as complete by the Department of City Planning on March 7, 2016 and was duly referred to Community Board 5 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Manhattan Community Board 5 held a public hearing on this application on May 12, 2016 and on that date, by a vote of forty in favor, one opposed, and three abstaining, adopted a resolution recommending disapproval of the application with the following comments:

Community Board 5 recommends denial unless the Mandatory Inclusionary Housing Program is applied in accordance with the Zoning Resolution as defined in ZR Section 23-92, and further more found that the waiver of rear yard requirements would result in a negative impact to adjacent buildings.

Borough President Recommendation

This application was considered by the Manhattan Borough President, who also issued an unfavorable recommendation on June 15, 2016, with the condition that the Mandatory Inclusionary Housing program be applied in accordance with the Zoning Resolution Section 23-92. The Borough President also noted that the heights of the proposed development would decrease light and air to 32 West 18th Street, a neighboring coop building, and asked the applicant to commit to

paying building service workers a prevailing wage.

City Planning Commission Public Hearing

On June 8, 2016 (Calendar No. 7), the City Planning Commission scheduled June 22, 2016, for a public hearing on this application (C 160082 ZSM). The hearing was duly held on June 22, 2016 (Calendar No. 23). There were thirteen speakers, and six were in favor and seven were in opposition of the application.

Several representatives from the applicant's team spoke in favor of the application, describing the proposed development and the modifications being sought. The speakers stated that the proposed heights would be in context with the existing buildings located on both West 17th and West 18th streets. They also explained that many of the buildings on these streets rise over 150 feet without setbacks, therefore the proposed project would be consistent with the built context. The representatives further stated that the proposed use is consistent with recent residential developments that were a result of conversions and rehabilitations. Since these buildings were primarily pre-existing buildings, rear yard equivalents were not required.

The Chair of the Land Use Committee of Community Board 5 and another board member spoke in opposition and reiterated the Board's conditional disapproval of the application, stating that MIH must be applied to the project. A representative of Land Use Division for the Manhattan Borough President also reiterated the Borough President's conditional disapproval of the application, for the same reason.

Several other speakers, including residents of the neighboring coop at 32 West 18th Street, spoke or submitted written testimony in opposition of the application, raising multiple concerns regarding the proposed waivers related to height, setback, and rear yards as well as the proposed through-block commercial portion of the building that is not the subject of the proposed waivers.

A consultant retained by the residents of the 32 West 18th Street building provided additional written testimony related to the consideration of the application by the New York City Landmarks Preservation Commission, the proposed project's compliance with New York State Multiple

Dwelling Law, and the rear yard obstruction waiver that was removed from the application.

The Urban Justice Center submitted written testimony dated July 22, 2016, which outlines their legal opinion that the City Planning Commission is obligated to impose the requirement of MIH on this project. The State Senator representing the 28th Senate District made a request, which was granted, to delay the Commission vote to allow more time for discussion and review of the application.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of this special permit (C 160082 ZSM) is appropriate.

The applicant intends to develop an approximately 84,024 square-foot mixed-use building. The building would contain approximately 68,097 square feet of residential use; approximately 15,296 square feet of commercial use; and a below-grade, one level parking garage for 17 accessory parking spaces and 39 bicycle parking spaces.

The current application will facilitate the construction of this new building on a zoning lot that is shared with two historically significant buildings. It is located in a C6-4A District which permits an as-of-right base floor area ratio of up to 10 FAR for commercial, community facility, or residential uses. Overall, the proposed development has an FAR of 8.61 and contains 118,831 square feet, approximately 19,200 square feet less than permitted under the Districts' 10 FAR maximum.

The proposed building will be located on a lot within the Ladies Mile Historic District that currently comprises a parking lot and two existing buildings that will remain. The proposed development requires several modifications to height and setback requirements, yard regulations, and minimum distance between buildings. As originally filed, the applicant sought modifications to six Sections of the Zoning Resolution. Subsequent to certification, the applicant revised its application to reflect the recently adopted Zoning for Quality and Affordability (ZQA) regulations

and to remove an unnecessary modification requested in error. As a result, the waiver to the now former Section 23-663 for the rear yard setback and the modification to Section 33-23 for permitted obstructions in rear yards are no longer required.

The requested height and setback modifications would allow the northern wing of the new building to rise above the 60 foot maximum building height and would allow the south wing to rise without setback above the maximum base height of 150 feet. The LPC found the proposed building heights and street walls to be appropriate to the historic context of the Ladies Mile Historic District. Heights along West 17th Street vary in height. The shorter buildings range from 75 to 77 feet in height, the medium height buildings are approximately 125 feet tall. Then there are several buildings that range from 148 to 200 feet in height. The street wall of the proposed building on West 17th Street would reach 166 feet.

The heights of buildings along West 18th Street also vary. There are small buildings along this frontage of approximately 30 to 48 feet in height. The building on Lot 14 is 76 feet tall and the building on Lot 66 is 48 feet tall. The taller buildings on the block range from 153 to 180 feet in height. The proposed building will rise to 170 feet on West 18th Street. The resultant new building height and massing is appropriate to both 17th and 18th streets, creates building envelopes that are characteristic of the historic district, and fills a gap in what is otherwise a generally consistent and strong street wall along both street frontages.

The requested rear yard modification applies only above the third floor, where the new building becomes residential and a 60-foot rear yard equivalent is required. The applicant is proposing a reduction of 10 feet to provide a rear yard equivalent of 50 feet and a minimum distance between the buildings of 50 feet. In addition, this block is only 184 feet deep, whereas a normal block in Manhattan block is 200 feet deep. The site is also constrained by the presence of two historically significant buildings on the zoning lot.

The Commission believes that the modifications to height and setback regulations, rear yard requirements, and the minimum distance between buildings will not have adverse effects on the structures or open space in the vicinity in terms of scale, location, or access to light and air. The

location and footprint of the building would be the same as that of an as-of-right building. The modifications will facilitate the construction of an appropriate new building and the preservation of two historically significant buildings on a shared zoning lot. The Commission believes these modifications to be appropriate.

During the public review of this application, the Commission heard testimony and received correspondence from community residents, elected officials, and others regarding the proposed building height, rear yard waivers, maximum base height and setback, and the applicability of the Mandatory Inclusionary Housing Program (MIH) to this proposed development. The Commission, as noted above, believes that the applicant has met the required conditions and findings of this special permit.

The Commission appreciates the testimony provided by residents of the building adjacent to the project site at 32 West 18th Street regarding access to light and air and the effect of the proposed waivers for height, setback, and rear yards on their building. In their testimony, the residents point to the location of their residences' windows that currently front onto a noncomplying rear yard and assert that the reduction in rear yard requirements from the standard 60 feet to 50 feet for the proposed development would detrimentally affect their access to light and air. While the residences in question currently enjoy openness afforded by the parking lot on the subject property, the diminished rear yard condition of the 32 West 18th Street building results from the exceedingly deep footprint of the building itself, which intrudes into what would normally be an area reserved for rear yard, as well as the seven and eleven-story buildings that front on West 17th Street, whose rear façades face the 32 West 18th Street building and also do not provide a standard rear yard. This existing, shallow rear yard condition is not unusual on the subject block nor in the larger historic Ladies' Mile neighborhood, where many buildings are built at or close to the rear lot line and rear yards are frequently greatly reduced in size.

The Commission notes that the rear yard as proposed on the project site would be 50 feet in depth. While this is less than the required 60 feet, it would be significantly greater than the existing rear yard condition of the 32 West 18th Street building and also greater than rear yards typically found throughout the area. Further, the rear façade of the proposed building fronting on West 17th Street

would be recessed four to eight feet beyond the rear walls of the adjacent buildings that face the 32 West 18th Street building, providing an increased degree of openness and access to light and air.

The Commission is also mindful of the fact that the block in question is 184 feet deep, shallower than a typical Manhattan city block, and the applicant asserts that this reduced depth necessitates the rear yard reduction to achieve reasonable floorplates in the proposed development. The consultant retained by the residents of 32 West 18th Street testified that Section 23-534 provides relief for zoning through lots located on blocks that are less than 180 feet in depth and that the rear yard waivers sought are inappropriate given the depth of the block is greater than 180 feet. The Commission acknowledges that the as-of-right relief provided by Section 23-534 is not available to the applicant and that the requested rear yard waiver via special permit is therefore the appropriate avenue to request relief for the shallow through lot condition. The Commission believes that the floorplates of the proposed buildings would be typical of the built typology of the Ladies' Mile Historic District while providing a reasonable and appropriate rear yard dimension that responds to conditions on adjacent lots.

The Commission also notes the testimony regarding the height and setback waivers that would allow the proposed development to exceed permitted heights. The Commission recognizes that the Landmarks Preservation Commission reviewed the proposed waivers and the resulting relationship between the proposed development and surrounding buildings within the Ladies' Mile Historic District and found the proposal to be appropriate. The Commission further observes that existing built conditions on the subject block and the broader area are varied and that buildings of the scale and massing of the proposed development are common. The modifications for height and setback as proposed are therefore appropriate.

The residents of the 32 West 18th Street building, as well as the consultant retained by the residents to conduct an analysis of the proposal, reference the three-story commercial through-block portion of the building and assert that it exceeds what is permitted as-of-right. The Commission notes that the portion of the building in question is not the subject of any of the proposed waivers sought by the applicant. However, Department staff have carefully reviewed the testimony and have

determined that the three-story portion of the building is indeed permitted as-of-right, as provided for in Section 35-10 of the Zoning Resolution, which states that commercial portions of mixed-use buildings located within commercial zoning districts are subject to Article III Chapter 3. Section 33-281 exempts commercial buildings in C6-4A districts from rear yard requirements.

The Commission has considered the testimony provided by the consultant retained by the residents of 32 West 18th Street related to review of the application by the Landmarks Preservation Commission and the applicability of the New York State Multiple Dwelling Law to the requested rear yard modification. The testimony states that the proposed rear yard waiver is not appropriate due to the lack of explicit mention in the Landmark Preservation Commission's ("LPC") Certificate of Appropriateness. After reviewing the Certificate of Appropriateness, the LPC's Modification of Use and Bulk Regulations report ("MOU"), and consulting with LPC staff, Department staff have determined that the conditions in question for the Section 74-711 special permit have been met. The documentation provided to the Commission by the LPC clearly demonstrates that the restorative work required under the continuing maintenance program contributes to a preservation purpose and that the proposed development facilitated by the requested modifications relates harmoniously to the buildings in the Ladies Mile Historic District.

With regards to the consultant's testimony on the appropriateness of the requested waivers in relation to New York State Multiple Dwelling Law, the Commission notes that the section of the law in question does not apply to buildings constructed or altered in New York City after December 6, 1969.

The Commission acknowledges the testimony of those who wish to see the Mandatory Inclusionary Housing program applied to this project, and shares the goal of facilitating the creation of affordable housing in neighborhoods throughout the City. Indeed, the Commission created the most comprehensive, rigorous inclusionary housing program of any large city in the nation. The Commission is also mindful of applicable legal and constitutional constraints and recognizes that attempts to exceed the bounds of MIH as enacted could be self-defeating and would place the program in legal jeopardy.

It is important for the Commission to keep this consideration in mind with respect to this project. Department staff and the Commission were clear and consistent throughout public review that MIH would not apply to special permits of this type. The Applicability section of the CPC Report for MIH anticipates precisely this type of project:

The program is not expected to be applied in conjunction with special permit applications that would reconfigure residential floor area that is already permitted under zoning, without increasing the amount of residential floor area permitted.

This echoes statements made by Department staff at certification and by the City Planning Director in testimony before the City Council. Given that a CPC Report is the representation to the public and to the City Council of the scope of the law, and given that the City Council did not modify this aspect of the law, the Commission does not now have the discretion to act in a way that contradicts these representations or that goes beyond the law's explicit scope. The Commission understands the difficult issues this project presents, but this legal conclusion is clear.

The MIH program, pursuant to Section 74-32 of the Zoning Resolution, applies to special permits when they significantly increase permitted residential floor area, such as those that allow residential uses within manufacturing districts where no residential uses are currently permitted. The proposed development is within a C6-4A district, which allows residential densities of up to 12 FAR. The grant of this special permit will not increase residential density or floor area beyond what is permitted today under zoning. In fact, this Special Permit would enable the development of significantly less than what is permitted today under zoning. Rather, the waivers requested merely allow for the reconfiguration of already permitted floor area on the zoning lot and preservation and continuing maintenance of existing buildings within the historic district. For these reasons, MIH does not apply. The Commission simply cannot exceed the scope of the powers granted to it under the law.

The Commission believes that the findings of Section 74-711 have been met, and the Commission believes that this project, as proposed is appropriate.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-711 (Special Permits for Landmark Preservation) 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) Not Applicable

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action 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 42 West 18th Realty Corp. pursuant to Section 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 (Landmark Preservation In all Districts) of the Zoning Resolution to modify the height and setback requirements of Sections 23-66, 35-65 & 23-692, the rear yard requirements of Section 23-53, and the minimum distance between buildings requirements of Section 23-711, to facilitate a mixed-use development on property located at 38-42 West 18th Street (Block 819, Lots 14, 15 & 66), in a C6-4A District, within the Ladies Mile Historic District, Borough of Manhattan, Community District 5, is approved, subject to the following terms and conditions:

- 1) The property that is the subject of this application (C 160082 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications, and zoning computations indicated on the following plans, prepared by Morris Adjmi, filed with this application and incorporated in this resolution:

<u>Drawing Number</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-030	Zoning Compliance Summary	06/21/16

Z-100	Site Plan	09/17/15
Z-140	Bulk Waiver Plan & Section	06/21/16
Z-141	Bulk Waiver Section	06/21/16

- 2) Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
- 3) Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
- 4) Development pursuant to this resolution shall be allowed only after the restrictive declaration attached hereto as Exhibit A with such administrative changes as are acceptable to Counsel to the Department of City Planning, has been executed and recorded in the Office of the Register of the City of New York, County of New York. Such Restrictive declaration shall be deemed incorporated herein as a condition of this resolution.
- 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, sublessee, or occupant.
- 6) Upon the failure of any party having any right, title, or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms, or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation, or amendment of the special permit hereby granted.
- 7) Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 160082 ZSM), duly adopted by the City Planning Commission on August 15, 2016 (Calendar No. 6), is filed with the Office of the Speaker, City Council, and the Borough

President in accordance with the requirements of Section 197-d of the New York City Charter.

CARL WEISBROD, Chairman

KENNETH J. KNUCKLES, Esq., Vice Chair

IRWIN G. CANTOR, ALFRED C. CERULLO, III,

JOSEPH I. DOUEK, RICHARD W. EADDY,

HOPE KNIGHT, Commissioners

RAYANN BESSER, ANNA HAYES LEVIN,

ORLANDO MARIN, Commissioners, Abstaining

MANHATTAN COMMUNITY BOARD FIVE

Vikki Barbero, Chair

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Wally Rubin, District Manager

May 13, 2016

Hon. Carl Weisbrod
Chair of the City Planning Commission
22 Reade Street
New York, NY 10007

Re: ULURP Application # C 160082 ZSM, An application by 42 West 18th Street Realty Corp for a special permit to modify height and setback requirements, rear yard requirements and the minimum distance between buildings requirement to facilitate the development of mixed-use building massed in two wings of 16 and 17 stories containing approx 66 units of residential (68,000 sq ft), approx 16,000 sq ft of commercial space and a below-grade one-level parking garage.

Dear Chair Weisbrod:

At the regularly scheduled monthly Community Board Five meeting on Thursday, May 12, 2016, the following resolution passed with a vote of 40 in favor; 1 opposed; 3 abstaining:

WHEREAS, An application by 42 West 18th Street Realty Corp (Applicant) has applied for a special permit pursuant to Zoning Resolution (ZR) Section 74-711 to modify height and setback requirements, rear yard requirements and the minimum distance between buildings requirement to facilitate the development of mixed-use building massed in two wings of 16 and 17 stories containing approximately 66 units of residential (68,000 gross sq. ft.), approximately 16,000 gross sq. ft. of commercial space and a below-grade one-level parking garage; and

WHEREAS, The project site includes three tax lots (Block 819 and Lots 14, 66 and 15) where Lots 14 and 66 are contributing buildings to the Ladies Mile Historic District and Lot 15 is a through-block parcel with 25 feet of frontage on West 18th Street and 50 feet of frontage on West 17th Street currently used as an at-grade parking lot; and

WHEREAS, Both historic buildings have suffered extensive deterioration from neglect from the present owner and remain surrounded by scaffolding due to safety concerns; and

WHEREAS, According to residents of the block, this scaffolding has been in place for many years without the owner making any significant effort to restore the existing buildings and is considered an eyesore and nuisance; and

WHEREAS, The proposed development would add a three-story rear addition to Lot 66 and develop Lot 15 into a building with a 16-story building segment fronting on West 17th Street and a 17-story building segment fronting on West 18th Street; and

WHEREAS, The proposed development would require a special permit to allow for the following modifications:

- **Rear Yard Equivalent and Minimum Distance between Windows Waivers:** The underlying residential rear yard equivalent requirements do apply above the third floor where the new building becomes residential and the requested waiver of 10 feet from the required 60-foot deep rear yard equivalent is still required. This waiver will allow a rear yard equivalent of 50 feet and a minimum distance between the buildings of 50 feet; and
- **Height and Setback Waivers:** The requested height and setback waivers would allow the northern wing of the new building to rise above the 60 foot maximum building height applicable to narrow lots and would allow the south wing to rise without setback above the maximum base height of 125 feet; and

WHEREAS, Among other requirements, for the city to approve the special permit as put forth, the city must find that "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"; and

WHEREAS, The president of the Condominium Board at 32 West 18th Street, representing her building, argued that the proposed building "will have direct and substantial adverse effects on our building's open space, light and air"; and

WHEREAS, The president of the Condominium Board at 32 West 18th Street, in particular, requested that the application for modification of the regulations pertaining to maximum height for a narrow building be rejected; and

WHEREAS, Another resident of 32 West 18th Street expressed concerns that the modifications in the rear yard would have significant and adverse impacts for access to light and clean air in his ground-level apartment; and

WHEREAS, While it is difficult to quantify the adverse impact without further study, CB5 believes that the encroachment of the South Wing of the proposed building into the rear yard equivalent by 10 feet (resulting in a 50-foot rear yard equivalent rather than a 60-foot one) certainly has an adverse impact on other properties on the block (as compared with the no-action) scenario; and

WHEREAS, While sympathetic to the concerns of the neighbors regarding the modification to the height of the portion of the building fronting 18th street, we are particularly concerned about the requested waiver for modifications of zoning requirements for a rear yard and believe that the 60-foot distance requirement between the 17th Street and 18th Street building segments should be maintained; and

WHEREAS, CB5 has, in the past, found modifications to bulk regulations pursuant to ZR Section 74-711 to be acceptable as such modifications can facilitate new construction that contributes to the historic district;

WHEREAS, ZR Section 74-32 (part of the newly adopted MIH text amendment) titled "Additional Considerations for Special Permit Use and Bulk Modifications" reads,

"Where a special permit application would allow a significant increase in #residential floor area# and the special #floor area# requirements in #Mandatory Inclusionary Housing areas# of paragraph (d) of Section 23-154 (Inclusionary Housing) are not otherwise applicable, the City Planning Commission, in establishing the appropriate terms and conditions for the granting of such special permit, shall apply such requirements where consistent with the objectives of the Mandatory Inclusionary Housing program as set forth in Section 23-92 (General Provisions)"; and

WHEREAS, ZR Section 12-10 reads,

""Bulk" is the term used to describe the size of #buildings or other structures#, and their relationships to each other and to open areas and #lot lines#, and therefore includes: (a) the size (including height and #floor area#) of #buildings or other structures#; (b) the area of the #zoning lot# upon which a #building# is located, and the number of #dwelling units# or #rooming units# within a #building# in relation to the area of the #zoning lot#; (c) the shape of #buildings or other structures#; (d) the

location of exterior walls of #buildings or other structures# in relation to #lot lines#, to other walls of the same #building#, to #legally required windows#, or to other #buildings or other structures#; and (e) all open areas relating to #buildings or other structures# and their relationship thereto"; and

WHEREAS, While "significant" is not a defined term, the Department of City Planning (DCP) has communicated that the applicability threshold would be 10 residential units or 12,500 sq. ft. of residential floor area; and

WHEREAS, ZR Section 12-10 has #Residential# defined as "pertaining to a #residence#"; and

WHEREAS, ZR Section 12-10 has #Floor Area# defined as the following: "the sum of the gross areas of the several floors of a #building# or #buildings#, measured from the exterior faces of exterior walls or from the center lines of walls separating two #buildings#."; and

WHEREAS, The only "objectives" referenced in ZR Section 74-32 are set forth in ZR Section 23-92:

"The Inclusionary Housing Program is established to promote the creation and preservation of housing for residents with varied incomes in redeveloping neighborhoods and to enhance neighborhood economic diversity and thus to promote the general welfare"; and

WHEREAS, The 2009-2013 American Community Survey estimates that while 22.7% of NYC's population is "Black or African American," only 1.5% of the subject site's census tract (Manhattan 54) population identifies as such; and

WHEREAS, The 2009-2013 American Community Survey estimates that while 28.7% of NYC's population is "Hispanic or Latino," only 9.0% of the subject site's census tract (Manhattan 54) population identifies as such; and

WHEREAS, The 2009-2013 American Community Survey estimates that while 17.3% of NYC's population has income below the poverty rate, only 2.0% of the subject site's census tract (Manhattan 54) population has income below the threshold.; and

WHEREAS, CB5 finds that the area surrounding the site is neither economically nor racially diverse and that the application of MIH as part of the special permit would thereby promote the creation of housing for residents with varied incomes in a redeveloping neighborhood and enhance neighborhood economic diversity—fully consistent with the objectives of ZR Section 23-92; and

WHEREAS, The Environmental Assessment Statement (EAS) for the proposed MIH text amendment reads,

"The MIH program would also apply outside of MIH areas in zoning districts as a condition of granting future special permits for use or bulk modifications that facilitate the creation of a significant number of additional dwelling units"; and

WHEREAS, The EAS for MIH, referring to neighborhoods with historic districts, reads,

"According to the Market and Financial Study conducted by BAE, these neighborhoods contain some of the strongest housing real estate markets in the city. They also represent some of the least economically diverse neighborhoods in the city, according to analysis provided in the DCP report, Mandatory Inclusionary Housing: Promoting Economically Diverse Neighborhoods. As shown in Figures 23.3 of the latter report (Attachment B), the community districts where 74-71 applications are concentrated overlap substantially with the neighborhoods where the majority of households are concentrated within higher income brackets"; and

WHEREAS, The EAS for MIH reads,

"In the future with the action, 74-71 permit applications that facilitate a significant increase in housing would be required to comply with the Proposed Action, creating a requirement for permanently affordable housing.... Where a property owner chooses to pursue modifications under 74-71 to create a substantial amount of new housing, the MIH requirements would apply. Since these

sites are concentrated in the strongest residential real estate markets in the city, an MIH development on these sites would likely be feasible even with ongoing commitments to maintain and preserve the historic character of the site consistent with the preservation purpose of the special permit. In the event that the MIH requirements would make a project infeasible, the BSA special permit created by the proposed action would be available to provide relief. Therefore, in the future with the proposed action, there is likely to be a greater amount of permanently affordable housing in some of the city's least economically diverse neighborhoods, further contributing to neighborhood economic diversity"; and

WHEREAS, The EAS for MIH reads,

"... new developments that occur under 74- 71 are likely to continue to primarily attract high income residents, further limiting the economic diversity of these neighborhoods in the future without the action"; and

WHEREAS, Manhattan Borough President Gale Brewer in testifying in favor of MIH at the City Planning Commission stated,

"I can support the MIH plan for the following reasons: 1. In addition to neighborhood rezonings, it would apply to all special-permit applications by private developers to add more than 10 residential units of housing to any area where this housing couldn't otherwise be built"; and

WHEREAS, According to the EAS for this special permit application (CEQR No. 16DCP106M 3/4/2016) reads,

"The applicant is seeking a Special Permit pursuant to Section 74-711 of the New York City Zoning Resolution to modify bulk regulations pertaining to the rear yard equivalent; rear setback; maximum base height and setback; distance between buildings; and narrow buildings to facilitate the Proposed Development at 38-42 West 18th Street/41-45 West 17th Street"; and

WHEREAS, According to the EAS for this special permit application (CEQR No. 16DCP106M 3/4/2016), the no-action condition would allow for 40 residential units with 55,828 gross sq. ft. of residential floor area (45,730 zoning sq. ft. of residential floor area) and the with-action condition would allow for 66 residential units with 79,793 gross sq. ft. of residential floor area (68,097 zoning sq. ft. of residential floor area); and

WHEREAS, The special permit, if granted would facilitate the development of 26 more market-rate residential units (at 23,965 gross sq. ft. of residential floor area and 22,367 zoning sq. ft. of residential floor area); and

WHEREAS, Despite the fact that the special permit as currently envisioned would allow for 26 new units of luxury housing that the Applicant says cannot be built absent a special permit approval, the Applicant states that there should be no MIH requirement (i.e. affordable housing) for this development; and

WHEREAS, Applicant, in a letter to CB5 dated April 26th 2016, states:

"DCP's Zoning Division and Counsel's office, who are the authors of this recently enacted text, have concluded that this special permit application does not result in "a significant increase in residential floor area" because the bulk waivers requested under the ZR Section 74-711 Special Permit application simply facilitate the use of permitted residential floor area on a zoning lot encumbered by landmark buildings"; and

WHEREAS, The argument that ZR Section 74-32 bulk modifications refer to only a change in the maximum permitted residential floor area ratio and not to other bulk modifications is not supported by the Zoning Resolution or the administrative record (including the EAS for MIH); and

WHEREAS, ZR Section 74-32 does not permit the City Planning Commission to exercise discretion as to whether it may apply the MIH requirement to this development and rather states that the City Planning Commission shall apply the MIH requirement under these circumstances; and

WHEREAS, CB5 finds that MIH must be applied consistently and that the bulk modifications sought in this special permit (pertaining to the rear yard equivalent, rear setback, maximum base height and setback, distance between buildings and narrow buildings) unquestionably qualify as bulk modifications for purposes of ZR Section 74-32; and

WHEREAS, The 26 residential units (and 23,965 gross sq. ft. of residential floor area and 22,367 zoning sq. ft. of residential floor area) would be considered a "significant increase" according to the MIH applicability threshold; and

WHEREAS, In the Zoning Resolution the term "#residential floor area#" is used to refer to the actual amount of residential floor area on a site as opposed to "maximum permitted residential floor area ratio," and an interpretation otherwise is inconsistent with a plain reading and meaning of the Zoning Resolution; and

WHEREAS, According to a plain reading and meaning of the Zoning Resolution, the requirements of MIH are triggered by this special permit and the City Planning Commission and the City Council must withhold approval of this special permit unless MIH is applied; and

WHEREAS, With extremely limited opportunities for low-income households to move into Manhattan Community District 5 and this census tract in particular, CB5 urges the City Planning Commission to require the provision of housing units affordable to households with incomes at or below 60 percent of Area Median Income (and including units for households with income at or below 40 percent of Area Media Income); and

WHEREAS, 32BJ submitted written testimony arguing that it is important for the new building to bring high quality jobs for building service workers and that the building should have an affordable housing set aside in light of the passage of the Mandatory Inclusionary Housing text amendment; and

WHEREAS, CB5 strongly encourages the owners of 42 West 18th Street to commit to creating high quality building service jobs that pay all building service workers the industry standard prevailing wage (along with family and retirement benefits); therefore be it

RESOLVED, Community Board Five **recommends denial** of the application by 42 West 18th Street Realty Corp for a special permit pursuant to Zoning Resolution Section 74-711 **UNLESS** the Mandatory Inclusionary Housing Program is applied in accordance with the Zoning Resolution as defined in Section 23-92; and be it further

RESOLVED, Community Board Five **finds** that the waiver of rear yard requirements would result in a negative impact to adjacent buildings.

Thank you for the opportunity to comment on this matter.

Sincerely,



Vikki Barbero
Chair



Eric Stern
Chair, Land Use, Housing and Zoning Committee



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Gale A. Brewer, Borough President

June 15, 2016

**Recommendation on
ULURP Application Nos. C 160082 ZSM – 42 West 18th Street
by 42 West 18th Realty Corp.**

PROPOSED ACTIONS

42 West 18th Realty Corp. (the “applicant”) seeks approval of a **special permit** pursuant to Section 74-711 of the New York City Zoning Resolution (“ZR”) to effectuate the development of a mixed use building at 42 West 18th Street (Block 819, Lot 15) in a C6-4A zoning district in Manhattan Community District Five. The applicant will also restore, on the same zoning lot, the facades of two existing structures that are contributing buildings to the Ladies’ Mile Historic District (Block 819, Lots 14 and 66), and enlarge the existing building on Lot 66. This special permit requests waivers in base and setback, rear yard equivalent, minimum distance between buildings, and height.

In order to obtain a permit pursuant to ZR § 74-711, the following conditions must be met:

- (1) any application pursuant to this Section shall include a report from the Landmarks Preservation Commission stating that a program has been established for continuing maintenance that will result in the preservation of the subject *building* or *buildings*, and that such *use* or *bulk* modifications, or restorative work required under the continuing maintenance program, contributes to a preservation purpose;
- (2) any application pursuant to this Section shall include a Certificate of Appropriateness, other permit, or report from the Landmarks Preservation Commission stating that such *bulk* modifications relate harmoniously to the subject landmark *building* or *buildings* in the Historic District, as applicable; and
- (3) the maximum number of *dwelling units* shall be set forth in Section 15-111 (Number of permitted dwelling units).

In order to grant a special permit, the City Planning Commission (CPC) shall find that:

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

PROJECT DESCRIPTION

The project site is comprised of Tax Lots 14, 15, and 66 on Block 819, bounded by West 18th Street to the north, Fifth Avenue to the east, West 17th Street to the south, and Sixth Avenue to the west. The applicant is seeking a special permit pursuant to ZR § 74-711 in order to construct a new building on Lot 15, enlarge the existing building on Lot 66, and restore the facades of the existing buildings on Lots 66 and 14. Currently, Lots 66 and 14 are occupied by buildings containing commercial uses that will remain and be restored. Lot 15 is being used as a 54-space public parking lot.

Background

In 2001, the Landmarks Preservation Commission (LPC) issued a Certificate of No Effect (CNE 02-0492) for proposed work on the building located on Lot 14, and a Certificate of Appropriateness (COFA 02-0504) for alterations and additions to the buildings on Lots 14 and 66, as well as the construction of a new building on Lot 15. In 2004, the CPC granted a special permit pursuant to ZR § 74-711 (C 020244 ZSM) for this new building and enlargement to existing buildings pursuant to Uniform Land Use Review Procedure (ULURP).

In 2004, the CPC rezoned the area bounded by Fifth Avenue, West 17th Street, Sixth Avenue, and West 22nd Street from an M1-6M to a C6-4A district (C 040331 ZMM), and amended ZR § 11-44, 23-633, and 35-24 to clarify zoning text, grandfather the special permit previously approved for the project site (M 020244 ZSM), and allow street wall heights to match adjacent street walls provided that such height does not exceed 150 feet (N 040332 ZRM). This rezoning allowed the conversion to and construction of residential uses as of right within the rezoned area.

The previous special permit was modified in 2004 (M 020244A ZSM). In 2008, the LPC issued a Certificate of Appropriateness approving further design modifications (COFA 08-8225). This special permit was renewed for three years on May 5, 2008 (N 080266 CMM) and for an additional three years on August 8, 2011 (N 110199 CMM). This project did not proceed and the special permit lapsed on February 2, 2014.

On December 3, 2014, the LPC issued a Certificate of Appropriateness (COFA 16-5428) approving the current proposed building and restoration plan for the existing buildings.

On March 22, 2016, the New York City Council approved the Mandatory Inclusionary Housing (MIH) text amendment with modifications. The text amendment makes the production of affordable housing a mandatory condition of residential development when developers build in an area zoned for MIH, whether as a part of a City plan or a private rezoning application. In addition, with regard to special permit use and bulk modifications, ZR § 74-32 states:

Where a special permit application would allow a significant increase in #residential floor area# and the special #floor area# requirements in #Mandatory Inclusionary Housing areas# of paragraph (d) of Section 23-154 (Inclusionary Housing) are not otherwise applicable, the City Planning Commission, in establishing the appropriate terms and

conditions for the granting of such special permit, shall apply such requirements where consistent with the objectives of the Mandatory Inclusionary Housing program as set forth in Section 23-92 (General Provisions).

Proposed Development

The applicant would restore and repair the facades of the two historic buildings on Lots 66 and 14 pursuant to the Certificate of No Effects issued by the LPC (CNEs 17-7108 and 7109). The buildings would be subject to a continuing maintenance plan as described in the modification of use agreement (MOU 17-1707).

The applicant would also alter and remove 184 square feet of floor area from the ground floor of the existing building on Lot 66, and construct a three-story rear enlargement totaling 438 zoning square feet, resulting in a net increase in floor area of 292 zoning square feet of retail and storage space in the existing building.

On Lot 15, the applicant would construct an approximately 84,024 square foot mixed use building with 68,097 square feet of residential use (66 market-rate dwelling units); 15,296 zoning square feet of commercial use; and a below-grade, one-level parking garage with 17 accessory parking spaces and 39 bicycle parking spaces. Lot 15 generates 71,000 zoning square feet of floor area, and utilizes 13,024 zoning square feet of unused development rights from the remainder of the zoning lot. In total, the zoning lot would contain 118,831 zoning square feet of development (8.61 FAR)

The new building on Lot 15 would consist of a north wing fronting on 18th Street, and a south wing fronting on 17th Street. The north wing, with a frontage of 25 feet, would be 17 stories and 170 feet in height with no front setback. The south wing, with a frontage of 50 feet, would be 16 stories and 166 feet in height with no front setback. The two wings would be connected by a three-story base, with ground-floor retail use on the first floor, and office and retail use on the second and third floors.

According to the Environmental Assessment Study (EAS) for this current special permit application, the no-action condition would allow for 40 residential units with 45,730 zoning square feet of residential floor area and the with-action condition would allow for 66 residential units with 68,097 zoning square feet of residential floor area. Thus, given the no-action condition in the EAS, the special permit would facilitate the development of 26 more market-rate residential units (22,367 zoning square feet of residential floor area).

Area Context

The project site is located in a C6-4A zoning district in the Ladies' Mile Historic District. This approximately five-block area was rezoned from M1-6M in 2004 and allows residential uses as a matter of right. Uses along West 17th Street and West 18th Street include newly constructed or converted residences, community facilities, and commercial establishments ranging from restaurants to bookstores and salons. The building types include two- to four-story commercial

buildings, five- to six-story commercial buildings, and taller loft buildings that range in height from 140 to 185 feet and rise without setback from the street line.

In 1989, the Landmarks Preservation Commission (LPC) designated the Ladies' Mile Historic District, between West 15th Street and West 24th Street, and east of Broadway and west of Sixth Avenue. The District's takes its name from a stretch of Broadway that was a fashionable shopping center in the last third of the 19th century. The area is defined by a variety of buildings reflecting the changing nature of retailing, commerce, and manufacturing, as well as advances in building technology from the second half of the 19th century to the early 20th century. The buildings illustrate the history of New York's commercial architecture and its stylistic, structural, and technological responses to changes in business and commerce.

The area is well served by mass transit with multiple subway lines nearby, including the F/M lines at 14th Street and Sixth Avenue, the N/Q/R lines at Union Square, and the 1 line at 18th Street and Seventh Avenue. The PATH train is also nearby at 14th Street and 23rd Street, and the crosstown buses run along 14th Street and 23rd Street as well.

Proposed Actions

The applicant seeks a **special permit** pursuant to ZR § 74-711 to allow:

- (1) Location of a building not in compliance with the applicable base and setback regulations set forth in ZR § 35-24 and ZR § 23-633. The south wing of the new development on Lot 15 would rise to a height of 166 feet with no setback, which exceeds the maximum permitted base height of 125 feet without setback.
- (2) Rear yard equivalent that does not comply with ZR § 23-532. The Zoning Resolution requires a rear yard equivalent of 60 feet on a through lot. The residential space in the proposed building on Lot 15 would encroach into the rear yard equivalent by 10 feet, resulting in a 50 foot rear yard equivalent.
- (3) Location of building portions that do not comply with ZR § 23-711 regarding minimum distance between windows on a zoning lot. The minimum required distance between buildings is 60 feet on a single zoning lot. The building on Lot 15 would have a distance of 50 feet between its north and south wings.
- (4) Portion of the building with a street frontage of less than 45 feet in width to exceed permitted maximum height pursuant to ZR § 23-692. The maximum permitted height for a building with less than 45 feet of frontage on a narrow street (60 feet in width) is 60 feet. The building on Lot 15 would have a north wing of 170 feet.

COMMUNITY BOARD RECOMMENDATION

At its Full Board meeting on May 12, 2016, Manhattan Community Board 5 (CB5) approved a resolution recommending **denial**, *unless* the Mandatory Inclusionary Housing Program is applied in accordance with the Zoning Resolution as defined in ZR § 23-92, and furthermore found that

the waiver of rear yard requirements would result in a negative impact to adjacent buildings. The resolution passed with a vote of 40 in favor; 1 opposed; and 3 abstaining.

BOROUGH PRESIDENT'S COMMENTS

The applicant proposes an attractive and thoughtful project that respects the visual character of the Ladies' Mile neighborhood. The construction of the new building would complete the streetwall on West 17th and West 18th Streets, and the design of both façades relate well to the context of the streetscapes. The restorative work on the existing buildings will reinforce their historic and architectural character and that of the historic district. This project clearly serves a preservation purpose for the applicability of ZR § 74-711.

However, this project is troubling with regard to the application of the Mandatory Inclusionary Housing program. The New York City Department of City Planning's Zoning Division and Counsel's office have concluded that this special permit application does not result in MIH being applied because the requested bulk waivers simply facilitate the use of residential floor area that is already permitted, instead of creating newly permitted residential floor area.

In my testimony on the MIH text amendment before the City Planning Commission on December 16, 2015, the first reason I gave as to why I was able to support the proposed text amendment was that “[i]n addition to neighborhood rezonings, it would apply to all special-permit applications – the best part of it – by private developers to add more than 10 residential units of housing to any area where this housing couldn't otherwise be built.”

The language of the text amendment indicates as much. Section 23-933 on Mandatory Inclusionary Housing Areas states that the “Inclusionary Housing Program shall also apply as a condition of City Planning Commission approval of special permits as set forth in Section 74-32 (Additional Considerations for Special Permit Use and Bulk Modifications). . . .” Then in section 74-32 entitled “Additional Considerations for Special Permit Use and Bulk Modifications” the text reads that “[w]here a special permit application would allow a significant increase in #residential floor area# . . . , the City Planning Commission, in establishing the appropriate terms and conditions for the granting of such special permit, shall apply such requirements where consistent with the objectives of the Mandatory Inclusionary Housing program as set forth in Section 23-92 (General Provisions).

The text does not make reference to an increase in residential FAR being required for the applicability of MIH, nor does it state an increase in permitted residential floor area is required. I believe that it is important to apply MIH to any special permit that will enable more than ten units of housing or 12,500 square feet of residential floor area to be built where it could not have been built absent the approval of the special permit.

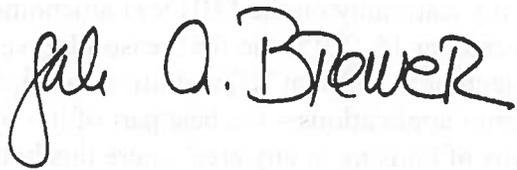
The bulk permit sought in this application facilitates more residential units and should fall within the requirements for application of the MIH program. However, the applicant has also provided us with a scenario where that residential floor area can be realized in existing structures. While important to note, its importance is in showing the difference between reallocating floor area

within existing structures, which should not be subject to MIH, versus waivers that allow for additional floor area. It remains my belief that the MIH requirements should, at a minimum, apply to the additional floor area facilitated by this special permit approval, in the manner of an enlargement.

Furthermore, I recognize that the requested waivers would have an adverse impact on nearby buildings on the block. The height of the towers on 17th and 18th Streets and the 50-foot rear yard equivalent would decrease access to light and air for the neighboring building at 32 W 18th Street in particular. I would also like to join SEIU 32BJ and CB5 in asking 42 West 18th Realty Corp to commit to creating high quality building service jobs and paying their building service workers the prevailing wage.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends **denial** of ULURP Application No. C 160082 ZSM **unless** the Mandatory Inclusionary Housing Program is applied in accordance with ZR § 23-92.



Gale A. Brewer
Manhattan Borough President

38-42 WEST 18th STREET and 41-43 WEST 17th STREET

DECLARATION

Dated: As of _____, 20__

Location: Block 819, Lots 14, 15 and 66
New York County, New York

Record & Return to:

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Attn: Valerie G. Campbell, Esq.

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SCHEDULE OF EXHIBITS

DECLARATION made as of the ___ day of _____, 20___ by 42 West 18th St. Realty Corp., having an address at 42 West 18th Street, New York, New York 10022 (“Lot 14/15 Declarant”) and West 18 Realty Corp. , having an address at 42 West 18th Street, New York, New York 10022 (“Lot 66 Declarant”)(the Lot 14/15 Declarant and Lot 66 Declarant, collectively the “Declarants”).

W I T N E S S E T H:

WHEREAS, Lot 14/15 Declarant is the owner in fee of certain real property located in the Borough of Manhattan, City, County and State of New York, which property is designated as Block 819, Lot 15 on the Tax Map of the City of New York (“Tax Map”) and by the street address 41-43 West 17th Street (the “Development Site”);

WHEREAS, Lot 14/15 Declarant is also the owner in fee of certain real property located in the Borough of Manhattan, City, County and State of New York, which property is designated as Block 819, Lot 14 on the Tax Map and by the street address 42 West 18th Street (the “Lot 14 Landmark Property”), on which is located a 6-story commercial building (the “Lot 14 Designated Structure”);

WHEREAS, Lot 66 Declarant is the owner in fee of certain real property located in the Borough of Manhattan, City, County and State of New York, which property is designated as Block 819, Lot 66 on the Tax Map and by the street address 40 West 18th Street (the “Lot 66 Landmark Property,” together with the Lot 14 Landmark Property, the “Landmark Properties”), on which is located a 4-story commercial building (the “Lot 66 Designated Structure,” together with the Lot 14 Designated Structure, the “Designated Structures”);

WHEREAS, in connection with the development of a new building on the Development Site, Declarants intend to utilize unused development rights from the Landmark Properties and propose to restore the facades of the Designated Structures, which are contributing buildings in the Ladies' Mile Historic District; and

WHEREAS, it is anticipated that the Development Site and Landmark Properties (together, the "Subject Premises," as more particularly described on Exhibit A attached hereto), will be merged into a single and separate zoning lot pursuant to a Declaration of Zoning Lot Restrictions;

WHEREAS, Old Republic National Title Insurance Company ("Title Company") has certified as of _____, 2016, that Declarants and Signature Bank ("Mortgagee") are the sole parties-in-interest ("Parties in Interest"), as that term is defined in the zoning lot definition in Section 12-10 of the Zoning Resolution (as hereinafter defined), to the Subject Premises, a copy of which certification is attached hereto as Exhibit B; and

WHEREAS, the sole Parties in Interest to the Subject Premises have therefore either executed this Declaration or waived their right to do so; and

WHEREAS, by the instrument attached hereto as Exhibit C, Title Company has determined that as of _____, 2016 there has been no change in the certification attached as Exhibit B, and Declarants represent and warrant that the Parties in Interest listed in Exhibit C are the only known Parties in Interest in the Subject Premises as of the date hereof; and

WHEREAS, the Mortgagee has executed a Waiver of Execution of Restrictive Declaration and Subordination to Declaration, a copy of which is attached hereto as Exhibit D and is to be recorded simultaneously with this Declaration; 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 an area which includes the Designated Structures as the Ladies’ Mile Historic District because of its special character or historical or aesthetic interest or value; and

WHEREAS, pursuant to Application No. 160082 ZSM, dated October 21, 2015 (the “Application”), Declarants have applied to the City Planning Commission of the City of New York (the “CPC”) for a special permit pursuant to Section 74-711 of the Zoning Resolution (the “Special Permit”), to modify the bulk regulations of (i) ZR Section 23-532 (Required rear yard equivalents), (ii) ZR Section 35-24 (Special Street Wall Location and Height and Setback Regulations in Certain Districts), (iii) ZR Section 23-692 (Height limitations for narrow buildings or enlargements) and (iv) ZR Section 23-663 (Required rear setbacks for tall buildings in other districts) to permit the construction of a new mixed-use building on the Development Site (the “Special Permit Building”).

WHEREAS, at a public hearing held on September 23, 2014, Declarants requested that the LPC issue a report to the CPC in connection with the Application; and

WHEREAS, at the LPC public meeting held on November 25, 2014, following said public hearing, the LPC voted to issue the report to the CPC as requested in connection with the Application, and subsequently issued report MOU 17-7107, dated September 25, 2015 (the “LPC Report”) annexed hereto as Exhibit E; and

WHEREAS, at the public meeting on September 23, 2014, 2014, the LPC also voted to grant a Certificate of Appropriateness for the construction of the Special Permit

Building and subsequently issued COFA 16-5428, dated December 3, 2014 (the “COA”) annexed hereto as Exhibit F; and

WHEREAS, the LPC has also issued, in connection with the Lot 66 Landmark Property, a Certificate of No Effect on Protected Architectural Features (CNE 17-7108) for restorative work on the Designated Structures, dated September 25, 2015 (the “Lot 66 CNE”) annexed hereto as Exhibit G; and

WHEREAS, the LPC has also issued, in connection with the Lot 14 Landmark Property, a Certificate of No Effect on Protected Architectural Features (CNE 17-7109) for restorative work on the Designated Structures, dated September 25, 2015 (the “Lot 14 CNE,” together with the Lot 66 CNE, the “CNE”) annexed hereto as Exhibit H; and

WHEREAS, Section 74-711 of the Zoning Resolution requires, inter alia, that a program has been established for continuing maintenance (the “Continuing Maintenance Program”) that will result in the preservation of the Designated Structures; and

WHEREAS, Declarants have agreed to certain obligations and restrictions contained in this Declaration for the protection, preservation, repair and maintenance of the Designated Structures; and

WHEREAS, Declarants desire 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, Declarants represent and warrant 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, Declarants do 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 Declarants and their 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 a named Declarant and the heirs, successors and assigns of a named Declarant including, without limitation, any owner of a condominium unit within the Designated Structures, 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 Structures” is defined in the second Whereas Clause set forth above.

1.11 “Effective Date” is defined in Section 4.1(a) hereof.

1.12 “Force Majeure” shall mean: strike, lockout or labor dispute(s); inability to obtain materials or reasonable substitutes therefore unless due to any act or failure to act by Declarant; acts of God; unforeseen governmental restrictions, regulations, omissions or controls; enemy or hostile government actions; civil commotion, insurrection, revolution or sabotage; fire or other casualty; 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; any damage to the Subject Premises of such

a nature as to make completion of the Landmark Work not feasible; a taking of the Subject Premises, or a portion thereof, by condemnation or eminent domain; failure of a public utility to provide power, heat or light; unusual delay in transportation; 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; 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; 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 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 2.2 and 6.2 hereof.

1.13 “Landmark Work” is defined in Section 2.1(a) hereof.

1.14 “LPC” shall mean the Landmarks Preservation Commission of New York City or any successor to the jurisdiction thereof.

1.15 “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.

1.16 “PCO” is defined in Section 2.2(b) hereof.

1.17 “Special Permit” is defined in the recitals of this Agreement.

1.18 “Special Permit Space” shall mean the Special Permit Building and any additions to the rear of the Designated Structures. Notwithstanding the foregoing, no space within the Special Permit Building shall be deemed Special Permit Space if it is permitted as of right within the Subject Premises by the terms of the Zoning Resolution then in effect.

1.19 “Special Permit Building” is defined in the recitals of this Agreement.

1.20 “TCO” is defined in Section 2.2(b) hereof.

1.21 “Zoning Resolution” shall mean the Zoning Resolution of the City of New York, effective December 15, 1961, as amended.

ARTICLE II

DEVELOPMENT, PRESERVATION, REPAIR AND MAINTENANCE OF THE DESIGNATED STRUCTURES; PROJECT COMPONENTS RELATED TO THE ENVIRONMENT

2.1 Development of the Designated Premises. Declarant covenants and agrees to maintain the Subject Property substantially in accordance with the following plans prepared by Morris Adjmi Architects attached hereto as Exhibit I:

<u>Drawing Number</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-030	Zoning Compliance Summary	06/21/16

Z-100	Site Plan	09/17/15
Z-140	Bulk Waiver Plan & Section	06/21/16
Z-141	Bulk Waiver Section	06/21/16

2.2 Certificate of Occupancy.

(a) The "Landmark Work" shall be a comprehensive exterior restoration program for the Designated Structures to bring them to sound, first-class condition:

42 West 18th Street

West 18th Street Façade (North):

- *Perform tests to determine most efficacious method for cleaning the buff-colored glazed terra cotta. Clean a minimum of ten units of terra cotta to determine the original range of glaze colors for replication purposes.*
- *Engage a structural engineer with extensive experience assessing the structural condition of historic terra-cotta construction to investigate the condition of the West 18th Street façade.*
- *Any terra cotta replacement shall match the historic in size, shape, ornament, profile, texture and glaze color. Replace any missing or severely deteriorated ornament or features based on historic photographs.*
- *Repair any deterioration to the backup masonry in kind based on recommendations by the structural engineer.*
- *Replace or repair any deteriorated steel substructure or terra-cotta hanging systems based on recommendations by the structural engineer.*
- *Replace all non-historic aluminum windows and severely deteriorated historic wood windows with new one-over-one double-hung wood window frames and sash. Profiles shall match the existing historic wood windows at the fifth story and the existing historic wood transoms at the third story. (Note: the operation of the replacement windows at the fifth story may need to be modified. The fifth-story windows are currently single-pane windows with horizontal or vertical center pivots. Casement windows may be an appropriate replacement configuration.)*
- *Install a new wood-and-glass storefront which recalls or reproduces conditions documented in historic photographs.*

Secondary Elevation (East):

- *Perform tests to determine the most efficacious method for removing the graffiti, and the coating or parging from the brick masonry. Remove the graffiti from the brick masonry.*
- *If the coating or parging may be safely removed without damaging the brick substrate, remove the coating or parging from the brick. If the coating or parging may not be safely removed from the brick, remove any loose or delaminating coating or parging, repair the masonry as noted below, and recoat or reparse the brick.*

- *Engage a structural engineer with extensive experience assessing the structural condition of historic brick and terra cotta construction to investigate the vertical crack at the northeast corner of the east elevation.*
- *Repair the vertical crack at the northeast corner of the east elevation based on recommendations by the structural engineer. Replacement brick shall match the historic brick in size, shape, color and texture.*
- *Selectively repoint areas of open joints with new mortar matching the historic mortar in strength, permeability, color, texture and tooling.*
- *Repair any step cracks or through-brick cracks by removing the affected bricks and rebuilding the area in kind using new brick matching the original in size, shape, color and texture.*
- *Replace exfoliated brick at the parapet with new brick to match the original in size, shape, color and texture.*
- *Remove all metal embeds and patch the affected brick with a restoration patch mix matching the brick in color and texture, or replace the damaged brick with new brick matching the original in size, shape, color and texture.*
- *Replace the non-historic tripartite aluminum windows and all one-over-one aluminum windows with new metal windows matching the historic three-over-three double-hung kalamein sash.*
- *Remove all through-wall HVAC equipment, louvers, conduits, signs and light fixtures from the brick masonry. Replace missing or damaged brick to match the original in size, shape, color and texture.*
- *Remove the chain-link fence at the roof.*

West 17th Street Façade (South):

- *Perform tests to determine the most efficacious method for removing soiling and paint from the buff brick, limestone sills, and granite water table at the south elevation. Remove paint and soiling from the masonry based on tests.*
- *Engage a structural engineer with extensive experience assessing the structural condition of historic brick construction to investigate the vertical and horizontal cracks at the parapet.*
- *Repair the parapet based on recommendations by the structural engineer. Replacement brick shall match the historic brick in size, shape, color and texture.*
- *Repoint open joints in the brick masonry and limestone sills with new mortar matching the original in strength, permeability, color, texture and tooling.*
- *Replace deflected steel lintels at the window openings with new steel lintels. Install proper flashing and protective finishes to slow future deterioration of the new steel. Replacement of adjacent brick shall be performed with new brick matching the historic in size, shape, color and texture.*
- *Recreate the missing intermediate cornice above the fifth story, based on historic photographs.*
- *Replace all non-historic aluminum windows and severely deteriorated original wood windows with new wood one-over-one windows with transoms. Profiles shall match the original wood windows and mullions at the third story.*

- *Carefully remove paint from the first-floor cornice, based on tests. The copper cornice appears to have been originally pre-patinated a dark green color. Repair any patination that is removed during paint removal to match the original dark green color.*
- *Remove metal embeds, conduit, signs and banner poles from the brick piers at the first floor. Patch the affected brick with a restoration patch mix matching the color and texture of the adjacent brick, or replace the damaged brick in kind.*
- *Install a new wood-and-glass storefront which recalls or reproduces conditions documented in historic photographs.*

40 West 18th Street

West 18th Street Façade (North):

- *Perform tests to determine the most efficacious method for removing soiling and paint from the buff-brick piers. Remove paint and soiling from the masonry based on tests.*
- *Engage a structural engineer with extensive experience assessing historic sheet-metal features to investigate the main building cornice and intermediate cornices.*
- *Repair the cornices based on recommendations by the structural engineer. Replacement sheet-metal panels shall match the historic in size, shape, profile and ornament.*
- *Replace non-matching, severely deteriorated, or severely deformed sheet-metal panels with new sheet metal to match the historic in size, shape, profile and ornament.*
- *Reattach loose sheet metal elements and fill all open joints.*
- *Remove the non-historic fire escape. Patch holes in the masonry using a restoration patch mix matching the cleaned masonry in color and texture. Patch holes in the sheet-metal panels using a metal filler sanded flush to the adjacent metal.*
- *Replicate the missing ornamental grille work above the eastern and western fourth-story windows, based on historic photographs and the remaining historic grille at the center of the fourth story.*
- *Replace all non-historic aluminum and kalamein windows, and all severely deteriorated historic wood windows with new wood windows. The fourth-story windows should be single-paned windows, and the second- and third-story windows should be three-over-three double-hung windows. Profiles shall match the original wood windows that remain.*
- *Perform a paint color investigation of the historic sheet-metal panels, and wood windows and mullions to determine the historic finish colors used on the building.*
- *Scrape any loose paint and remove any corrosion from the sheet-metal panels, and repaint the sheet-metal façade based on the historic finish color investigation.*
- *Install a new wood-and-glass storefront which will recall or reproduce the conditions documented in historic photographs. A new storefront cornice shall be reproduced based on historic photographs.*

Secondary Elevation (East):

- *Perform tests to determine the most efficacious method for removing the graffiti and the coating from the brick masonry. Remove the graffiti from the brick masonry.*
- *If the coating may be safely removed without damaging the brick substrate, remove the coating from the brick. If the coating may not be safely removed from the brick, remove any loose or delaminating coating, repair the masonry as noted below, and recoat the brick.*
- *Selectively repoint areas of open joints with new mortar matching the historic mortar in strength, permeability, color, texture and tooling.*
- *Repair any step cracks or through-brick cracks by removing the affected bricks and rebuilding the area in kind using new brick matching the original in size, shape, color and texture.*
- *Replace exfoliated brick with new brick to match the original in size, shape, color and texture.*
- *Remove all metal embeds and patch the affected brick with a restoration patch mix matching the brick in color and texture, or replace the damaged brick with new brick matching the original in size, shape, color and texture.*
- *Remove all through-wall HVAC equipment, grilles, conduits, signs and light fixtures from the brick masonry. Replace missing or damaged brick to match the original in size, shape, color and texture.*

Rear Elevation (South):

- *Perform tests to determine the most efficacious method for removing the graffiti, the coating and the mastic from the brick masonry. Remove the graffiti from the brick masonry.*
- *If the coating and mastic may be safely removed without damaging the brick substrate, remove both the coating and the mastic from the brick. If either the coating or the mastic may not be safely removed from the brick, remove any loose or delaminating coating, repair the masonry as noted below, and recoat the brick. If the mastic is an asbestos-containing material, abate the mastic and replace any damaged brick with new brick matching the original in size, shape, color and texture.*
- *Engage a structural engineer with extensive experience assessing the structural condition of historic brick and construction to investigate the vertical cracks at the southeast corner of the south elevation.*
- *Repair the vertical cracks at the southeast corner of the south elevation based on recommendations by the structural engineer. Replacement brick shall match the historic brick in size, shape, color and texture.*
- *Remove all HVAC equipment and dunnage from the setback roofs.*
- *Selectively repoint areas of open joints with new mortar matching the historic mortar in strength, permeability, color, texture and tooling.*
- *Replace exfoliated brick with new brick to match the original in size, shape, color and texture.*

- *Replace all non-historic aluminum windows with new wood windows. Profiles shall be based on surviving physical evidence, if any, or shall be historically appropriate.*
- *Remove all metal embeds and patch the affected brick with a restoration patch mix matching the brick in color and texture, or replace the damaged brick with new brick matching the original in size, shape, color and texture.*
- *Remove all through-wall HVAC equipment, grilles, conduits, signs and light fixtures from the brick masonry. Replace missing or damaged brick to match the original in size, shape, color and texture.*

The issuance of the Special Permit is premised on, inter alia, the agreement by Declarants to the performance of the Landmark Work in conformity with the CNE, the LPC Report, and the requirements thereof.

(b) The Declarants shall give written notice to the Chair of the LPC seven (7) days prior to applying to the Buildings Department for a temporary certificate of occupancy (“TCO”) or permanent certificate of occupancy (“PCO”) for the Special Permit Space. No TCO or PCO for the Special Permit Space shall be granted by the Buildings Department or accepted by Declarants until the Chairperson of the LPC shall have given written notice to the Buildings Department that the Landmark Work has been satisfactorily completed by Declarants or the Chairperson of the LPC has certified in writing, as provided in Section 2.2(d) hereof, that (a) a Force Majeure has occurred and (b) 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 Premises. The Chairperson of the LPC shall issue said notice in the exercise of his or her reasonable judgment and reasonably promptly after Declarants have 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 Declarants in writing of the reason for not issuing said notice, within fourteen (14)

calendar days after Declarants have 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 either of the Designated Structures. In the event that the Buildings Department shall grant to Declarant, or Declarant shall accept, a TCO or PCO for either of the Designated Structures in violation of the terms of this Declaration, the Declarants shall, after having received written notice of such violation and opportunity to cure as provided under Section 4.4 hereof, at the request of the Chair of the LPC promptly relinquish and forfeit such TCO or PCO. Notwithstanding anything to the contrary contained herein, the Chairperson of the LPC shall declare that the Landmark Work has been satisfactorily completed notwithstanding that minor and insubstantial details of construction or mechanical adjustment remain to be performed.

(c) Declarants 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 2.2(b) hereof.

(d) (i) Upon application by Declarants, 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 Declarants reasonably believe that full performance of its obligations to complete the Landmark Work has been delayed as a result of a Force Majeure, Declarants shall so notify the Chairperson of the LPC promptly after Declarants learn of such circumstances. Declarants' written notice shall include a description of the condition or event, its cause (if known to Declarants), 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 fourteen (14) calendar days of its receipt of Declarants' 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 Declarants 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 Premises, or (B) notify Declarants that it does not reasonably believe a Force Majeure has occurred. With respect to any claim that a Force Majeure has delayed the Declarants' 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 Declarants shall be using reasonable efforts to minimize the effects thereof. Upon cessation of the events causing such delay, the Declarants 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 Declarants from (i) applying for or receiving a TCO or a PCO for any floor area in the Designated Structures which is not to within the Special Permit Space; or (ii) obtaining permits or building notices from the Buildings Department to perform work, including tenant work, in the Designated Structures prior to the completion of the Landmark Work; or (iii) entering into agreements affecting all or any portions of the space in the Designated Structures prior to completion of the Landmark Work.

2.3 Preservation, Repair and Maintenance. Declarants hereby covenant and agree to preserve, repair and maintain the Designated Structures in sound, first-class condition, at its own cost and expense, in accordance with this Declaration, the LCP Report 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.

2.4 Continuing Maintenance Program. The Lot 14/15 Declarant, in its capacity as the owner of Lot 14 Landmark Property, shall comply with the obligations and restrictions of the continuing maintenance program (the "Continuing Maintenance Program") as set forth below in connection with the Lot 14 Landmark Property, and the Lot 66 Declarant shall comply with the obligations and restrictions of the Continuing Maintenance Program as set forth below in connection with the Lot 66, it being understood that in the event the Development Site comes under separate ownership, the new owner of the Development Site shall no longer be subject to the obligations and

restrictions under the Continuing Maintenance Program with respect to either of the Landmark Properties after the date of such transfer:

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

(i) At Declarants' expense, an inspection (the "Periodic Inspection") shall be made every five years, on or within thirty (30) days of the anniversary of the issuance by the LPC of the Notice of Compliance pursuant to the LPC Report, and thereafter, shall be made on or within thirty (30) days of the fifth anniversary of the date of such initial or subsequent inspection. In the event that Declarants have accepted a TCO or a PCO for the Special Permit Space without having first received the Notice of Compliance, the first periodic inspection shall be made on or within thirty (30) days of the fifth anniversary date of the issuance of such TCO or PCO and every five years thereafter. 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 Declarants from a list prepared by Declarants and approved by the Chairperson of the LPC as to their credentials, which approval shall not be unreasonably withheld or delayed. Declarants shall update such listing upon the request of the Chairperson of the LPC. In addition, Declarants may periodically supplement the list of Preservation Architects, subject to the reasonable 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 Structures as well as those portions of the Designated Structures' interior that are accessible to the owner and, if not properly

maintained, could affect the condition of the exterior, including, but not limited to interior systems such as heating, plumbing and air conditioning. The Periodic Inspection shall include (but not be limited to) the following portions of the Designated Structures: [front façade, rear façade, and roof].

(ii) The Preservation Architect shall, at the expense of Declarants, submit a report on each Periodic Inspection (the “Periodic Report”) to Declarants and the LPC within forty-five (45) days after each Periodic Inspection. The Periodic Report shall outline the existing conditions of the Designated Structures and detail the work which should be performed in order to maintain the Designated Structures, including all architectural features and elements, in a sound, first-class condition.

(iii) Submission of Local Law 10 & 11 Facade Inspection Report. If the Designated Structures are 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 either of the Designated Structures are found to be unsafe pursuant to such inspection, the Declarants shall notify the Landmarks Preservation Commission simultaneously with the Department of Buildings, pursuant to Title 1 RCNY §32-03(b)(2)(vii).

(iv) Except as set forth below, Declarants 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 Declarants need not and shall not have such specific item performed. Declarants shall have the right to contest in a hearing before the LPC any work called for in a Periodic Report or Emergency Incident Report. Declarants' 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. Declarants shall proceed with all work that is uncontested during the stay pursuant to a permit.

(v) Unless Declarants have notified the LPC in writing that it contests any work as set forth in the preceding paragraph, Declarants shall apply for all necessary permits or certificates from the LPC within forty-five (45) days of receiving the completed report from the Preservation Architect. Declarants shall use their 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 (9) 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 (9) months of the date of the Periodic Report or Emergency Incident Report. If for reasons beyond Declarants' control, as determined by the Chairperson of the LPC, in the exercise of his or her reasonable judgment, such work cannot be completed within nine (9) months, Declarants 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, conditioned, or delayed.

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

(i) If a fire, the elements or any other cause whatsoever damages or destroys the Designated Structures or any part thereof (each such incident, an “Emergency Incident”), Declarants shall use all reasonable means to save, protect and preserve the Designated Structures 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. Declarants shall not remove from the Subject Premises any debris consisting of exterior features of the Designated Structures 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 Declarants shall not remove any other debris or otherwise clear the Subject Premises without the approval of the LPC or its Chairperson.

(ii) Declarants shall give immediate written notice of such Emergency Incident to the LPC. Declarants 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 (60) days of such Emergency Incident, a Preservation Architect shall, at the expense of Declarants, make a thorough inspection of the Designated Structures and submit a report (an “Emergency Incident Report”) to Declarants 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 Structures, and (B) work that should be performed to repair and restore the Designated Structures to a sound, first-class condition or, alternatively to (A) and (B), that Declarants make an application to the LPC for permission to demolish the remaining portions of the Designated Structures.

(iv) With regard to the work to be performed pursuant to subparagraph (iii)(A), Declarants shall promptly upon receipt of the Emergency Incident Report request and vigorously pursue all necessary permits and upon their issuance, shall promptly undertake all such work. 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 (90) days of receiving the report of the Preservation Architect, Declarants 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 Structures, and no work on the interior of the Designated Structures 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 Emergency Incident report would be inappropriate, using the criteria set forth in the Landmarks Preservation Law, the determination of the LPC shall control and the Declarants shall not have such specific work performed or be entitled to have the Designated Structures demolished unless Declarants are obligated to perform such work or demolish the Designated Structures in accordance with an “Immediate Emergency Declaration” issued by the Department of Buildings. All repairs, restoration, rehabilitation, repointing and other work provided for in a certificate or permit shall be completed within nine (9) months of the date of issue of such certificate or permit by the LPC. If such work cannot be completed within nine (9) months for reasons beyond Declarant’s control, as determined by the Chairperson of the LPC in the exercise of his or her reasonable judgment, 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 that is related to the period of the delay and shall not be unreasonably withheld, conditioned, or delayed.

(c) Access to Designated Structures. Declarants agree 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 Declarants. Subject to the provisions of Section 4.4 hereof, in the event that Declarants, their successors or assigns, fails after sixty (60) 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 Declarants 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 Declarants and shall have the right to enter onto the Subject Premises and to charge said Declarants for all the actual cost of such work, together with actual administrative and legal fees incurred in the collection thereof. The City's actual costs hereunder 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 either of the Designated Structures is converted to a condominium, Declarants' 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.

ARTICLE III

CONDOMINIUM BOARD

3.1 General. These provisions shall apply in the event that a Condominium is established in accordance with the New York State Real Property Law.

3.2 Board. Declarants shall require that each owner of a condominium unit (the “Unit Owner”) appoint Declarants as his or her 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 be amended to incorporate an obligation by Declarants to comply with the provisions of Article 3 of this Declaration.

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 twenty-one (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) the date of final approval of the Special Permit pursuant to Sections 197-c and 197-d of the New York City Charter. The Declaration shall become immediately effective upon the Effective Date. If, before the Effective Date, Declarants request or cause 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 canceled 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 Declarants and shall be of no further force or effect and the CPC shall, if requested by Declarants, provide Declarants with a letter in recordable form stating that the Declaration has been so canceled and is of no further force and effect.

(c) This Declaration is intended to supersede in all respects that certain Declaration dated March 4, 2005 and recorded in the Office of the City Register under CRFN 2005000267254.

4.2 Filing and Recordation. Declarants 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. Declarants shall promptly deliver to the CPC and the LPC duplicate executed originals, promptly following the Effective Date and, following recordation, a true copy of this Declaration as recorded, as certified by the Register. If Declarants fail to so record this Declaration, the City may record this Declaration, at the sole cost and expense of Declarants, 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. Declarants acknowledge 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. Declarants also acknowledge 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 Declarants, their 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 Declarants forty-five (45) days written notice of such alleged violation, during which period Declarants shall have the opportunity to effect a cure of such alleged violation. If Declarants commence 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 Declarants continue 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 Premises, 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 either of the Designated Structures is or is converted to a condominium or cooperative, the right to notice and cure provided in this subsection shall apply only to the condominium or cooperative 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.

(b) If Declarants fail to observe any of the terms or conditions of this Declaration, and the Declarants fail 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 Declarants 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, Declarants 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 Declarants are in default of any material obligation under this Declaration.

4.5 Acknowledgment of Covenants. Declarants acknowledge 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 Declarants and their successors, legal representatives, and assigns.

4.6 No Other Enforceable Restrictions. Declarants represent and warrant that there are no enforceable restrictions of record on the use of the Subject Property or the Designated Structures, nor any present or presently existing future estate or interests in the Subject Property or the Designated Structures, 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. Declarants covenant 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 either of the Designated Structures 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 Buildings Department and Declarants 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) Declarants 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. Notwithstanding anything to the contrary contained in this Declaration, the City and any other party or person relying on the Declaration will look solely to the fee estate and interest of Declarants in the Subject Property, on an in rem basis only, for the collection of any money judgment recovered against Declarants, and no other property of Declarants shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration, and Declarants shall have no personal liability under this Declaration. 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 a Declarant.

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

4.11 Subordination. Declarants shall cause every individual, business organization or other entity that between the date hereof and the date of recordation 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 Structures.

ARTICLE V

AMENDMENTS, MODIFICATIONS AND CANCELLATIONS

5.1 Amendment or Cancellation. Except as provided in paragraph 4.1 above, this Declaration may be amended or canceled only upon application by LPC on behalf of Declarants 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; provided, however, that no such approval shall be required in the case of any cancellation pursuant to paragraph 5.4.

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. In the event that the Landmark Work is modified by the LPC, a Notice of Landmark Work documenting such modification, subject to approval by the LPC, shall be recorded in the City Register's Office, in lieu of a modification of this Declaration. Such recordation shall be in accordance with section 5.3 hereof, and proof of recordation shall be provided to the CPC and LPC.

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, Declarants 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 Declarants.

5.4 Surrender or Nullification. Notwithstanding the provisions of Section 4.1(a) and 4.1(b), in the event that Declarants do not use the Subject Premises pursuant to the Special Permit, Declarants may surrender the Special Permit to the CPC and proceed with any use or development of the Subject Premises 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 recordation of an instrument filed by Declarants discharging it of record, with copies to LPC and CPC, the recordation of which instrument shall constitute a waiver of the right to use the Subject Premises 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 Declarants, Project Operation LLC, having an address at c/o Thomas

F. Harrison, Principal, Colony Capital, LLC, 2450 Broadway Boulevard, 6th Floor, Santa Monica, CA 90404, with a copy to Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Valerie G. Campbell, Esq., if intended for the CPC, to the CPC at 22 Reade Street, New York, New York 10007 (or then-official address), Attn: Chairperson, if intended for the LPC, to the LPC at One Centre Street, Municipal Building, 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. Declarants, or their 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 Declarants are found by a court of competent jurisdiction to have been in default in the performance of their 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, Declarants 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 Declarants' obligations under this Declaration.

[SIGNATURE PAGE FOLLOWS]

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

42 WEST 18th ST. REALTY CORP.

By: _____
Name:
Title:

WEST 18 REALTY CORP.

By: _____
Name:
Title:

STATE OF _____)
) ss.:
COUNTY OF _____)

On the ____ day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

STATE OF _____)
) ss.:
COUNTY OF _____)

On the ____ day of _____ in the year 20__ before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

SCHEDULE OF EXHIBITS

<u>Exhibit A</u>	Metes and Bounds Description of the Subject Property
<u>Exhibit B</u>	Certificate of Parties-in-Interest
<u>Exhibit C</u>	Update Certificate
<u>Exhibit D</u>	Waiver and Subordination
<u>Exhibit E</u>	LPC Report (MOU)
<u>Exhibit F</u>	Certificate of Appropriateness
<u>Exhibit G</u>	Lot 66 Certificate of No Effect
<u>Exhibit H</u>	Lot 14 Certificate of No Effect
<u>Exhibit I</u>	Plans

EXHIBIT A

Metes and Bounds of Subject Property

Lot 66

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, of the City of New York, in the County and State of New York, bounded and described as follows:

BEGINNING at a point of the southerly side of West 18th Street, distant 285 feet easterly from the corner formed by the easterly side of 6th Avenue and the southerly side of West 18th Street;

THENCE easterly along the southerly side of West 18th Street, 25 feet;

THENCE southerly at right angles to West 18th Street, 92 feet;

THENCE westerly parallel with the southerly side of West 18th Street, 25 feet;

THENCE northerly at right angles to West 18th Street, 92 feet to the point or place of BEGINNING.

Lot 14

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, County of New York, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of West 17th Street, distant 260 feet easterly from the corner formed by the intersection of the said northerly side of West 17th Street and the easterly side of Avenue of the Americas (formerly Sixth Avenue);

RUNNING THENCE northerly parallel with Avenue of the Americas, 184 feet to the southerly side of West 18th Street;

THENCE easterly along said southerly side of West 18th Street, 25 feet;

THENCE southerly again parallel with Avenue of the Americas, 184 feet to the northerly side of West 17th Street;

THENCE westerly along said northerly side of West 17th Street, 25 feet to the point or place of BEGINNING.

Lot 15

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of West 17th Street distant 285 feet easterly from the corner formed by the intersection of the northerly side of West 17th Street and the easterly side of Avenue of the Americas;

RUNNING THENCE northerly parallel with the easterly side of Avenue of the Americas 92 feet to the center line of the block;

THENCE easterly along said center line of the block 25 feet;

THENCE northerly parallel with the easterly side of Avenue of the Americas 92 feet to the southerly side of West 18th Street;

THENCE easterly along said southerly side of West 18th Street, 25 feet;

THENCE southerly parallel with the easterly side of Avenue of the Americas 184 feet to the northerly side of West 17th Street;

THENCE westerly along said northerly side of West 17th Street, 50 feet to the point or place of BEGINNING.

EXHIBIT B

Certification of Parties-in-Interest

N.B. # _____

Or

ALT # _____

EXHIBIT II

Old Republic National Title Insurance Company

CERTIFICATION PURSUANT TO ZONING LOT SUBDIVISION (D) OF SECTION 12-10 OF THE ZONING RESOLUTION OF DECEMBER 15, 1961 OF THE CITY OF NEW YORK – AS AMENDED EFFECTIVE AUGUST 18, 1977.

Old Republic National Title Insurance Company, a title insurance company licensed to do business in the State of New York and having an office at 400 Post Avenue, Suite 310, Westbury, NY 11590, hereby certifies that as to the land hereinafter described being a tract of land, either un-subdivided or consisting of two or more lots of record, contiguous for a minimum of ten linear feet, located within a single block, that all the parties in interest constituting a "party in interest" as defined in Section 12-10, Subdivision (D) of the Zoning Resolution of the City of New York, effective December 15, 1961, as amended, are the following:

<u>NAME</u>	<u>ADDRESS</u>	<u>NATURE OF INTEREST</u>
West 18 Realty Corp.	42 West 18th Street New York, NY 10011	Fee owner Lot 66
42 West 18th St. Realty Corp.	42 West 18th Street New York, NY 10011	Fee owner Lots 14 and 15
Signature Bank	68 South Service Road Melville, NY 11747	Mortgage Holder Lots 66 and 14

The subject tract of land with respect to which the foregoing parties are the parties in interest as aforesaid is known as Tax Lots 66, 14 and 15 Block 819 as shown on the Tax Map of the City of New York, New York County, and more particularly described as follows:

Lot(s) 66

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, of the City of New York, in the County and State of New York, bounded and described as follows:

BEGINNING at a point of the southerly side of West 18th Street, distant 285 feet easterly from the corner formed by the easterly side of 6th Avenue and the southerly side of West 18th Street;

THENCE easterly along the southerly side of West 18th Street, 25 feet;

THENCE southerly at right angles to West 18th Street, 92 feet;

THENCE westerly parallel with the southerly side of West 18th Street, 25 feet;

THENCE northerly at right angles to West 18th Street, 92 feet to the point or place of BEGINNING.

Lot(s) 14

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, County of New York, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of West 17th Street, distant 260 feet easterly from the corner formed by the intersection of the said northerly side of West 17th Street and the easterly side of Avenue of the Americas (formerly Sixth Avenue);

RUNNING THENCE northerly parallel with Avenue of the Americas, 184 feet to the southerly side of West 18th Street;

THENCE easterly along said southerly side of West 18th Street, 25 feet;

THENCE southerly again parallel with Avenue of the Americas, 184 feet to the northerly side of West 17th Street;

THENCE westerly along said northerly side of West 17th Street, 25 feet to the point or place of BEGINNING.

Lot(s) 15

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of West 17th Street distant 285 feet easterly from the corner formed by the intersection of the northerly side of West 17th Street and the easterly side of Avenue of the Americas;

RUNNING THENCE northerly parallel with the easterly side of Avenue of the Americas 92 feet to the center line of the block;

THENCE easterly along said center line of the block 25 feet;

THENCE northerly parallel with the easterly side of Avenue of the Americas 92 feet to the southerly side of West 18th Street;

THENCE easterly along said southerly side of West 18th Street, 25 feet;

THENCE southerly parallel with the easterly side of Avenue of the Americas 184 feet to the northerly side of West 17th Street;

THENCE westerly along said northerly side of West 17th Street, 50 feet to the point or place of BEGINNING.

That the said premises are known as and by the street addresses of:

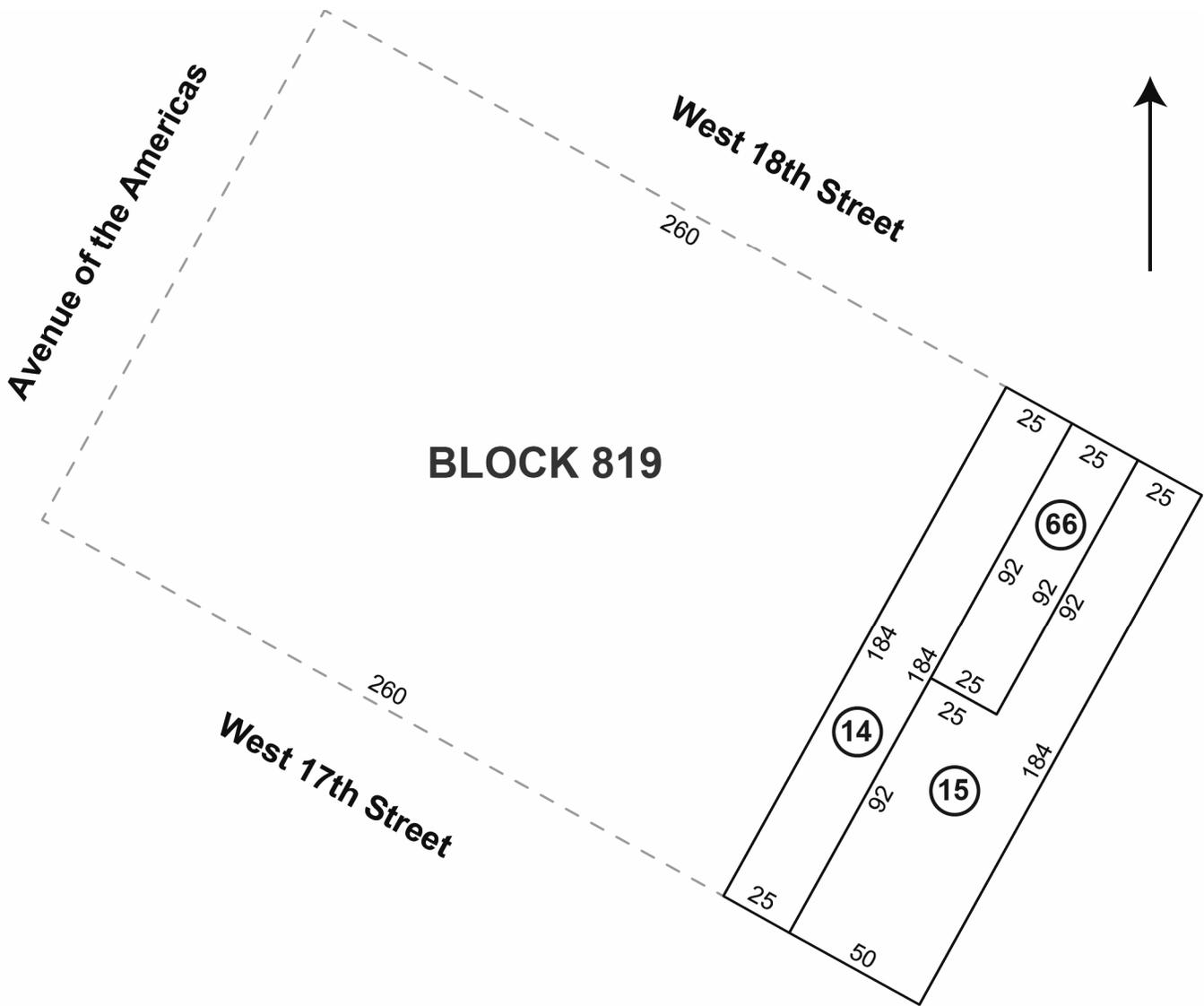
Address: 40 West 18th Street, New York, NY 10011 (Block 819, Lot(s) 66), as shown on the following diagram

Address: 42 West 18th Street, New York, NY 10011 (Block 819, Lot(s) 14), as shown on the following diagram

Address: 41 West 17th Street, New York, NY 10001 (Block 819, Lot(s) 15), as shown on the following diagram

1. Show Distance from corner)
2. Show Block and Lot Numbers)
and dimensions of each lot)
The north point of the diagram must agree with the arrow.

SEE ATTACHED DIAGRAM



NOTE: A Zoning Lot may or may not coincide with a lot as shown on the Official Tax Map of the City of New York, or on any recorded subdivision plot or deed. A Zoning Lot may be subdivided into two or more zoning lots provided all the resulting zoning lots and all the buildings thereon shall comply with the applicable provisions of the Zoning Lot Resolution.

THIS CERTIFICATE IS MADE AND ACCEPTED BY THE APPLICANT UPON THE EXPRESS UNDERSTANDING THAT LIABILITY HEREUNDER IS LIMITED TO ONE THOUSAND (\$1,000.00) DOLLARS.

DATED:

BY: Old Republic National Title Insurance Company

BY: _____
James H. Lee Esq., Counsel
Madison Title Agency, LLC, agent for
Old Republic National Title Insurance Company

STATE OF NEW YORK) : SS.:

COUNTY OF _____)

On _____ 20__ , before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument and that such individual made such appearance before the undersigned in the _____, State of New York

Notary Public

EXHIBIT C

Update Certificate

EXHIBIT D

Waiver and Subordination

**WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION
AND SUBORDINATION OF MORTGAGE**

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND
SUBORDINATION OF MORTGAGE, made this _____ day of _____, 20__ by
Signature Bank, a New York corporation (the "Mortgagee"), having its principal place of business at 68
South Service Road, Melville, New York, 11747.

WITNESSETH:

WHEREAS, the Mortgagee is the lawful holder of that certain mortgage, dated as of
_____, 20__ (the "Mortgage") made by 42 West 18th St. Realty Corp., a New
York corporation and West 18 Realty Corp., a New York corporation (collectively, the "Mortgagor")
in the principal amount of Three Million Two Hundred Fifty Thousand and 00/100 (\$3,250,000.00)
Dollars recorded in the Office of the Register/Clerk of the City of New York, County of New York, on
_____, 20__ as CRFN _____; and

WHEREAS, the Mortgage encumbers all or a portion of the property (the "Premises") known
as Block 819, Lots 66 and 14 on the Tax Map of the City of New York, County of New York, and
more particularly described in **Schedule A** attached hereto and made a part hereof, and any
improvements thereon (such improvements and the Premises are collectively referred to herein as the
"Subject Property"), which Subject Property is the subject of a restrictive declaration dated
_____, 20__ (the "Declaration"), made by 42 West 18th St. Realty Corp. and
West 18 Realty Corp.; and

WHEREAS, Mortgagee represents that the Mortgage represents its sole interest in the Subject
Property; and

WHEREAS, the Declaration, which is intended to be recorded in the Office of said
Register/Clerk simultaneously with the recording hereof, shall subject the Subject Property and the sale,
conveyance, transfer, assignment, lease, occupancy, mortgage and encumbrance thereof to certain
restrictions, covenants, obligations, easements and agreements contained in the Declaration; and

WHEREAS, the Mortgagee agrees, at the request of the Mortgagor, to waive its right to
execute the Declaration and to subordinate the Mortgage to the Declaration.

NOW, THEREFORE, the Mortgagee (i) hereby waives any rights it has to execute, and
consents to the execution by the Mortgagor of, the Declaration and (ii) hereby agrees that the
Mortgage, any liens, operations and effects thereof, and any extensions, renewals, modifications and

consolidations of the Mortgage, shall in all respects be subject and subordinate to the terms and provisions of the Declaration.

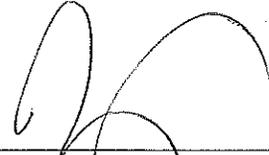
This Waiver of Execution of Restrictive Declaration and Subordination of Mortgage shall be binding upon the Mortgagee and its heirs, legal representatives, successors and assigns.

[Signature on following page]

IN WITNESS WHEREOF, the Mortgagee has duly executed this Waiver of Execution of Restrictive Declaration and Subordination of Mortgage as of the date and year first above written.

MORTGAGEE:
SIGNATURE BANK.

By:



Name: Zachary Bermudez
Title: Vice President

ACKNOWLEDGMENT

State of New York
County of Suffolk

On the 8th day of August in the year 2016 before me, the undersigned, a notary public in and for said state, personally appeared Zachary Bermudez, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



A handwritten signature in black ink, appearing to read "Brett Hoffman", is written over a horizontal line.

Brett David Hoffman
Notary Public, State of New York
No. 01HO6294129
Qualified in Queens County
Commission Expires 12/16/20 17

Schedule A

Legal Description of the Premises

Block 819, Lot 66

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, of the City of New York, in the County and State of New York, bounded and described as follows:

BEGINNING at a point of the southerly side of West 18th Street, distant 285 feet easterly from the corner formed by the easterly side of 6th Avenue and the southerly side of West 18th Street;

THENCE easterly along the southerly side of West 18th Street, 25 feet;

THENCE southerly at right angles to West 18th Street, 92 feet;

THENCE westerly parallel with the southerly side of West 18th Street, 25 feet;

THENCE northerly at right angles to West 18th Street, 92 feet to the point or place of BEGINNING.

Block 819, Lot 14

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, County of New York, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of West 17th Street, distant 260 feet easterly from the corner formed by the intersection of the said northerly side of West 17th Street and the easterly side of Avenue of the Americas (formerly Sixth Avenue);

RUNNING THENCE northerly parallel with Avenue of the Americas, 184 feet to the southerly side of West 18th Street;

THENCE easterly along said southerly side of West 18th Street, 25 feet;

THENCE southerly again parallel with Avenue of the Americas, 184 feet to the northerly side of West 17th Street;

THENCE westerly along said northerly side of West 17th Street, 25 feet to the point or place of BEGINNING.

EXHIBIT E

LPC Report (MOU)



THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION
1 CENTRE STREET 9TH FLOOR NORTH NEW YORK NY 10007
TEL: 212 669-7700 FAX: 212 669-7780



September 25, 2015

ISSUED TO:

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

Re: LPC - 176168
MOU 17-7107
38 WEST 18TH STREET
aka 41-43 West 17th Street
LADIES' MILE
Borough of Manhattan
Block/Lot: 819 / 15

November 25, 2014, following the Public Hearing and Public Meeting of September 23, 2014, the Landmarks Preservation Commission ("LPC") voted to issue a report to the City Planning Commission ("CPC") in support of an application for the issuance of a special permit, pursuant to Section 74-711 of the Zoning Resolution for modifications of bulk regulations at the buildings located at 38-42 West 18th Street. The Designated Buildings consist of a building originally built in 1858 and redesigned in 1898 in a commercial style by John R. Hutchinson (no. 40); an early 20th century commercial style store and loft building designed by George A. Crawley and built in 1907-08 (no. 42); and a vacant lot. The Designated Buildings are located in the Ladies' Mile Historic District.

In voting to issue a favorable report to the CPC, the LPC found that the applicant has agreed to undertake facade work to restore the Designated Buildings and bring them up to a sound, first-class condition, that the owner of the building has agreed to establish and maintain a program for continuing maintenance to ensure that the Designated Buildings are maintained in a sound, first-class condition; and that a Restrictive Declaration ("Declaration") will be filed against the property which will bind the applicants and all heirs, successors and assigns to maintain the continuing maintenance program in perpetuity. The Declaration will be recorded at the New York County Registrar's Office.

Specifically, at the Public Meeting of November 25, 2014, following the Public Hearing and Public Meeting of September 23, 2014, the Commission approved a proposal for the restoration of the masonry and metal facades, including the replacement in kind of the terra cotta cladding at 42 West 18th Street, the restoration of the missing metal cornice at 45 West 17th Street, the removal of metal windows and the installation of wood

windows, and the removal of non-historic storefront infill and the installation of new wood storefront infill.

In reaching a decision to issue a favorable report to the CPC, the LPC found that the proposed restorative work approved pursuant to Certificate of No Effect 17-7108 (LPC 17-6064) and Certificate of No Effect 17-7109 (LPC 17-6073) will help return the building closer to its original appearance; and will reinforce the architectural and historic character of the building, streetscape, and Ladies' Mile Historic District; that the restorative work, including the restoration of the brick, limestone, and terra cotta masonry facades; repair and or replacement in kind of deteriorated sheet-metal facade elements and replication of missing decorative features; replacement of windows; and installation of wood storefront infill, will bring the buildings up to a sound, first-class condition, aid in their long-term preservation; that the implementation of a cyclical maintenance plan will ensure the continued maintenance of the building in a sound, first class condition; and that the owners of the building have committed themselves to establishing a perpetual cyclical maintenance plan which will bind all heirs, successors and assigns and subsequent owners of the building and which will be legally enforceable by the Landmarks Preservation Commission under the provisions of a Restrictive Declaration, and will be recorded against the property.

The Declaration requires the Declarant to commission a qualified preservation professional, whose credentials are to be approved by LPC, to undertake inspections every four years of the Designated Buildings' exteriors and such portions of the interior, which, if not properly maintained, would cause the Designated Buildings to deteriorate. The Declarant is required to perform all work identified in the resulting professional reports as being necessary to maintain the Designated Buildings in a sound, first-class condition within the stated time periods.

Please note that the restoration work must be completed and approved by the Landmarks Preservation Commission before the owners may apply for or accept a temporary Certificate of Occupancy or a permanent Certificate of Occupancy from the Department of Buildings for the area of the buildings and the vacant lot that are the subject of this special permit.

Please note that this Modification of Use is being issued in conjunction with Certificate of No Effect 7108 (LPC 17-6064) for facade restoration at 40 West 18th Street and Certificate of No Effect 7109 (LPC 17-6073) for facade restoration at 42 West 18th Street.

The staff of the Commission is available to assist you with these matters. Please direct inquiries to Olivia Brazee.



Meenakshi Srinivasan
Chair

cc: Carly Bond, Deputy Director of Preservation/LPC; John Weiss, LPC; Eugene Mendlowits, Owner

EXHIBIT F

Certificate of Appropriateness



THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION
 1 CENTRE STREET 9TH FLOOR NORTH NEW YORK NY 10007
 TEL: 212 669-7700 FAX: 212 669-7780



PERMIT CERTIFICATE OF APPROPRIATENESS

ISSUE DATE: 12/03/14	EXPIRATION DATE: 11/25/2020	DOCKET #: 158949	COFA #: COFA 16-5428
ADDRESS: 38-42 WEST 18TH STREET <u>HISTORIC DISTRICT</u> LADIES' MILE		BOROUGH: MANHATTAN	BLOCK/LOT: 819 / 14

Display This Permit While Work Is In Progress

ISSUED TO:

Eugene Mendlowits
42 West 18th Street Corp.
42 West 18th Street, 4th Floor
New York, NY 10011

Pursuant to Section 25-307 of the Administrative Code of the City of New York, the Landmarks Preservation Commission, at the Public Meeting of November 25, 2014, following the Public Hearing and Public Meeting of September 23, 2014, voted to grant a Certificate of Appropriateness for the construction of a new building, and to restore the facades and replace windows and storefront infill at 40 and 42 West 18th Street, as put forward in your application completed on August 28, 2014.

The proposal, as approved, consists of constructing a new building with a sixteen-story frontage on West 17th Street and a seventeen-story frontage on West 18th Street and featuring a metal-mesh facade with a base-shaft-capital composition and classically inspired elements on West 17th Street and a facade composed of a grid of brick panels tapering upwards from solid to void, with stepped window frames, on West 18th Street. The approved work at the existing buildings consists of the restoration of the masonry and metal facades, including the replacement in kind of the majority of the terra cotta cladding at 42 West 18th Street, the restoration of the missing metal cornice at 45 West 17th Street, the removal of metal windows and the installation of wood windows, and the removal of non-historic storefront infill and the installation of new wood storefront infill. The proposal, as initially presented, called for an eighteen-story frontage on West 17th Street and a facade composed of a grid of cast-concrete panels on West 18th Street. The proposal was shown in physical models and in digital presentation slides labeled 1 through 47, dated September 23, 2014, and prepared by Morris Adjmi Architects, and revised physical models and digital presentation slides labeled 1 through 17, and dated November 25, 2014, submitted as components of the application, and presented at the Public Hearing and Public Meetings.

In reviewing this proposal, the Commission noted that the Ladies' Mile Historic District designation report describes the site as a vacant lot; and describes 40 West 18th Street as a building originally built in 1858 and redesigned in 1898 in a commercial style by John R. Hutchinson; and 42 West 18th Street as an early 20th century commercial style store and loft building designed by George A. Crawley and built in 1907-08. The Commission also noted that the historical development of the Ladies' Mile Historic District occurred in several phases, resulting in a variety of building heights and widths adjacent to each other, including early 19th-century residential development which included residences and stable buildings; early commercial development which included mid-rise building and the commercial adaptation of some residential buildings and stables; large turn-of-the-century department stores; large 20th-century loft buildings and older buildings converted to manufacturing use; and that many streets combine buildings from several or all of these periods, with taller buildings facing the avenues and the major cross-town streets, such as West 14th and West 23rd Streets; and that the facades of the taller buildings frequently feature a strongly articulated base, shaft, and capital composition as well as classically inspired ornament. The staff further notes that West 17th and West 18th Streets comprise a combination of mid-scale and large early 20th-century commercial buildings and small scale 19th-century rowhouses with punched masonry openings and converted commercial ground floors. The Commission further noted that Notice of Violation 99-0497 and Notice of Violation 99-0498 were both issued July 6, 1999 for the "installation of fixed awning ("Adorama") and neon signage at ground floor shopfront without permit(s)"; that Notice of Violation 08-0122 was issued September 6th, 2007, for the "installation of signage and billboards without permit(s)"; that Certificate of No Effect 02-0492 was issued July 23, 2001, for window replacement, facade repairs, replacement of the storefront infill and the installation of signage; that Modification of Use and Bulk 02-0505 was issued August 2, 2001 for modifications of use at the buildings located at 40-42 West 18th Street and the vacant lot located at 38 West 18th Street; that Certificate of Appropriateness 02-0504 was issued August 2, 2001, for the construction of a new building on vacant lot; the construction of rooftop additions at 40 and 42 West 18th Street, and the installation of a flagpole at 42 West 18th Street; that Miscellaneous/Amendments 04-5232 was issued February 26, 2004 for enlarging the interior courtyard from 40 feet to 50 feet by reducing the footprint at the rear of 38 and 40 West 18th Street, and slightly increasing the footprint at the rear of the West 17th Street side of the new building; and that Certificate of Appropriateness 08-8225 was issued April 24, 2008, for the construction of a new building on the vacant lot; the construction of rooftop additions at 40 and 42 West 18th Street, and the replacement of storefront infill.

With regard to this proposal, the Commission found that the construction of a new building on the site will complete the streetwall on West 17th and West 18th Streets and will reinforce the continuity of the streetwall on two streets, which is currently disrupted on both West 17th and 18th Streets by a through-block parking lot; that the careful massing of the building into two distinct parts allows the facades to relate successfully to the streetscape on both West 17th and 18th Streets; that the height and scale of both facades relate well to the context of the surrounding buildings in the streetscapes; that the proposed West 17th Street facade is articulated as a base, shaft and capital, recalling the typical facade composition of early 20th-century commercial buildings located throughout the historic district; that the proposed West 17th Street façade, composed of a structural-glass curtain wall overlaid by metal-mesh panels, is an innovative evocation of classical architectural features and ornament; that the proposed West 18th Street façade, composed of a grid of brick panels tapering upwards from solid to void, is evocative of the progression from traditional load-bearing masonry construction to steel-skeleton construction that shaped the development of the historic district during the late-19th and early-20th centuries; that the detailing of this brick façade, featuring strong orthogonal lines and recessed, stepped window frames, is a contemporary interpretation of the robust facade articulation and ornament characteristic of masonry buildings found within the historic district; that both façade designs incorporate an interplay of façade planes and smooth and textured surfaces, and will therefore display a level of depth and articulation comparable to what is found on historic buildings

within this historic district; that the proposed building will enhance the special architectural and historic character of the historic district; and that the restorative work to be approved pursuant to LPC 15-8949 will return the building closer to its original appearance; that the restorative work, including restoration of the brick, limestone, and terra cotta masonry facades; repair and or replacement in kind of deteriorated sheet-metal façade elements and replication of missing decorative features; replacement of windows; and installation of wood storefront infill, will bring the building up to a sound, first-class condition, aid in its long-term preservation, and reinforce the architectural and historic character of the building, the streetscape, and the historic district; that the owners of the building have committed themselves to establishing a cyclical maintenance plan; and that a restrictive Declaration ("Declaration") will be filed against the property which will bind the applicants and all heirs, successors and assigns to maintain the continuing maintenance program in perpetuity. Based on these findings, the Commission determined the proposed work to be appropriate to the Ladies' Mile Historic District and voted to approve it. Therefore, Certificate of Appropriateness 16-5428 is being issued.

The Commission notes that the applicant is applying to the Board of Standards and Appeals for certain variances. Any changes to the design required by the Board of Standards and Appeals approval must be submitted to the Landmarks Preservation Commission for review and approval prior to the issuance of the final approval letter.

PLEASE NOTE: This permit is issued contingent upon the Commission's review and approval of the final Department of Building filing set of drawings. No work can begin until the final drawings have been marked approved by the Landmarks Preservation Commission with a perforated seal. Please submit these drawings to the Landmarks Preservation Commission staff when they become available.

Also, as the approved work consists of subsurface work, the applicant is required to strictly adhere to the Department of Buildings TPPN 10/88 governing in-ground construction adjacent to historic buildings. It is the applicant's obligation at the time of applying for their permit to inform the Department of Buildings that the TPPN applies.

This permit is issued on the basis of the building and site conditions described in the application and disclosed during the review process. By accepting this permit, the applicant agrees to notify the Commission if the actual building or site conditions vary or if original or historic building fabric is discovered. The Commission reserves the right to amend or revoke this permit, upon written notice to the applicant, in the event that the actual building or site conditions are materially different from those described in the application or disclosed during the review process.

All approved drawings are marked approved by the Commission with a perforated seal indicating the date of the approval. The work is limited to what is contained in the perforated document. Other work or amendments to this filing must be reviewed and approved separately. The applicant is hereby put on notice that performing or maintaining any work not explicitly authorized by this permit may make the applicant liable for criminal and/or civil penalties, including imprisonment and fine. This letter constitutes the permit; a copy must be prominently displayed at the site while work is in progress. Please direct inquiries to Olivia Brazee.

Meenakshi Srinivasan
Chair

PLEASE NOTE: PERFORATED DRAWINGS AND A COPY OF THIS PERMIT HAVE BEEN SENT TO:

Page 3

Issued: 12/03/14

DOCKET #: 158949

Valerie Campbell, Kramer Levin Naftalis & Frankel LLP

cc: Jared Knowles, Deputy Director, Preservation/LPC; Katie Rice, Enforcement/LPC

EXHIBIT G

Lot 66 Certificate of No Effect



THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION
 1 CENTRE STREET 9TH FLOOR NORTH NEW YORK NY 10007
 TEL: 212 669-7700 FAX: 212 569-7730



PERMIT

CERTIFICATE OF NO EFFECT

ISSUE DATE: 09/25/15	EXPIRATION DATE: 9/25/2019	DOCKET #: 176064	CNE #: CNE 17-7108
ADDRESS: 40 WEST 18TH STREET <u>HISTORIC DISTRICT</u> LADIES' MILE		BOROUGH: MANHATTAN	BLOCK/LOT: 819 / 66

Display This Permit While Work Is In Progress

ISSUED TO:

Eugene Mendlowits
 42 West 18th Street Corp.
 42 West 18th Street, 4th Floor
 New York, NY 10011

Pursuant to Section 25-306 of the Administrative Code of the City of New York, the Landmarks Preservation Commission hereby approves certain alterations to the subject premises as proposed in your application completed on September 25, 2015.

The approved work consists of facade restoration, including the removal of non-historic metal storefront infill, security roll-down gates, awnings, and signage; the removal of the non-decorative metal fire escape at the second through fourth floors; the installation of new wood storefront infill featuring a dark-green painted finish (Sherwin Williams "Jasper", SW-6216), a projecting central bay flanked by recessed entries with single glazed doors and transoms; the application of painted signage ("The Photography People") at the glass transom above the projecting storefront; the restoration of the pressed-metal storefront cornice, and the installation of white metal sign letters ("Adorama") at the fascia of the cornice; the restoration of the cast-iron piers flanking the storefronts; the installation of two (2) recessed downlights at the soffit above the storefront entries; at the second, third, and fourth floors, the removal of through-wall HVAC louvers and vents; the repair and or replacement in-kind of deteriorated sheet-metal facade elements, including panels, pilasters, pilaster capitals, cornices, and window grillework, and the replication of missing decorative features; painting the restored sheet-metal facade elements a dark green color (Sherwin Williams "Jasper", SW-6216); selective repointing and rebuilding of the brick back-up; selective repairs to or replacement of deteriorated face brick; repointing and cleaning of the brick piers; the removal of all deteriorated historic and replacement metal and wood windows, and two doors at the second and third floors; and the installation of new wood windows, including two (2) one-over-one double-hung windows flanking a fixed single-pane

window at the second and third floors; the installation of five (5) single-pane casement windows at the fourth floor, within the existing decorative metal frames; the installation of two attic windows with decorative metal grilles at the eastern and western facade bays on the fourth floor; at the rear facade, the removal of a non-historic one-story extension; the removal of mastic from the fourth-floor setback facade, and repairs to the underlying brick; repointing and sealing of coping units; and the installation of a metal guardrail at the rear roof; as described in an exterior finish color investigation and mortar analysis replication report dated January 8, 2007 and prepared by Jablonski Berkowitz Conservation Inc.; and as described in written specifications and elevation drawings labeled G-000.00, A-100.00, A-200.00, A-201.00, A-202.00, A-203.00, A-204.00, A-205.00, A-206.00, A-207.00, A-300.00, A-301, A-401, A-402.00, A-403.00, A-404.00, A-405.00, A-406.00, and A-407.00, dated August 12, 2015, prepared by Morris Adjmi, R.A., and submitted as components of the application.

In reviewing this proposal, the Commission notes that the Ladies' Mile Historic District Designation Report describes 40 West 18th Street as a building originally built in 1858 and redesigned in 1898 in a commercial style by John R. Hutchinson; and that the building's style, scale, materials and details are among the features contributing to the special architectural and historic character of the Ladies' Mile Historic District. The Commission further notes that Certificate of Appropriateness 16-5428 (LPC 15-8949) was issued on December 3, 2014, approving the construction of a new building on the vacant portion of the site and the restoration of the two historic buildings on the site.

With regard to this proposal, the Commission finds, in accordance with the provisions of RCNY, Title 63, Section 2-13, that the fire escape is not a significant protected feature on the building; that the fire escape is not original to the building; that the fire escape does not have architectural merit in itself; that any damage to the facade will be repaired to match the adjacent fabric; that the removal of the fire escape will not leave gaps, holes, or unsightly conditions on the facade. The Commission further finds that the proposed masonry units will match the historic masonry units in terms of size, color, texture and bond pattern; that the existing joints will be raked by hand or by a method that will not cause damage to the surrounding brick; that the proposed mortar will match the historic mortar in terms of size, color, texture and tooling; that the cleaning of the brick piers will be done in the gentlest effective method without causing damage to the masonry; that the water pressure will not exceed 500 psi; and that the proposed work will protect the building's facade and structure from future damage due to water infiltration and aid in the long term preservation of the building; and, in accordance with the provisions set forth in Title 63 of the Rules of the City of New York, Section 2-17(c) that the replacement of the existing infill will not cause the removal of significant historic fabric that may have been added over time, which is evidence of the history and development of a building, structure, or site; that the design of the infill is based on historic storefront prototypes and details within the historic district for buildings of similar age, type and style; that the configuration of replacement infill will be consistent with the proportions of display window, transom, and bulkhead of historic storefront infill; that the storefront framing will feature a molding profile that recalls the articulation of historic storefront framing; that the placement of the display window, transom, and bulkhead will maintain the building street wall; that the bulkhead will be between eighteen (18) inches and two (2) feet six (6) inches in height, including a curb; that the recessed entrance will have splayed returns; that the material of the new infill will match the historic infill; that the finish will recall the finish of historic storefronts; that no interior partitions will be closer than eighteen (18) inches to the glass of the display window; that the design will include restoration of the original size of the storefront opening; that the historic storefront surround, revealed by probes, will be restored as part of the application for new storefront; and, in accordance with the provisions set forth in Title 63 of the Rules of the City of New York, Section 2-20 (c), that the installation of signage will not damage, destroy or obscure significant architectural features or material of the building or storefront; that the sign will be installed in a signage band above a storefront; that the signage consists of letters and logos applied directly on wood, metal, or opaque glass

panels mounted flat with the signband or painted directly onto the ground floor signband and lintels; that the sign panel will project no more than 3 inches from the façade, and pin-mounted letters on the sign panels will project no more than 1 inch beyond the panel for a total projection of 4 inches from the façade; that the pin-mounted letters are not installed directly into cast iron; that the sign will be proportional to the signband, but in no event exceed 90 percent of the area of the signband; that the letters will not be higher than 18 inches; that the installation of painted or vinyl signage will not exceed more than 20 percent of storefront glazing, and therefore will not substantially reduce the transparency of the display window, doors, or transom; that the signage will not be internally illuminated, nor feature neon strips outlining the display window; and that the overall amount of signage is not excessive and will not detract from the architectural features of the building, the adjacent buildings, or the streetscape; and, in accordance with the provisions set forth in RCNY, Title 63, Section 3-04 (c), that the new windows at the primary façade will match the historic windows in terms of configuration, operation, details, material and finish. Finally, the Commission finds that the basis for the design of the proposed restoration's authenticity is documented by photographic evidence and physical evidence at the building; that the restoration will not cause the removal of significant historic fabric that may have been added over time and that are evidence of the history and development of a building, structure or site; that the proposed sheet-metal facade elements will match the historic facade elements in terms of placement, material, dimension, design, and details.

PLEASE NOTE: this permit is contingent upon the Commission's review and approval of samples of masonry cleaning, joint cutting method(s), pointing, painting or coating, and replacement sheet-metal architectural features, prior to the commencement of work. Samples should be installed adjacent to clean, original surface(s) being repaired; allowed to cure; and cleaned of residue. Submit digital photographs of all samples to obrazee@lpc.nyc.gov for review.

This permit is also contingent on the understanding that the work will be performed by hand and when the temperature remains a constant 45 degrees Fahrenheit or above for a 72 hour period from the commencement of the work.

PLEASE NOTE that this permit is being issued in conjunction with Certificate of No Effect 7109 (LPC 17-6073), approving facade restoration at 42 West 18th Street; and Modification of Use 17-7107 (LPC 17-6168) approving a request that the Landmarks Preservation Commission issue a report to the City Planning Commission in support of an application for the issuance of a special permit, pursuant to Section 74-711 of the Zoning Resolution, for a Modifications of Use.

The Commission has reviewed the application and these drawings and finds that the work will have no effect on significant protected features of the building.

This permit is issued on the basis of the building and site conditions described in the application and disclosed during the review process. By accepting this permit, the applicant agrees to notify the Commission if the actual building or site conditions vary or if original or historic building fabric is discovered. The Commission reserves the right to amend or revoke this permit, upon written notice to the applicant, in the event that the actual building or site conditions are materially different from those described in the application or disclosed during the review process.

All approved drawings are marked approved by the Commission with a perforated seal indicating the date of the approval. The work is limited to what is contained in the perforated document. Other work or amendments to this filing must be reviewed and approved separately. The applicant is hereby put on notice

that performing or maintaining any work not explicitly authorized by this permit may make the applicant liable for criminal and/or civil penalties, including imprisonment and fine. This letter constitutes the permit; a copy must be prominently displayed at the site while work is in progress. Please direct inquiries to Olivia Brazee.



Meenakshi Srinivasan
Chair

PLEASE NOTE: PERFORATED DRAWINGS AND A COPY OF THIS PERMIT HAVE BEEN SENT TO:

Jeremy Reed, Morris Adjmi Associates

cc: Carly Bond, Deputy Director of Preservation/LPC

EXHIBIT H

Lot 14 Certificate of No Effect



THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION
 1 CENTRE STREET 9TH FLOOR NORTH NEW YORK NY 10007
 TEL: 212 659-7700 FAX: 212 659-7780



PERMIT CERTIFICATE OF NO EFFECT

ISSUE DATE: 09/25/15	EXPIRATION DATE: 9/25/2019	DOCKET #: 176073	CNE #: CNE 17-7109
ADDRESS: 42 WEST 18TH STREET aka 45 West 17th Street LADIES' MILE		BOROUGH: MANHATTAN	BLOCK/LOT: 819 / 14

Display This Permit While Work Is In Progress

ISSUED TO:

Eugene Mendlowits
 42 West 18th Street Corp.
 42 West 18th Street, 4th Floor
 New York, NY 10011

Pursuant to Section 25-306 of the Administrative Code of the City of New York, the Landmarks Preservation Commission hereby approves certain alterations to the subject premises as proposed in your application completed on September 25, 2015.

The approved work consists of facade restoration at the north-facing (West 18th Street) facade, including the removal of non-historic metal storefront infill, security roll-down gates, awnings, and signage; the removal of a flagpole installed above the storefront; the removal of brick veneer from the masonry piers flanking the storefront; the restoration of the cast-iron storefront piers; the installation of new wood storefront infill featuring a dark-green painted finish (Sherwin Williams "Jasper", SW-6216), display windows and transoms above a molded transom bar, and a single-leaf glazed wood door with a transom above; the installation of a wood-framed metal signband above the storefront, and the installation of surface-mounted metal sign letters ("Adorama"); the installation of one (1) recessed downlight at the soffit above the storefront entry; the removal of all the terra cotta from the facade; structural repairs to the steel framing members; selective repointing and rebuilding of the brick back-up; the installation of new replica terra cotta units; the removal of metal replacement windows and deteriorated historic wood windows and wood transoms from the masonry openings at the second through sixth floors; the installation of new wood windows at the second through fourth floors, including a tripartite window composed of a fixed center pane flanked by single-pane casement sash and topped by a divided transom within the masonry opening in the center facade bay, and a single one-over-one-double hung sash topped by a transom at the flanking facade bays; the installation of new irregularly shaped wood windows at the fifth floor, within the monumental Tudor-arched masonry

opening, including a tripartite window and transoms within the center facade bay, flanked by paired single-pane fixed and casement sash; and the installation of three (3) new one-over-one double-hung wood windows within the existing masonry openings at the sixth floor; the installation of structural bracing at the parapet; selective masonry repairs at the interior lightwell facades; and facade restoration at the south-facing (West 17th Street) facade, including the removal of non-historic metal storefront infill; the installation of new wood storefront infill featuring a dark-green painted finish ("Jasper"), a paneled bulkhead, display window, and single-leaf glazed doors with sidelites and transoms; the installation of four (4) flush-mounted louvers with a dark-green finish ("Jasper") above the storefront transoms; the installation of a paneled metal fascia above the louvers; restoration of the decorative metal cornice at the second floor; selective repointing and replacement of face brick; selective cleaning of the brick facade; selective installation of Dutchman™ repairs at the limestone trim; repointing of the limestone sills; selective patching of spalled stone; selective replacement of failed embedded steel lintels; restoration of the missing decorative metal cornice at the sixth floor; rebuilding of the brick parapet and the installation of new cast-stone coping units; the removal of metal replacement windows and deteriorated historic wood windows from the second through sixth floors; the installation of new wood windows, including five (5) one-over-one double-hung windows with fixed transoms separated by vertical wood mullions at each floor, within the existing window openings; at the roof, the replacement of the roofing membrane; the replacement of the metal cladding and roofing material at the stair and elevator bulkheads; the replacement in kind of two skylights; the replacement in kind of the coping stones at the lightwell; repointing and sealing of coping units; and the installation of a metal guardrail at the roof perimeter; as described in an exterior finish color investigation and mortar analysis replication report dated January 8, 2007, and prepared by Jablonski Berkowitz Conservation Inc.; and as described in written specifications and shown on drawings labeled G-000.00, A-100.00, A-200.00, A-201.00, A-202.00, A-203.00, A-204.00, A-205.00, A-206.00, A-207.00, A-300.00, A-301, A-401, A-402.00, A-403.00, A-404.00, A-405.00, A-406.00, and A-407.00, dated August 12, 2015, prepared by Morris Adjmi, R.A., and submitted as components of the application.

In reviewing this proposal, the Commission notes that the Ladies' Mile Historic District Designation Report describes 42 West 18th Street (aka 45 West 17th Street) as an early 20th century commercial style store and loft building designed by George A. Crawley and built in 1907-08; and that the building's style, scale, materials and details are among the features contributing to the special architectural and historic character of the Ladies' Mile Historic District. The Commission further notes that documentation shows that the majority of the terra cotta units at the facade are in a severely deteriorated condition, warranting replacement; and that Certificate of Appropriateness 16-5428 (LPC 15-8949) was issued on December 3, 2014, approving the construction of a new building on the vacant portion of the site and the restoration of the two historic buildings on the site.

With regard to this proposal, the Commission finds that the proposed masonry units will match the historic masonry units in terms of size, color, texture and bond pattern; that the proposed mortar will match the historic mortar in terms of size, color, texture and tooling; and that the proposed work will protect the building's façade and structure from future damage due to water infiltration and aid in the long term preservation of the building. The Commission further finds, in accordance with the provisions set forth in Title 63 of the Rules of the City of New York, Section 2-17(c) that the replacement of the existing infill will not cause the removal of significant historic fabric that may have been added over time, which is evidence of the history and development of a building, structure, or site; that the design of the infill is based on historic storefront prototypes and details within the historic district for buildings of similar age, type and style; that the configuration of replacement infill will be consistent with the proportions of display window, transom, and bulkhead of historic storefront infill; that the storefront framing will feature a molding profile that recalls the articulation of historic storefront framing; that the placement of the display window, transom, and bulkhead will maintain the building street wall; that the bulkhead will be between eighteen (18) inches and

two (2) feet six (6) inches in height, including a curb; that the recessed entrance will have straight returns; that the material of the new infill will match the historic infill; that the finish will recall the finish of historic storefronts; that no interior partitions will be closer than eighteen (18) inches to the glass of the display window; that the design will include the re-introduction of piers that recall the location, size and dimension of the historic piers which were previously removed; that the design will include restoration of the original size of the storefront opening; and, in accordance with the provisions set forth in Title 63 of the Rules of the City of New York, Section 2-20 (c), that the installation of signage will not damage, destroy or obscure significant architectural features or material of the building or storefront; that the sign will be installed in a signage band above a storefront; that the signage consists of letters and/or logos applied directly on wood, metal, or opaque glass panels mounted flat with the signband; that the sign panel will project no more than 3 inches from the façade, and letters on the sign panels will project no more than 1 inch beyond the panel for a total projection of 4 inches from the façade; that the sign will be proportional to the signband, but in no event exceed 90 percent of the area of the signband; that the letters will not be higher than 18 inches; that the installation of painted or vinyl signage will not exceed more than 20 percent of storefront glazing, and therefore will not substantially reduce the transparency of the display window, doors, or transom; that the signage will not be internally illuminated, nor feature neon strips outlining the display window; that the light fixtures will be installed in areas of plain masonry, metal, or wood, and the installation will not damage, destroy, or obscure significant architectural features of the building or storefront; that the lighting conduits will be concealed; that the proposed exterior light fixtures will only illuminate storefronts and related signage; and that the overall amount of signage is not excessive and will not detract from the architectural features of the building, the adjacent buildings, or the streetscape. Finally, the Commission finds, in accordance with the provisions set forth in RCNY, Title 63, Section 3-04 (c), that the new windows at the primary façade will match the historic windows in terms of configuration, operation, details, material and finish.

PLEASE NOTE: this permit is contingent upon the Commission's review and approval of samples of representative decorative and plain replacement terra cotta units prior to the commencement of work. Samples should be installed adjacent to clean, original terra cotta units. Submit digital photographs of all samples to obrazee@lpc.nyc.gov for review.

This permit is also contingent on the understanding that the work will be performed by hand and when the temperature remains a constant 45 degrees Fahrenheit or above for a 72 hour period from the commencement of the work.

PLEASE NOTE that this permit is being issued in conjunction with Certificate of No Effect 7108 (LPC 17-6064), approving facade restoration at 40 West 18th Street; and Modification of Use 17-7107 (LPC 17-6168) approving a request that the Landmarks Preservation Commission issue a report to the City Planning Commission in support of an application for the issuance of a special permit, pursuant to Section 74-711 of the Zoning Resolution, for a Modifications of Use.

The Commission has reviewed the application and these drawings and finds that the work will have no effect on significant protected features of the building.

This permit is issued on the basis of the building and site conditions described in the application and disclosed during the review process. By accepting this permit, the applicant agrees to notify the Commission if the actual building or site conditions vary or if original or historic building fabric is discovered. The Commission reserves the right to amend or revoke this permit, upon written notice to the applicant, in the

event that the actual building or site conditions are materially different from those described in the application or disclosed during the review process.

All approved drawings are marked approved by the Commission with a perforated seal indicating the date of the approval. The work is limited to what is contained in the perforated document. Other work or amendments to this filing must be reviewed and approved separately. The applicant is hereby put on notice that performing or maintaining any work not explicitly authorized by this permit may make the applicant liable for criminal and/or civil penalties, including imprisonment and fine. This letter constitutes the permit; a copy must be prominently displayed at the site while work is in progress. Please direct inquiries to Olivia Brazeo.



Meenakshi Srinivasan
Chair

PLEASE NOTE: PERFORATED DRAWINGS AND A COPY OF THIS PERMIT HAVE BEEN SENT TO:
Jeremy Reed, Morris Adjmi Associates

cc: Carly Bond, Deputy Director of Preservation/LPC

EXHIBIT I

Plans

Exhibit I

Plans

Order of Plan Segments:

6	4	2			
5	3	1	<table border="1"><tr><td>Title</td></tr><tr><td>No.</td></tr></table>	Title	No.
Title					
No.					

STREET FRONTAGE BEYOND 50 FEET FROM THE INTERSECTION OF A WIDE STREET, AT LEAST 70 FEET. STREETWALL SHALL BE LOCATED WITHIN EIGHT FEET OF THE STREETLINE AND SHALL EXTEND TO AT LEAST THE HEIGHT OF THE BUILDING, WHICHEVER IS LESS. FOR ZONING LOTS BOUNDED BY MORE THAN ONE STREET, STREETWALLS ARE MANDATORY ALONG ONLY ONE STREET LINE	17TH STREET FRONTAGE COMPLIES WITH THE STREETWALL PROVISION.
17TH STREET, ZR 23-692	17TH STREET NEW BUILDING BUILDING HEIGHT = 166' 18TH STREET NEW BUILDING BUILDING HEIGHT = 170'
17TH STREET & 18TH STREET 17TH STREET & 150'0" (DUE TO ADJACENT BLDG) 18TH STREET 150'0" = 15'0" FOR BOTH 17TH STREET & 18TH STREET	17TH STREET NEW BUILDING BASE HEIGHT = 166' 18TH STREET NEW BUILDING BASE HEIGHT = 170' NO SETBACK PROVIDED AT BASE HEIGHT
MINIMUM BASE HEIGHT PROVISIONS SHALL NOT APPLY ALONG ANY STREET FRONTAGE OF A ZONING LOT UNLESS ALL HEIGHTS OR WIDTHS SHALL REMAIN UNALTERED	18TH STREET (EXISTING BUILDINGS ONLY): STREET WALL UNALTERED BASE HEIGHT UNALTERED
PERMITTED USES ON A THROUGH LOT	THREE STORY (33 FEET HIGH) PORTION FOR COMMERCIAL USE
STREETS LESS THAN 45 FEET IN WIDTH SHALL NOT BE PERMITTED ABOVE THE FOLLOWING HEIGHTS; A STREET ON WHICH SUCH STREET WALLS FRONT (60') OR 100 FEET, WHICHEVER IS LESS. HEIGHT	18TH STREET BUILDING HEIGHT = 170'
MINIMUM SETBACK BETWEEN THE PORTION OF A BUILDING CONTAINING RESIDENCES AND ANY OTHER BUILDING ON THE LOT SHALL BE AS SET FORTH IN THE VALUES IN THIS SECTION. WINDOW TO WINDOW CONDITION FOR BUILDINGS > 50 FT TALL:	50 FT DISTANCE BETWEEN BUILDINGS

PERMITTED ONLY FOR DEVELOPMENTS OR ENLARGEMENTS CONTAINING RESIDENTIAL USE AS SET FORTH IN THIS SECTION. AND ITS PROLONGATIONS, THE NUMBER OF ACCESSORY OFF-STREET PARKING SPACES SHALL NOT EXCEED THE NUMBER OF DWELLING UNITS CONTAINED IN THE DEVELOPMENT OR 200 SPACES, WHICHEVER IS LESS. 4 SPACES PERMITTED	13 SPACES PROPOSED
PERMITTED FOR NON-RESIDENTIAL USES AS FOLLOWS: FOR COMMERCIAL USES LISTED IN GROUP 6, THE MAXIMUM NUMBER OF ACCESSORY OFF-STREET PARKING SPACES SHALL BE 4 SPACES PER 4,000 SF OF FLOOR AREA, OR 10 SPACES, WHICHEVER IS LESS. 4 SPACES < 10 MAX. 4 SPACES PERMITTED	4 SPACES PROPOSED
COMMERCIAL	17 TOTAL SPACES
STREET. CURB CUTS ARE PERMITTED ALONG NARROW STREETS PROVIDED THAT NO ZONING LOT SHALL BE PLANTED ON A NARROW STREET FRONTAGE	1 EXISTING CURB CUT TO REMAIN ON WEST 17TH STREET (NARROW STREET); 1 EXISTING CURB CUT TO BE REMOVED ON WEST 18TH STREET. EXISTING CURB CUT ON WEST 17TH STREET REDUCED TO 10'-6"
PER 2 DWELLING UNITS, 66 DWELLING UNITS X .5 = 33 BICYCLE PARKING SPACES REQUIRED PER 10,000 SQUARE FEET, 50,734 SF U.G. 6 = 6 BICYCLE PARKING SPACES REQUIRED	39 TOTAL BICYCLE SPACES PROPOSED

PLANTED, SHALL BE PROVIDED FOR EVERY 25 FEET OF STREET FRONTAGE OF THE ZONING LOT.	1 NEW TREE PROPOSED ON SITE AND 5 TREES TO BE PLANTED AT ALTERNATIVE LOCATIONS
SHALL BE PROVIDED FOR CHANGES OR ENLARGEMENTS OF COMMERCIAL USES GREATER THAN 10,000 SF.	COMMERCIAL ENLARGEMENT = 16,179 SF. NO OFF-STREET LOADING BERTHS PROVIDED

MINIMUM HEIGHT PURSUANT TO ZR SECTIONS 35-24 AND 23-633 ZR SECTION 23-663 ZR SECTION 23-44 MINIMUM HEIGHT PURSUANT TO ZR SECTION 23-692 MINIMUM SETBACK BETWEEN WINDOWS ON A ZONING LOT	
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	THROUGH LOT	WHICH SUCH THROUGH LOT FRONTS
ZR 35-651	HEIGHT & SETBACK REGULATIONS FOR QUALITY HOUSING BUILDINGS (STREET WALL LOCATION)	FOR ZONING LOTS WITH ONLY NARROW STREET FRONTS PERCENT OF THE AGGREGATE WIDTH OF STREETWALL SHALL BE AT LEAST THE MINIMUM BASE HEIGHT OR THE HEIGHT OF THE STREETLINE, THESE STREETWALL PROVISIONS ARE MANDATORY
ZR 35-652 ZR 23-662	MAXIMUM HEIGHT OF BUILDINGS AND SETBACK REGULATIONS	MAXIMUM BUILDING HEIGHT = 185' FOR 17TH STREET, NOT APPLICABLE FOR 18TH STREET DUE TO ZR 23-692
ZR 35-652 ZR 23-662(a) ZR 35-655(f)(2) ZR 23-662(c)	SETBACK REGULATIONS IN CERTAIN DISTRICTS (SETBACK REGULATIONS)	MINIMUM BASE HEIGHT = 60'0" FOR BOTH 17TH STREET & 18TH STREET MAXIMUM BASE HEIGHT = 125'0" FOR 17TH STREET & 18TH STREET FRONT SETBACK AT MAXIMUM BASE HEIGHT = 15'0" FOR 17TH STREET & 18TH STREET
ZR 35-655(c)	HEIGHT & SETBACK REGULATIONS IN CERTAIN DISTRICTS (ADDITIONAL REGULATIONS)	THE STREET WALL LOCATION AND MINIMUM BASE HEIGHT SHALL BE AS SHOWN ON THE MAP OCCUPIED BY BUILDINGS WHOSE STREET WALL HEIGHTS EXCEED 185 FEET
ZR 33-281	SPECIAL PROVISIONS FOR THROUGH LOTS / EXCEPTED DISTRICTS	NO REAR YARD REQUIRED FOR COMMERCIAL USES ON THROUGH LOTS
ZR 23-692	HEIGHT LIMITATIONS FOR NARROW BUILDINGS AND ENLARGEMENTS	PORTIONS OF BUILDINGS WITH STREETWALLS LESS THAN 45 FEET IN WIDTH SHALL HAVE A HEIGHT EQUAL TO THE WIDTH OF THE STREET ON WHICH THEY ARE LOCATED. LIMITATION = 60'
ZR 23-711	STANDARD MINIMUM DISTANCE BETWEEN BUILDINGS	THE REQUIRED MINIMUM DISTANCE BETWEEN THE PORTIONS OF BUILDINGS ON THE SAME ZONING LOT SHALL NOT BE LESS THAN THE VALUE SHOWN ON THE MAP. 60 FT

ACCESSORY OFF-STREET PARKING AND BICYCLE REGULATIONS

ZR 13-11	PERMITTED PARKING FOR RESIDENCES	ACCESSORY OFF-STREET PARKING SPACES ARE PERMITTED AS FOLLOWS: (a) FOR THE AREA SOUTH OF 60TH STREET AND ITS PRODUCTIONS, PERMITTED PARKING SPACES SHALL NOT EXCEED 20 PERCENT OF THE NUMBER OF NEW DWELLING UNITS. 66 DWELLINGS X 0.20 = 13.2, 13 SPACES PERMITTED
ZR 13-12	PERMITTED PARKING FOR NON-RESIDENTIAL USES	ACCESSORY OFF-STREET PARKING SPACES ARE PERMITTED AS FOLLOWS: (c) FOR DEVELOPMENTS COMPRISING COMMERCIAL USES, PERMITTED PARKING SPACES SHALL NOT EXCEED 1 SPACE PER 4,000 SF. 16,179 SF NEW COMMERCIAL SF / 4000 SF = 4 SPACES < 4 SPACES PERMITTED
ZR 13-11, ZR 13-12	TOTAL PROPOSED PARKING SPACES	13 SPACES RESIDENTIAL + 4 SPACES COMMERCIAL
ZR 13-241	CURB CUT LOCATIONS	NO CURB CUTS ARE PERMITTED ON WIDE STREET. CURB CUTS ARE PERMITTED ON NARROW STREET. CURB CUTS SHALL NOT BE MORE THAN ONE CURB CUT ON ANY NARROW STREET
ZR 13-242	CURB CUT WIDTH	MAXIMUM CURB CUT = 22'-0"
ZR 36-711	ENCLOSED BICYCLE PARKING SPACES	USE GROUP 2 = 1 BICYCLE PARKING SPACE PER 2 DWELLING UNITS USE GROUP 6 = 1 BICYCLE PARKING SPACE PER 10,000 SQUARE FEET

SPECIAL URBAN DESIGN GUIDELINES

ZR 26-41	STREET TREE PLANTING	ONE STREET TREE, PRE-EXISTING OR NEWLY PLANTED, SHALL BE REQUIRED FOR EVERY 150'-0" OF STREET FRONTAGE. 6 TREES REQUIRED (150'-0" / 25'-0" = 6)
ZR 36-62	REQUIRED OFF-STREET LOADING BERTHS	ACCESSORY OFF-STREET LOADING BERTHS SHALL BE PROVIDED AT A RATIO OF 1 BERTH PER 25,000 SF.

CPC WAIVERS REQUESTED

- LOCATION OF A BUILDING NOT IN COMPLIANCE WITH THE APPLICABLE BASE AND SETBACK REGULATIONS SET FORTH IN ZR SECTION 35-652
- LOCATION OF A BUILDING NOT IN COMPLIANCE WITH THE APPLICABLE REAR SETBACK REGULATIONS SET FORTH IN ZR SECTION 35-652
- REAR YARD THAT DOES NOT COMPLY WITH ZR SECTION 23-532 DUE TO OBSTRUCTIONS THAT DO NOT COMPLY WITH ZR SECTION 23-532
- PORTION OF THE BUILDING WITH A STREET FRONTAGE OF LESS THAN 45 FEET IN WIDTH TO EXCEED PERMITTED MAXIMUM HEIGHT
- LOCATION OF BUILDING PORTIONS THAT DO NOT COMPLY WITH ZR SECTION 23-711 REGARDING MINIMUM DISTANCE BETWEEN BUILDINGS

LEGEND	
	RESIDENTIAL ENTRANCE
	COMMERCIAL ENTRANCE
	PARKING ENTRANCE
	CURB CUT
	NEW STREET TREE
	EXISTING STREET TREE
	ZONING LOT BOUNDARY
	TAX LOT BOUNDARY
	ZONING LOTS, EXISTING BUILDING
	ZONING LOT, NEW CONSTRUCTION
	EXISTING BUILDINGS

ADORAMA

41-43 W.17th St &
38-42 W.18th St
New York, NY 10011

Manhattan
Block 819
Lots 14, 15, 66
ULURP: P2014M0114



Morris Adjmi Architects
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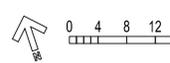
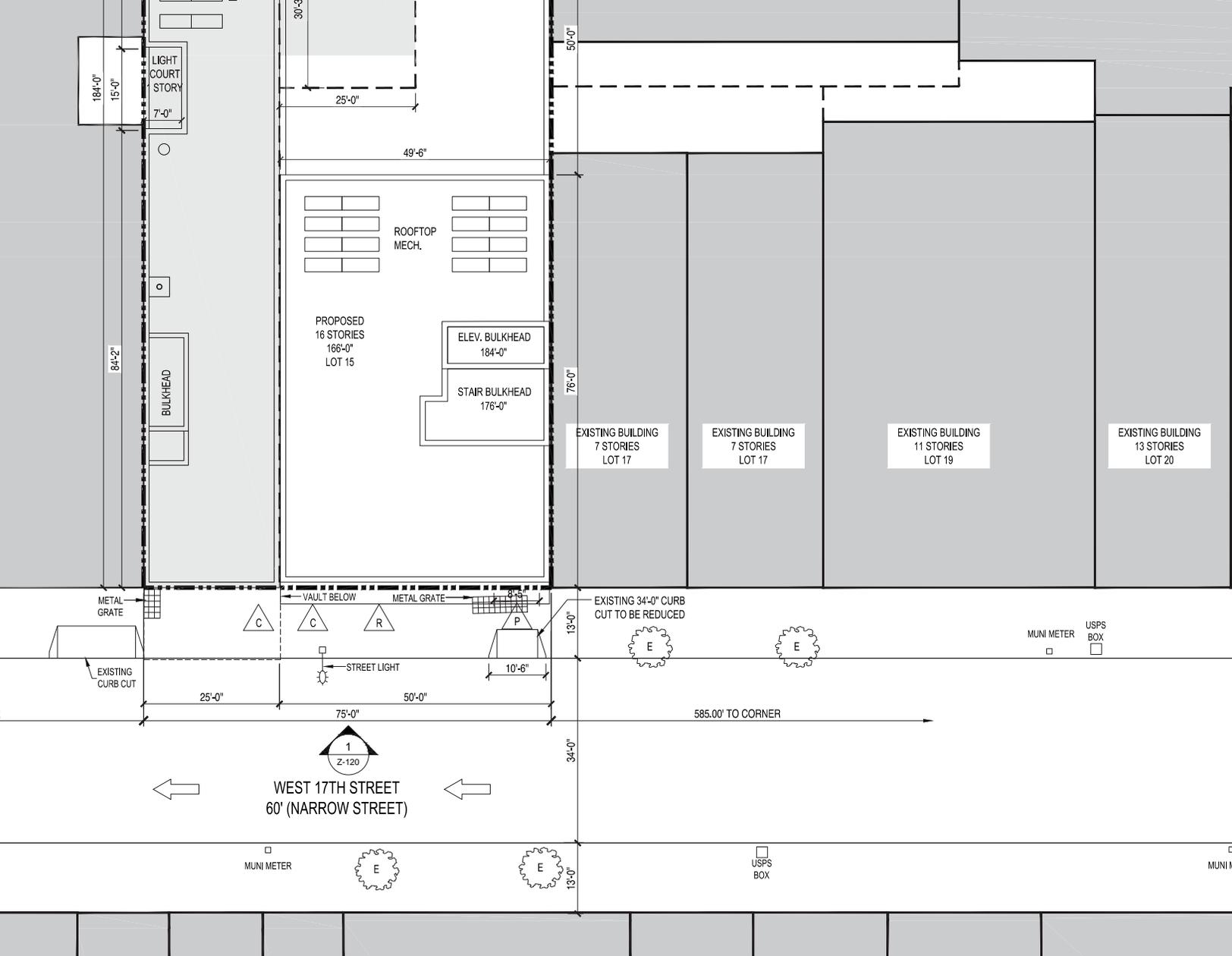
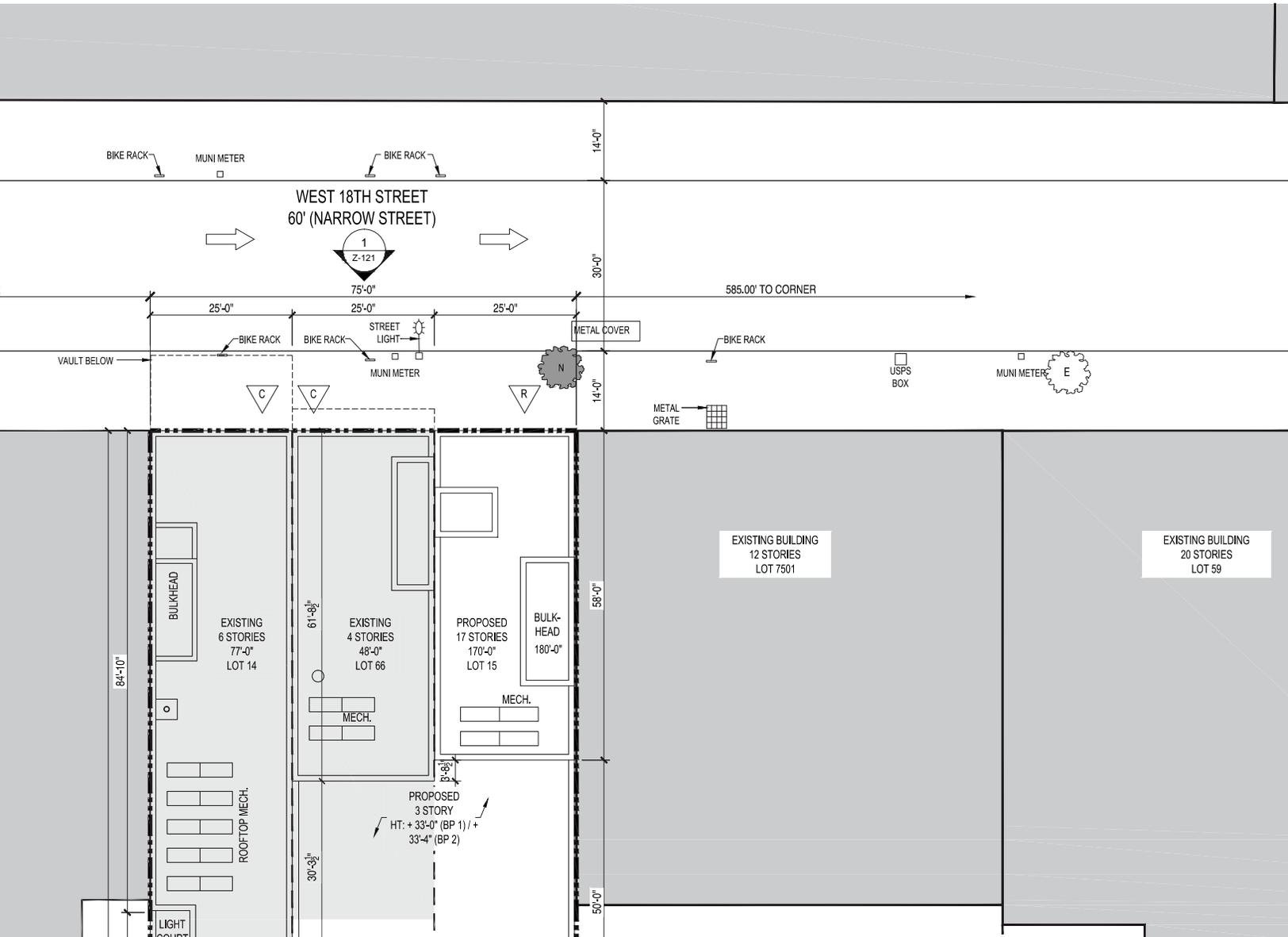
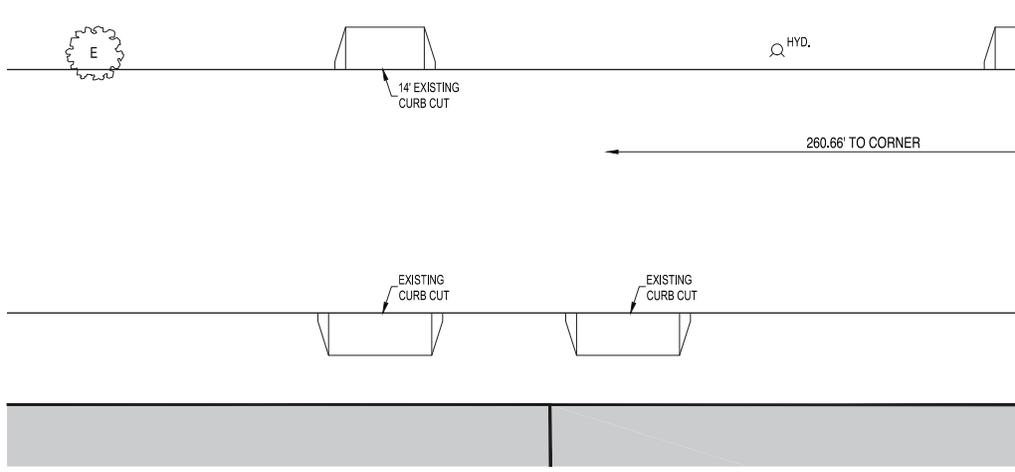
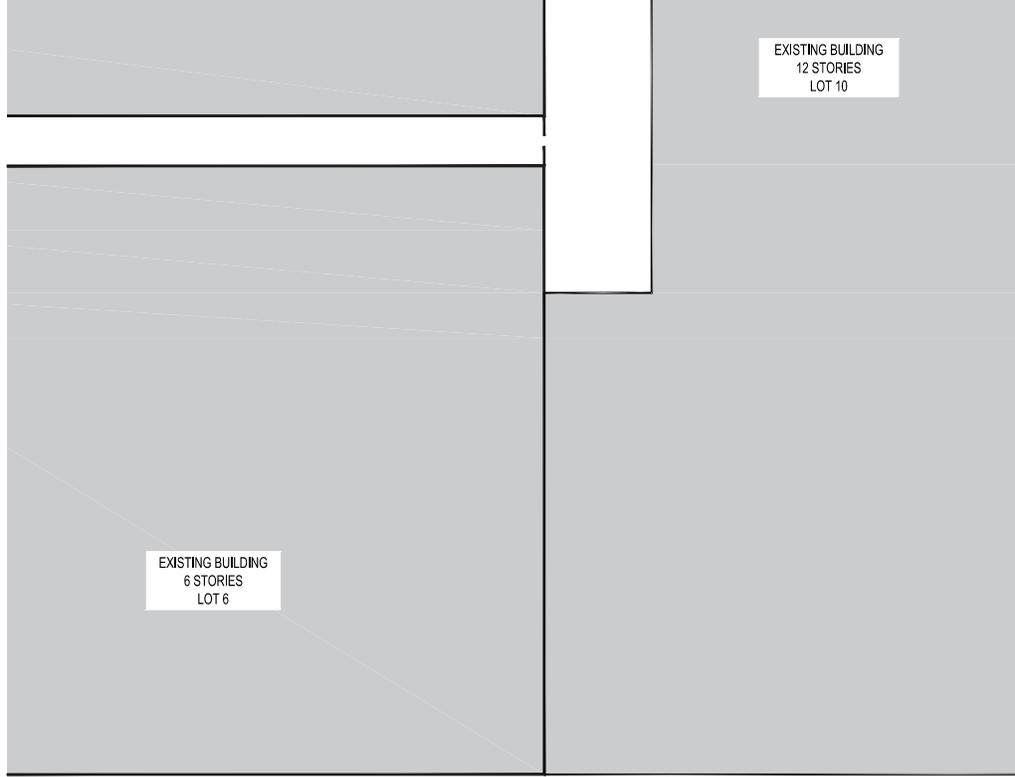


Exhibit I
 Z-100
 Page 4 of 6



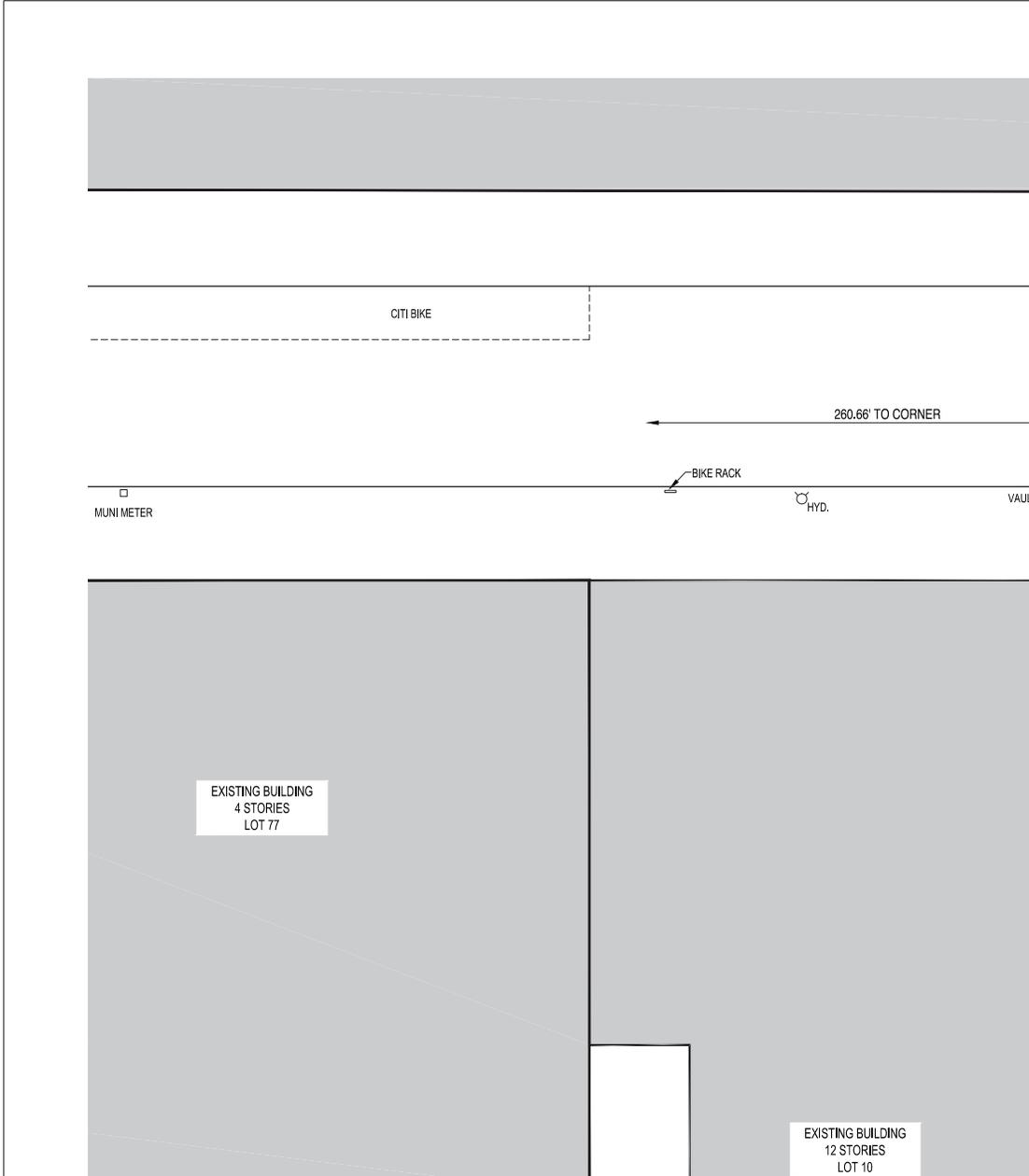


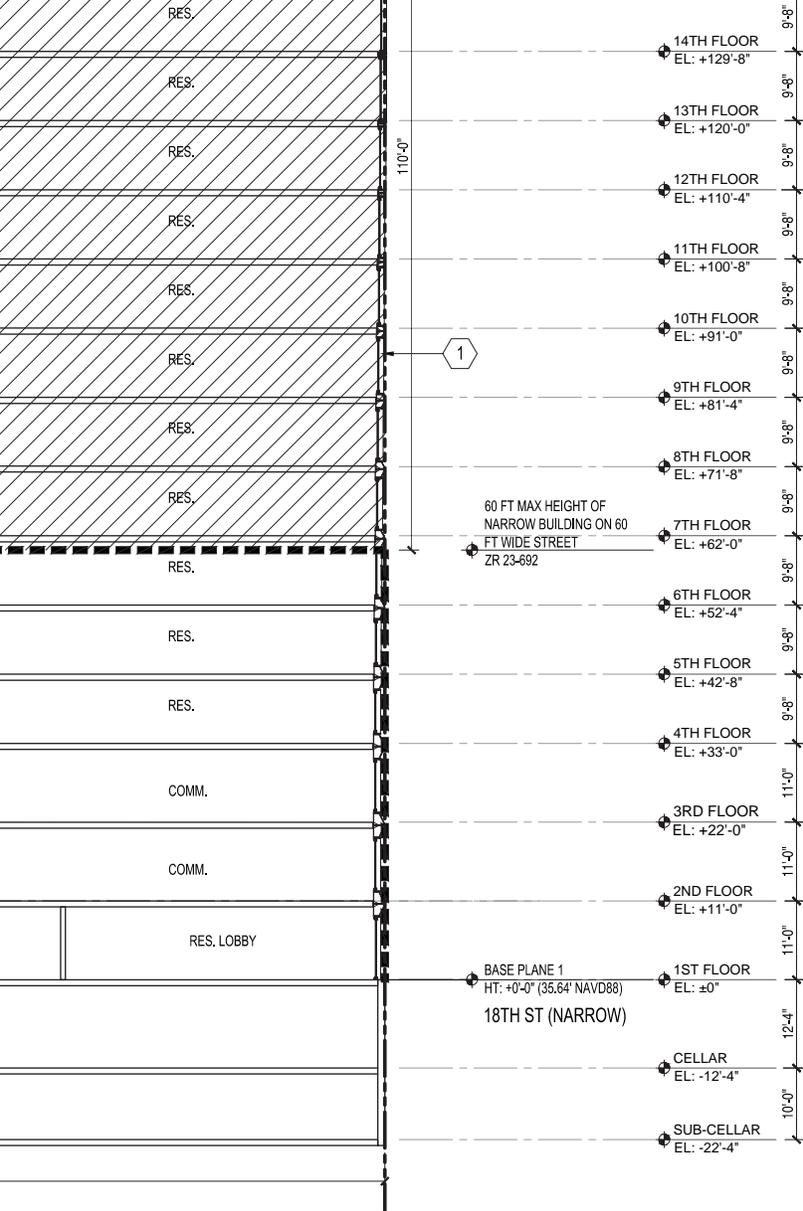
1 SITE PLAN
1/16" = 1'-0"

Exhibit I

Z-100

Page 6 of 6





REVISION FOR DCP 06/21/2016

REVISION	ISSUE	REMARKS
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ULURP SUBMISSION

OWNER:
42 WEST 18TH REALTY CORP.
42 WEST 18TH STREET, 4TH FLOOR
BROOKLYN, NY 11218
PHONE: 212-727-7495

ARCHITECT:
MORRIS ADJMI ARCHITECTS
45 EAST 20TH STREET
NEW YORK, NY 10003
PHONE: 212-982-2020

ENVIRONMENTAL CONSULTANT:
PHILIP HABIB & ASSOCIATES
102 MADISON AVE. #11
NEW YORK, NY 10016
PHONE: 212-929-5656

LANDMARKS CONSULTANT:
HIGGINS QUASEBARTH & PARTNERS
11 HANOVER SQUARE, 16TH FLOOR
NEW YORK, NY 10005
PHONE: (212) 274-9468
FAX: 212-274-9380



DATE 09/17/2015

SCALE AS NOTED

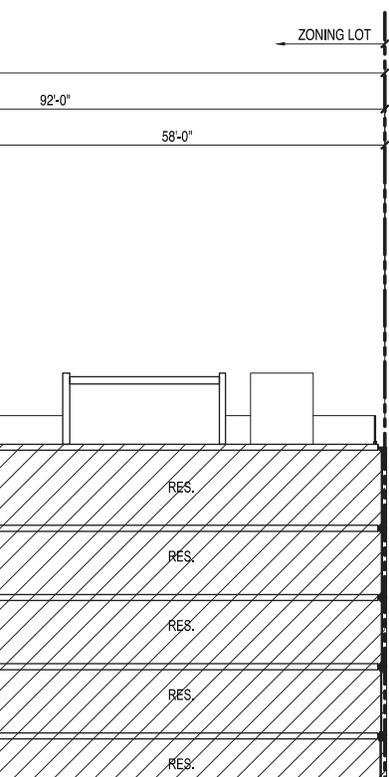
BULK WAIVER PLAN AND SECTION

Z-140

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SHEET 12 OF 15

MA PROJECT # 1302



LEGEND

-  OUTLINE OF MAXIMUM ZONING ENVELOPE
-  ZONING LOT BOUNDARY
-  TAX LOT BOUNDARY
-  EXISTING BUILDING
-  NEW CONSTRUCTION

WAIVERS REQUESTED

-   FOR 17TH STREET BUILDING, LOCATION OF A BUILDING NOT IN COMPLIANCE WITH THE APPLICABLE BASE AND SETBACK REGULATIONS SET FORTH IN ZR SECTIONS 35-23 AND 23-662
-  NOT REQUIRED AS PER ZQA REGULATIONS
-   REAR YARD THAT DOES NOT COMPLY WITH ZR SECTION 23-533 DUE TO OBSTRUCTIONS THAT DO NOT COMPLY WITH ZR SECTION 23-44
-   LOCATION OF BUILDING PORTIONS THAT DO NOT COMPLY WITH ZR SECTION 23-711 REGARDING MINIMUM DISTANCE BETWEEN WINDOWS ON A ZONING LOT

ADORAMA

41-43 W.17th St &
 38-42 W.18th St
 New York, NY 10011

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 Lots 14, 15, 66
 ULURP: P2014M0114

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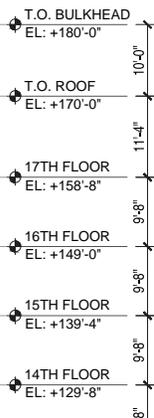
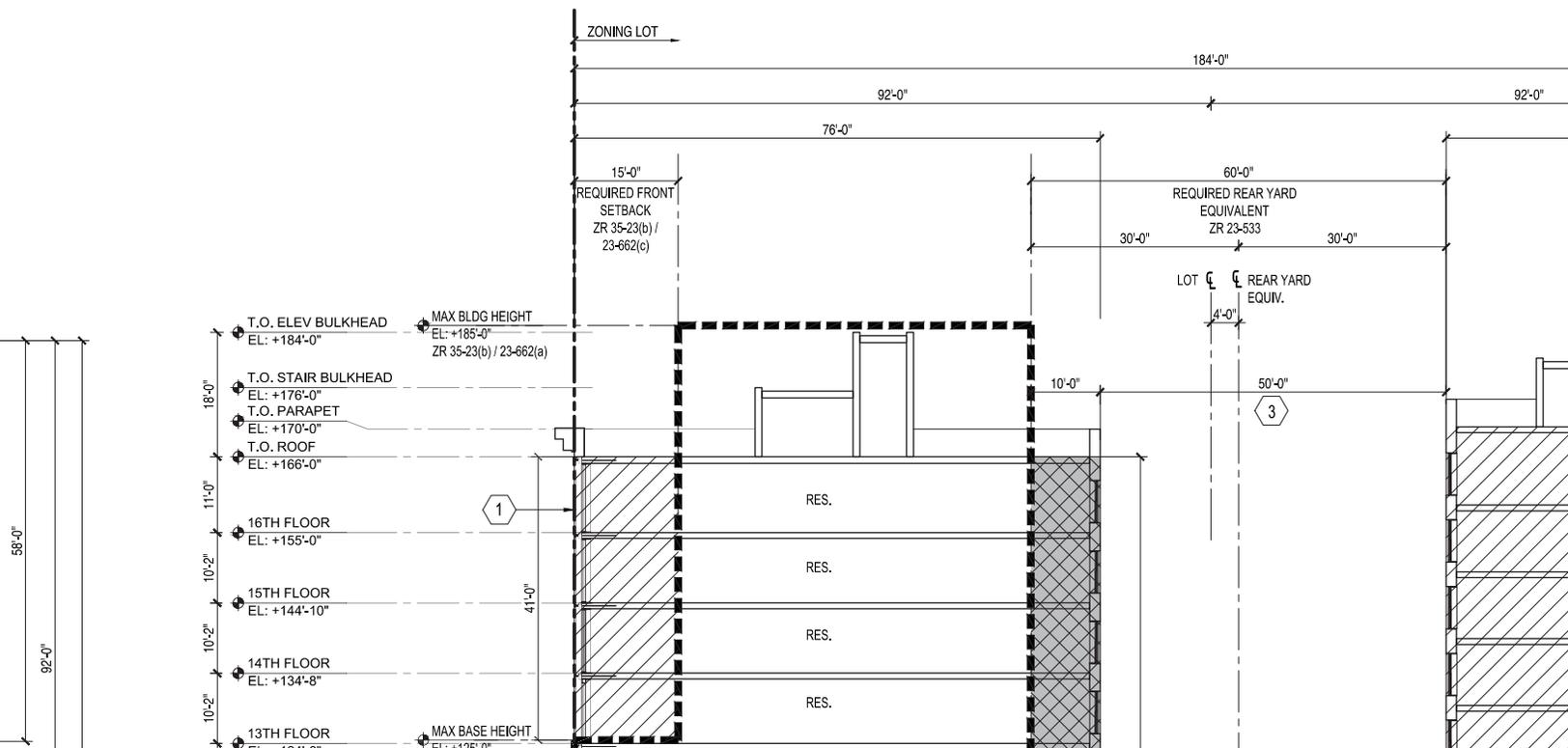
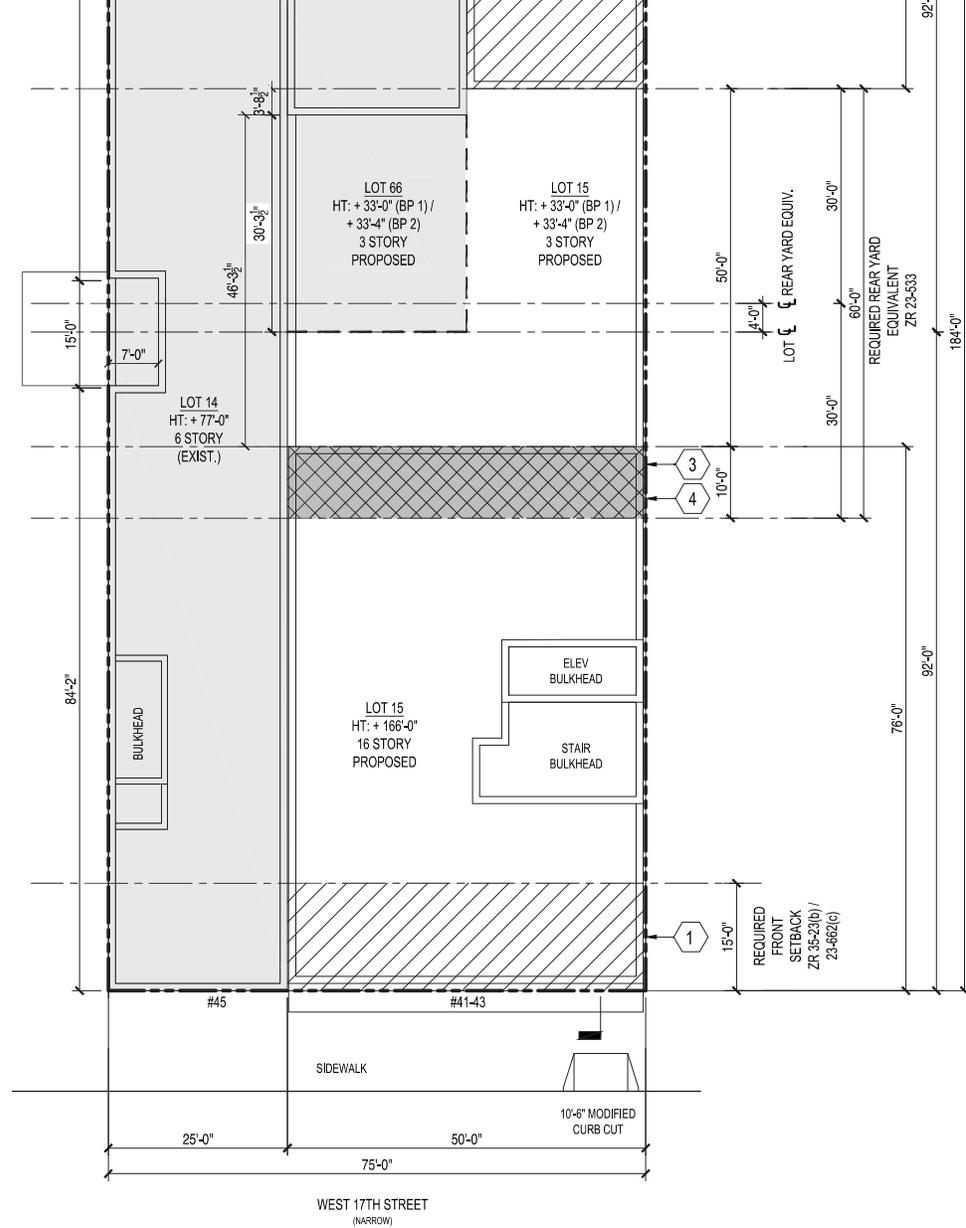
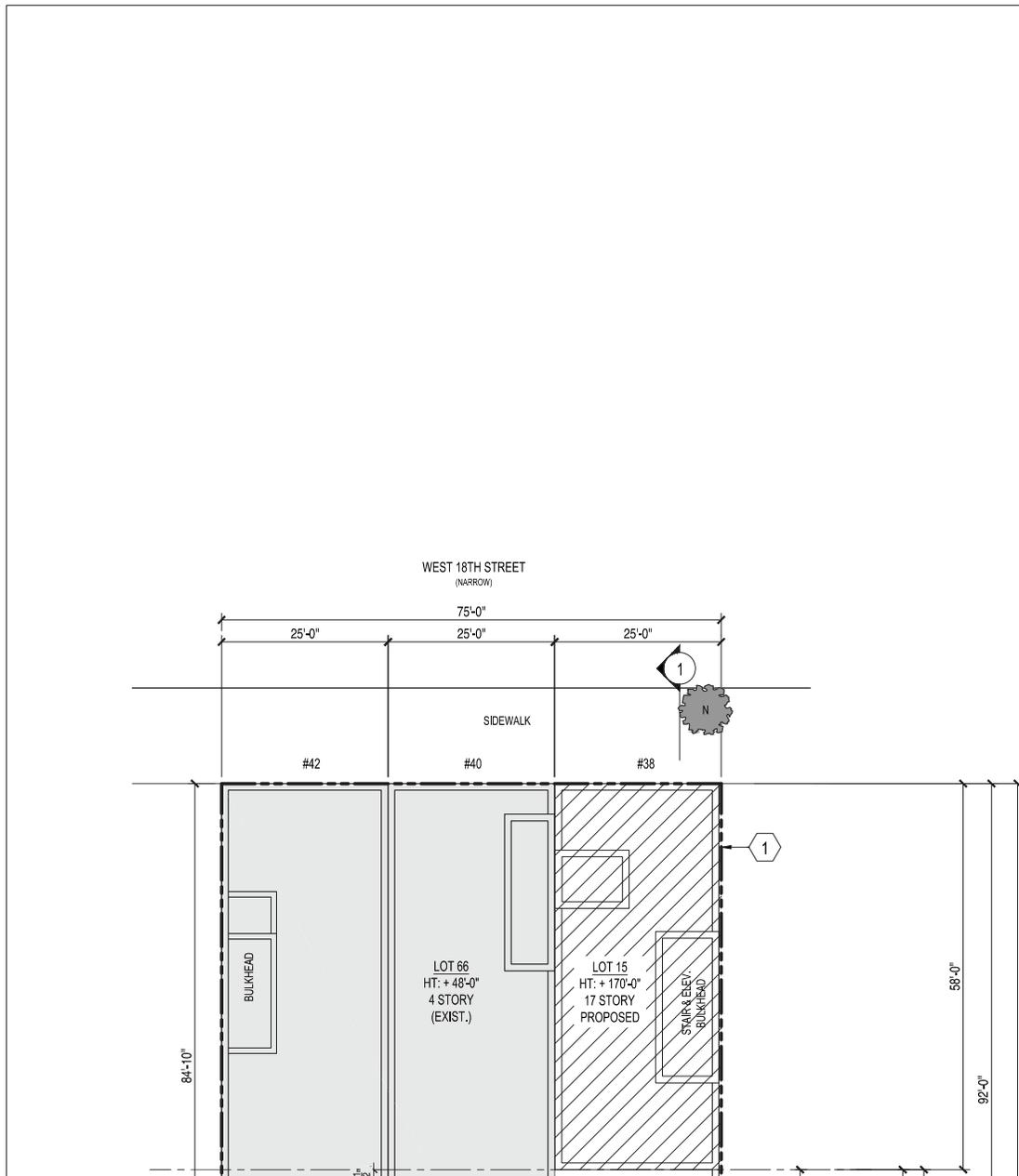


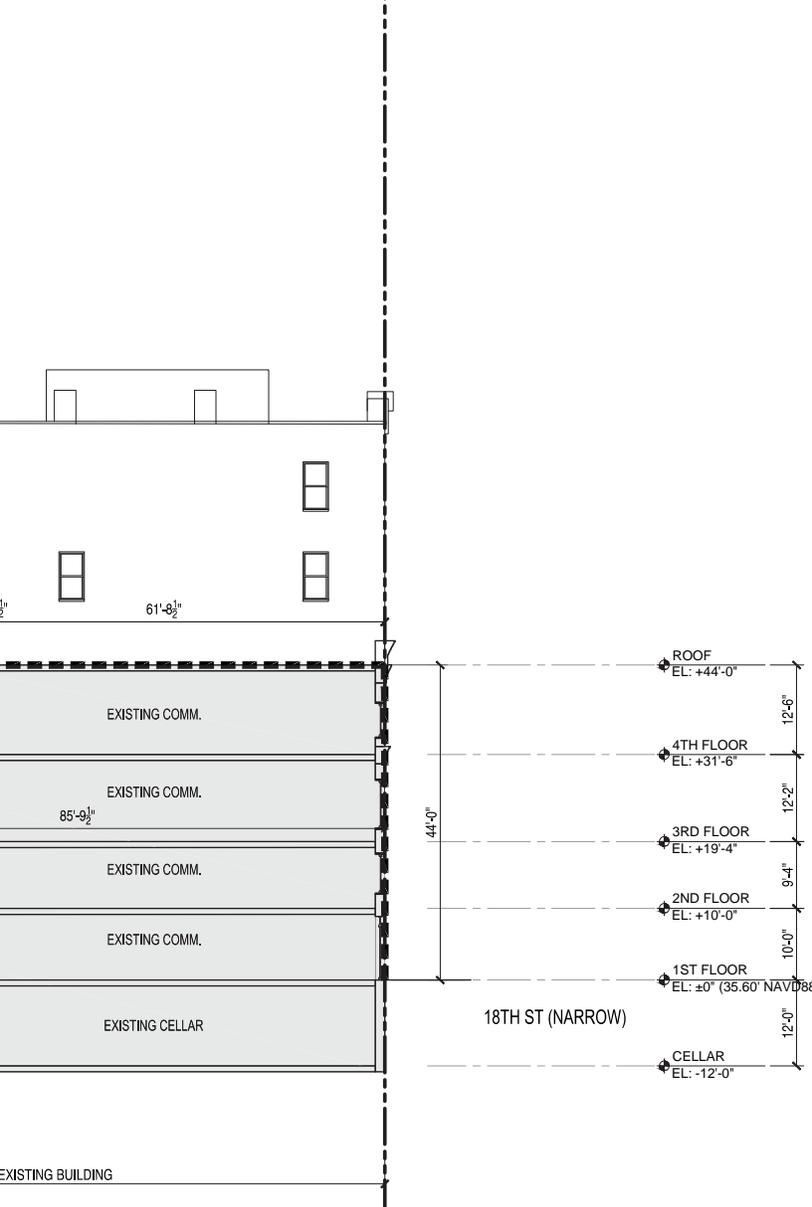
Exhibit I
 Z-140
 Page 4 of 6





2 BULK WAIVER ROOF PLAN
1/16" = 1'-0"





REVISION FOR DCP 06/21/2016

REVISION	ISSUE	REMARKS

ULURP SUBMISSION

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 42 WEST 18TH STREET, 4TH FLOOR
 BROOKLYN, NY 11218
 PHONE: 212-727-7495

ARCHITECT:
 MORRIS ADJMI ARCHITECTS
 45 EAST 20TH STREET
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 11 HANOVER SQUARE, 16TH FLOOR
 NEW YORK, NY 10005
 PHONE: (212) 274-9468
 FAX: 212-274-9380



DATE 09/17/2015

SCALE AS NOTED

BULK WAIVER SECTION

Z-141

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SHEET 13 OF 15

MA PROJECT # 1302

LEGEND

-  OUTLINE OF MAXIMUM ZONING ENVELOPE
-  ZONING LOT BOUNDARY
-  TAX LOT BOUNDARY
-  EXISTING BUILDING
-  NEW CONSTRUCTION

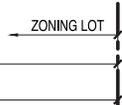
WAIVERS REQUESTED

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 FOR 17TH STREET BUILDING, LOCATION OF A BUILDING NOT IN COMPLIANCE WITH THE APPLICABLE BASE AND SETBACK REGULATIONS SET FORTH IN ZR SECTIONS 35-23 AND 23-662
- 
 FOR 18TH STREET BUILDING, PORTION OF THE BUILDING WITH A STREET FRONTAGE OF LESS THAN 45 FEET IN WIDTH TO EXCEED PERMITTED MAXIMUM HEIGHT PURSUANT TO ZR SECTION 23-692
 NOT REQUIRED AS PER ZQA REGULATIONS
- 

 REAR YARD THAT DOES NOT COMPLY WITH ZR SECTION 23-533 DUE TO OBSTRUCTIONS THAT DO NOT COMPLY WITH ZR SECTION 23-44
- 

 LOCATION OF BUILDING PORTIONS THAT DO NOT COMPLY WITH ZR SECTION 23-711 REGARDING MINIMUM DISTANCE BETWEEN WINDOWS ON A ZONING LOT

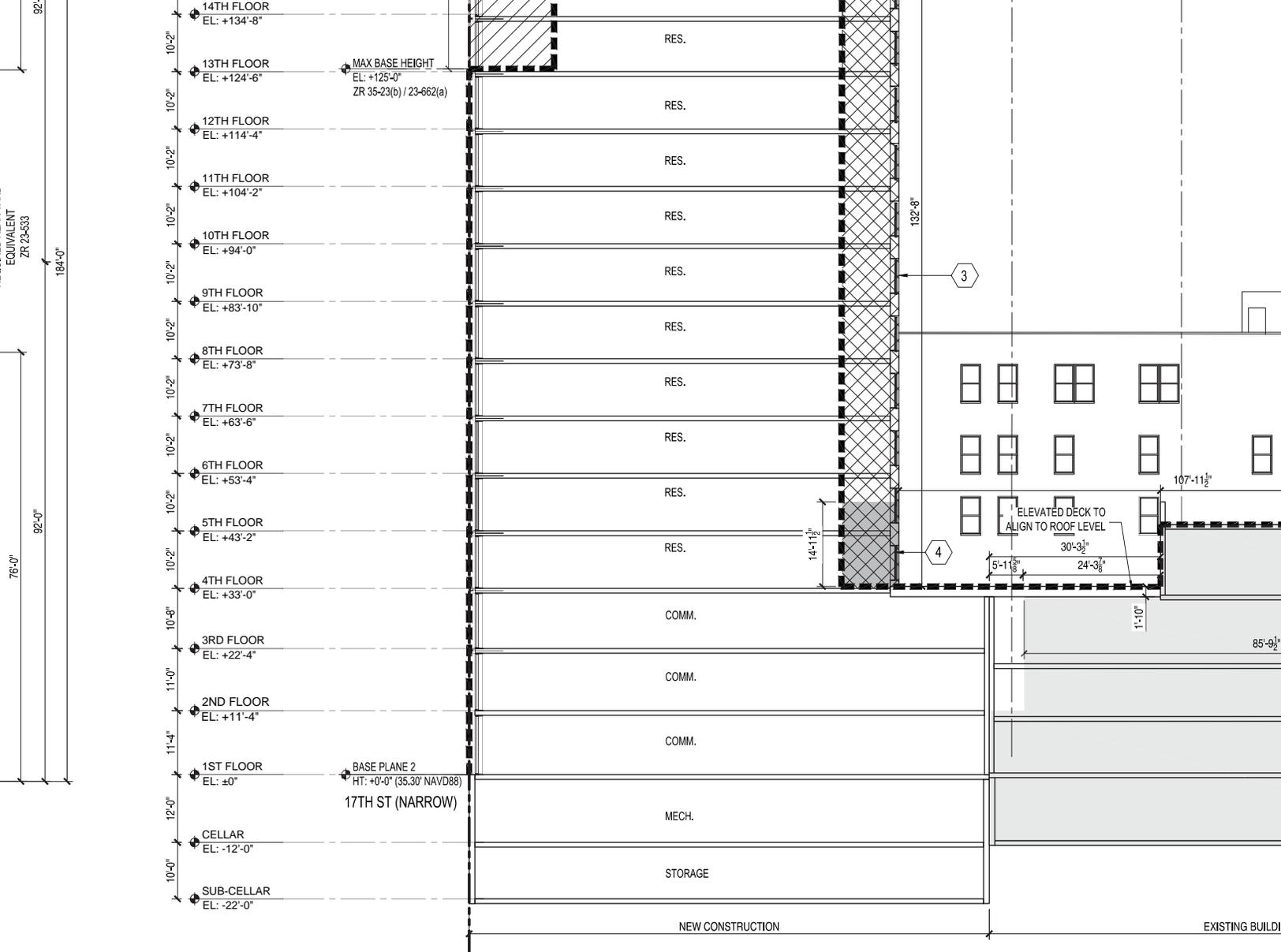


ADORAMA

41-43 W.17th St &
 38-42 W.18th St
 New York, NY 10011

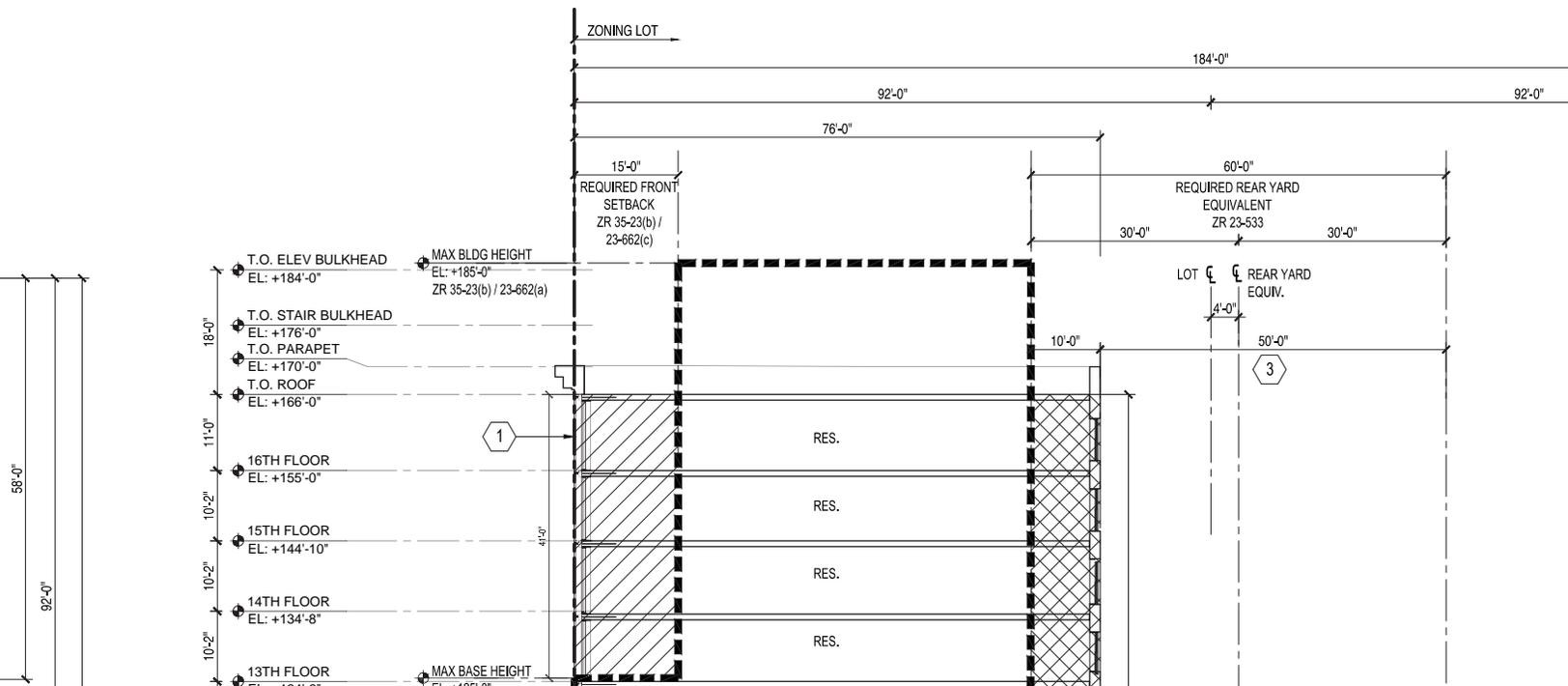
Manhattan
 Block 819
 Lots 14, 15, 66
 ULURP: P2014M0114

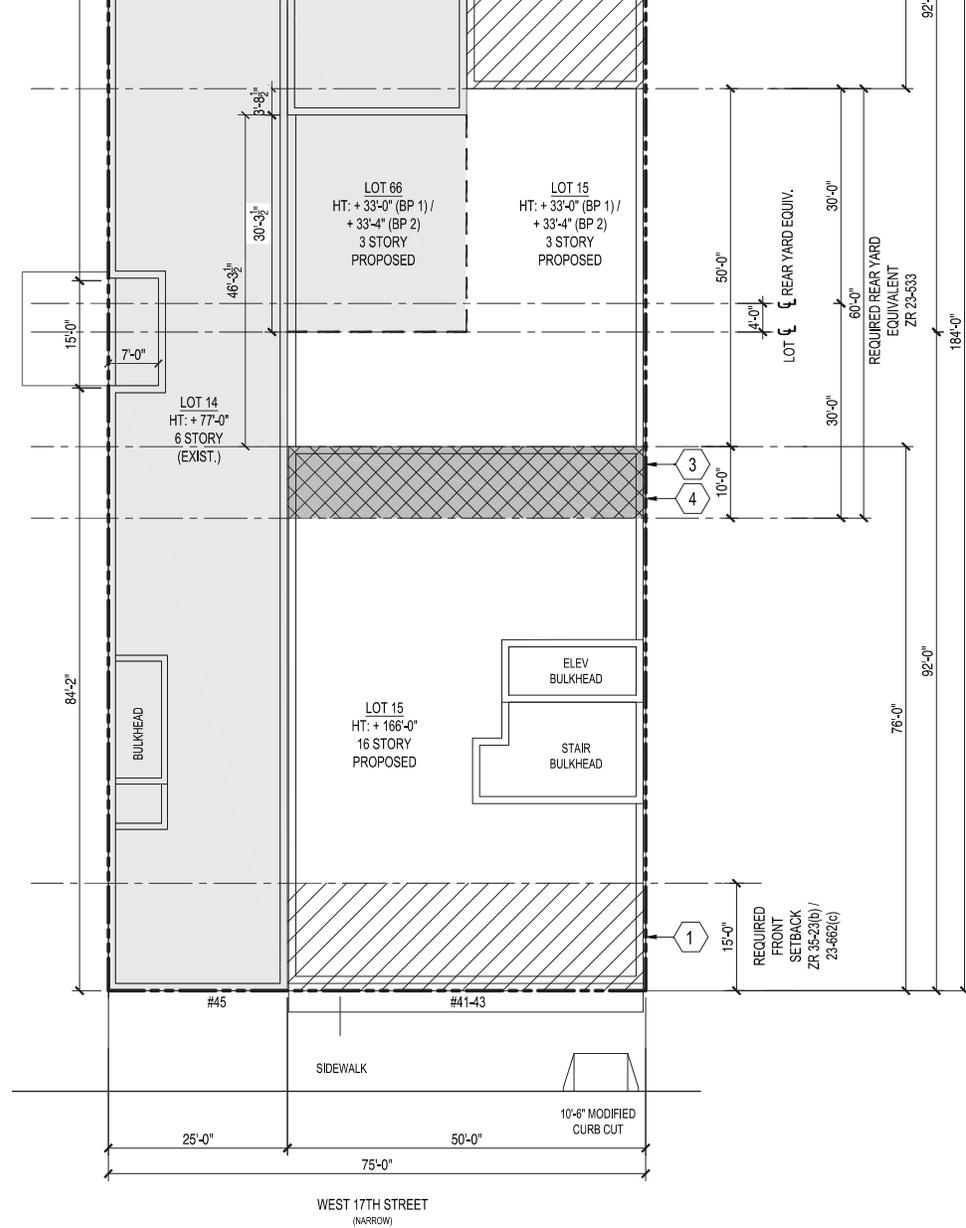
 Morris Adjmi Architects
www.ma.com



1 BULK WAIVER SECTION
1/16" = 1'-0"

Exhibit I
 Z-141
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2 BULK WAIVER ROOF PLAN
1/16" = 1'-0"

