
IN THE MATTER OF an application submitted by 41 Great Jones Holdings, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit to Section 74-711 of the Zoning Resolution to modify the use regulations of Section 42-10 to allow residential use (U.G. 2 use) on portions of the cellar, ground floor, 2nd – 5th floors, and proposed 6th floor of an existing 5-story building, on a property located at 41 Great Jones Street (Block 530, Lot 27), in an M1-5B District, within the NoHo Historic District Extension, Borough of Manhattan, Community District 2.

This application for a Special Permit was filed by 41 Great Jones Holdings, LLC on October 29, 2014, to modify the regulations of Zoning Resolution Section 42-10 to facilitate the conversion of an existing five story building at 41 Great Jones Street (Block 530, Lot 27) to a Use Group 2 residential building. The project site is located in an M1-5B District in the NoHo Historic District Extension, within Manhattan Community District 2.

BACKGROUND

The project site is located at 41 Great Jones Street (Block 530, Lot 27) on the south side of Great Jones Street between Lafayette Street and Bowery and is within the NoHo Historic District Extension, which was designated by the Landmarks Preservation Commission on May 13, 2008. The NoHo Historic District Extension is generally bounded by East 4th Street to the north, Bleeker Street to the south, Bowery to the east, and Lafayette Street to the west. Most buildings in the district were constructed primarily between the early nineteenth and early twentieth centuries, and include mid-rise store-and-loft style buildings with residential, commercial, and civic uses.

The site is developed with a building designed by Herter Brothers Architects, which was constructed between 1889 and 1890, and originally housed a number of garment manufacturers. The building remains largely intact to its early twentieth-century appearance, and contributes to the mixed-use and diverse character of the NoHo Historic District Extension. From 1959 to 2013, Acme Sandblasting Company occupied the lower levels. Beginning in 1979, the upper

levels of the building were occupied by Joint Living Work Quarters for Artists (JLWQA). In the early 1980s, the building was registered with the New York City Loft Board as an Interim Multiple Dwelling (IMD) to facilitate the lawful residential conversion of the 3rd, 4th, and 5th floors pursuant to Multiple Dwelling Law Article 7-C (The Loft Law). During the legalization process, the 4th floor was abandoned by the residential occupant and returned to non-residential use. In accordance with the Loft Law, in 1991, the then owner of the building registered the 3rd and 5th floor units with the New York State Division of Housing and Community Renewal (DHCR) for rent stabilization. The applicant has indicated that they believe the 3rd floor residential tenants sold their rights and improvements and vacated the unit in December, 2004, and that the residential occupant of the 5th floor unit vacated in the late 1990s. The building was subsequently occupied by commercial office uses (Use Group 6) until February 2015, when the commercial leases expired. The building is currently vacant.

41 Great Jones Street has a lot area of 2,700 square feet. The existing five-story building is 60'-5" tall, and has approximately 11,906 zoning square feet and a FAR of 4.41. It is located within an M1-5B zoning district, which does not allow residential use (Use Group 2) pursuant to ZR Section 42-10. Therefore, the applicant is seeking a Special Permit, pursuant to ZR Section 74-711, to modify the use regulations in the M1-5B District to allow Use Group 2 residential use throughout the entire building.

The proposed Special Permit would facilitate the conversion of the existing five-story building to an entirely residential building. As part of the development, a 1-story rooftop addition and terrace will be constructed. The building will include three residential units. The first unit will be a triplex, in the cellar, ground and second floor, with access to the rear yard. The second unit will be a duplex on the third and fourth floors. The third unit will be a duplex, on the fifth floor and rooftop addition. The sixth story rooftop will serve as a terrace. The development will be six stories and 73'-6" in height. It will comply with height and setback regulations in the M1-5B zoning district, which permit a maximum front wall height of 85' or 6 stories, whichever is less. The addition will be set back 12' from the Great Jones Street front lot line to reduce visibility from the street level, and will be set back 20' from the rear lot line to adhere to the prescribed 20'

rear yard requirement. The development will be 13,500 zoning square feet for a total FAR of 5.0. The Landmarks Preservation Commission issued a Certificate of Appropriateness (15-4930) and Certificate of No Effect (15-4933), both dated March 5, 2014, to allow the rooftop addition, as well as the restoration and renovation of the front and rear facades.

ENVIRONMENTAL REVIEW

This application (C 150146 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 New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR Number is 15DCP025M. The lead is the City Planning Commission.

After a study of the potential impacts of the proposed actions, a Negative Declaration was issued on February 2nd, 2015. On June 12, 2015 a revised EAS was submitted reflecting modifications by the applicant and a revised Negative Declaration was issued on June 15, 2015, which supersedes the Negative Declaration issued on February 2nd, 2015.

UNIFORM LAND USE REVIEW

On February 2, 2015, this application (C 150146 ZSM) was certified as complete by the Department of City Planning, and was duly referred to Manhattan Community Board 2 and the Manhattan Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

Community Board Public Hearing

Community Board 2 held public hearings on this application (C 150146 ZSM) on February 11, 2015 and March 11, 2015, and on March 19, 2015, by a vote of 37 in favor, 0 opposed and 1 recusing, adopted a resolution recommending disapproval of the application with the following comments:

- 1) CB2 Man. recommends denial of the application until sufficient documentation is provided that the third, fourth, and fifth floors are eligible for conversion to market rate residential, after having followed the legalization process under the Loft Law; and
- 2) Because the loss of JLWQA is a de facto loss of affordable housing stock in the District, a threat to the vibrant, mixed-use nature of the surrounding area, and a matter of great and ongoing concern for CB2, even if the units on these floors are not subject to rent stabilization under the Loft Law, CB2 recommends denial of this application unless JLWQA status is preserved for two full floors.

Borough President Recommendations

This application (C 150146 ZSM) was considered by the President of the Borough of Manhattan, who issued a recommendation disapproving the application on April 30, 2015.

City Planning Commission Public Hearing

On April 22, 2015 (Calendar No. 1), the City Planning Commission scheduled May 6, 2015 for a public hearing on this application (C 150146 ZSM). The hearing was duly held on May 6, 2015 (Calendar No. 15). There were four speakers in favor of the application and three in opposition.

The applicant's land use representative spoke in favor of the application, describing the proposed project, the actions being sought for approval and further explaining how the project meets the findings of Section 74-711. He also provided a history of occupancy at the project site.

The project architect spoke in favor of the application, providing a detailed description of the restoration and renovation work to be completed, which was approved by the Landmarks Preservation Commission.

The applicant's special counsel also spoke in favor of the application, addressing the concerns regarding the rental status of the units on the 3rd and 5th floors of the building. He stated that neither unit should be required to be rent stabilized because, for the 3rd floor, the tenant sold their rights and improvements and subsequently vacated, and for the 5th floor, the unit was occupied by a relative of the owner, who vacated the unit in the late 1990s. He explained that in this instance, there is no need for the sale of rights and improvements to deregulate the unit.

Therefore, he stated, both units should be deregulated.

The applicant's environmental consultant also testified in favor of the application.

The Chair of Manhattan Community Board 2's Land Use and Business Development Committee and the Chair of Manhattan Community Board 2 both spoke in opposition of the application. They both expressed concern that the 74-711 special permit was being used as a tool to change the character of SoHo and NoHo from a mixed-use neighborhood to a residential one.

A representative from the Manhattan Borough President's Office spoke in opposition of the project, reiterating the concerns of Manhattan Community Board 2 of the use of 74-711 to facilitate residential conversions in SoHo and NoHo. The representative also reasserted the Borough President's belief that the 3rd and 5th floor units should continue to be rent stabilized.

There were no other speakers and the hearing was closed.

Following the public hearing, the Executive Director of the New York City Loft Board provided verbal testimony indicating that it is her opinion that the units on the 3rd and 5th floors of the building should be rent stabilized. The rationale provided was that the Loft Board has no documentation of the rights and improvements being sold while the building was under the Loft Board's jurisdiction, which would allow the units to leave rent stabilization. She further explained that once a building with rent stabilized units pursuant to the Loft Law leaves the Loft Board's jurisdiction, the building is then required to register rent stabilized units with DHCR and is no longer able to benefit from the Loft Law provision of removing units from rent stabilization upon the sale of rights and improvements. Moreover, she stated that she believes that once a residential rent stabilized unit is created under the Loft Law, it is exempt from the luxury and vacancy decontrols that are available to other rent stabilized units registered with DHCR.

CONSIDERATION

The Commission believes that the grant of this Special Permit is appropriate.

The applicant, 41 Great Jones Holdings, LLC, seeks a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use regulations of Section 42-10 to facilitate the conversion of an existing building located at 41 Great Jones Street into a Use Group 2 residential development with three dwelling units.

The Commission believes that the modification of use regulations to allow Use Group 2 residential use at 41 Great Jones Street will have minimal adverse effects on the conforming uses within the building and in the surrounding area. The Commission believes that, as the entire building is currently vacant, its conversion to residential use would not adversely affect other conforming uses in the building.

The Commission also believes that the surrounding area has evolved from a primarily manufacturing district to a mixed-use district with residential uses, Joint-Living Work Quarters for Artists, commercial and retail uses and a few remaining manufacturing uses. Therefore, the Commission believes that the proposed conversion to residential use is consistent with the prevailing land use pattern found in the surrounding area and that adverse effects on conforming uses in the surrounding area would be unlikely.

The Commission acknowledges the Community Board and Borough President's concerns regarding the building's history with the New York City Loft Board and the New York State Division of Homes and Community Renewal with respect to rent stabilization, in addition to the remarks provided by the Executive Director of the New York City Loft Board. However, it is not within the Commission's purview to make a determination regarding the rent stabilization status of the units on the 3rd and 5th floors. The Commission views the rent stabilization status of these units as immaterial to the findings which must be met for this Special Permit, since rent stabilized units are still Use Group 2 residential units, pursuant to the Zoning Resolution, and would continue to be permitted if this special permit, pursuant to Zoning Resolution Section 74-

711, were approved.

The Commission believes that the zoning in the M1-5A and M1-5B districts of SoHo and NoHo merits additional attention. The Commission recognizes the complexity of issues in SoHo and NoHo, including those of affordability, the evolving nature of the community, and the importance of recognizing the historic conditions that have resulted in today's vibrant, mixed-use neighborhoods. Further, the Commission recognizes that the analysis required to shed light on the many questions raised is formidable, as it must address concerns regarding the method of accurately identifying existing JLWQA tenants while safeguarding the privacy of existing residents. The Commission supports ongoing efforts to study these issues, utilizing planning resources to the extent available within the Department, in concert with partner agencies and the local community, as it examines proposed future conversions and developments.

The Commission believes that this application will facilitate the renovation and preservation of 41 Great Jones Street and restoration to its previous built form. The Commission further acknowledges that the renovation and conversion of the building, to be accomplished as a result of this special permit, will enhance the architectural and historical built fabric of the NoHo Historic District Extension.

The application includes a report from the Landmarks Preservation Commission (LPC) stating that a program has been established for continuing maintenance that will result in the preservation of the subject building, and that the required restorative work under the continuing maintenance program, contributes to a preservation purpose. The continuing maintenance program is contained within a restrictive declaration entered into in connection with this application.

FINDINGS

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

- (1) [This finding is not applicable; no bulk modification is being requested]

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

RESOLUTION

RESOLVED, that the City Planning Commission finds that the 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 described in this report, that the application submitted by 41 Great Jones Holdings, LLC, pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 to modify the use regulations of Section 42-10 to allow residential use (U.G. 2 use) on portions of the cellar, ground floor, 2nd – 5th floors, and proposed 6th floor of an existing 5-story building, on a property located at 41 Great Jones Street (Block 530, Lot 27), in an M1-5B District, within the NoHo Historic District Extension, Borough of Manhattan, Community District 2, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 150146 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following approved plans, prepared by Morris Adjmi Architects, filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
G-002.00	Roof Plan/Site Plan	12/16/14
G-003.00	Ground Floor & Sidewalk Plan	12/16/14
Z-020.00	Zoning Compliance Summary	1/14/15
Z-111.00	Proposed Cellar Floor Plan	1/14/15
Z-112.00	Proposed Ground Floor Plan	1/14/15
Z-113.00	Proposed Second Floor Plan	1/14/15
Z-114.00	Proposed Third Floor Plan	12/16/14

Z-115.00	Proposed Fourth Floor Plan	1/14/15
Z-116.00	Proposed Fifth Floor Plan	12/16/14
Z-117.00	Proposed Sixth Floor Plan	12/16/14
Z-118.00	Proposed Roof Floor Plan	12/16/14
Z-200.00	Building Sections – 1	12/16/14
Z-201.00	Building Sections – 2	12/16/14
Z-202.00	Building Sections – 3	12/16/14

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, operating and maintenance.
4. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this resolution and the restrictive declaration described below and any subsequent modifications to either document shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.
5. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sub-lessee or occupant.
6. Development pursuant to this resolution shall be allowed only after the restrictive declaration attached to the report on this application, with such administrative and

technical changes as are acceptable to the City Planning Commission, has been executed and recorded in the Office of the City Register, New York County. Such restrictive declaration shall be deemed incorporated herein as a condition of this resolution.¹

7. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution the provisions of which 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 or breach of any of the conditions referred to above, may constitute grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, renewal or extension of the special permit hereby granted.
8. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's action or failure to act in accordance with the provisions of this special permit.

The above resolution (C 150146 ZSM), duly adopted by the City Planning Commission on June 17, 2015 (Calendar No. 7), 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 Chairman

**RAYANN BESSER, IRWIN G. CANTOR, P.E., ALFRED C. CERULLO, III,
MICHELLE R. DE LA UZ, JOSEPH I. DOUEK, CHERYL COHEN EFFORN, BOME
JUNG, ANNA HAYES LEVIN, ORLANDO MARIN, LARISA ORTIZ**, Commissioners

¹ Added to include the provision requiring that the applicant record and obey the restrictive declaration.

Tobi Bergman, Chair
Terri Cude, First Vice Chair
Susan Kent, Second Vice Chair
Bob Gormley, District Manager



Antony Wong, Treasurer
Keen Berger, Secretary
Susan Wittenberg, Assistant Secretary

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March 23, 2015

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

Dear Mr. Weisbrod:

At its Full Board meeting on March 19, 2015, CB#2, Manhattan (CB#2-Man.), adopted the following resolution:

41 Great Jones Street (south side of Great Jones between Bowery and Lafayette). Application 150146AZSM by 41 Great Jones Holdings LLC to the City Planning Commission for a special permit pursuant to ZR 74-711 to modify ZR 42.00 to allow the conversion of a 5-story commercial office building in an M1-5B zone in the NoHo Historic District Extension to Use Group 2 residential use. The project will include a one-story rooftop addition conforming to the bulk regulations of the underlying zoning for which a Certificate of Appropriateness was issued by the Landmark Preservation Commission in June, 2014.

Whereas:

1. This application was presented to the Land Use committee by Jerry Johnson of FoxRothschild at its February 11, 2015 and March 11, 2015 meetings;
2. The applicant's plan includes creation of a triplex apartment occupying the cellar, ground and second floors; a duplex apartment on the third and fourth floors; and another duplex apartment on the fifth and (new) rooftop floors;
3. According to the applicant's Project Description (p.3), the 3^d, 4th and 5th floors of the building were used as artists' joint live/work quarters beginning in 1979;
4. Ms. Lanny Alexander, executive director of the Loft Board, attended the committee's March 11, 2015 meeting to explain the Loft Board's history and the documentation that must accompany a building's units if they are to be eligible for conversion to market rate residential;
5. According to information obtained from the Loft Board, the building came under the jurisdiction of the NYC Loft Board in the 1980s and the building's Certificate of Occupancy was issued for JLWQA;

6. According to the Loft Board, the fourth floor was abandoned and so went out of rent regulation; when the third and fifth floors left the Loft Board's jurisdiction, they went into rent-stabilization status and moved to NYS Division of Housing and Community Renewal (DHCR);
7. The applicant was unable to provide documentation supporting these three floors' current status with respect to rent regulation or deregulation;
8. A finding for a special permit requires that any use modifications have only minimal adverse effects on conforming uses within the building and the neighborhood;
9. JLWQA is a conforming use that provides opportunities for more affordable residential rentals and purchases, which, in turn, helps maintain the diversity of the NoHo/SoHo area in general and its attractiveness to artists in particular;
10. Loss of JLWQA units in this building will have a significant adverse effect on the mixed-use nature of NoHo/SoHo and therefore the application does not meet the conditions required for a special permit under 74-711.

Therefore it is resolved that CB2, Man.:

1. CB2, Man. recommends denial of this application until sufficient documentation is provided that the third, fourth and fifth floors are eligible for conversion to market rate residential, after having followed the legalization process under the Loft Law.
2. Because the loss of JLWQA is a de facto loss of affordable housing stock in the District, a threat to the vibrant, mixed-use nature of the surrounding area, and a matter of great and ongoing concern for CB2, even if the units on these floors are not subject to rent stabilization under the Loft Law, CB2 recommends denial of this application unless JLWQA status is preserved for two full floors of the building.

Vote: Passed, with 37 Board members in favor, and 1 recusal (S. Wittenberg).

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

Sincerely,



Tobi Bergman, Chair
Community Board #2, Manhattan



Anita Brandt, Chair
Land Use & Business Development Committee
Community Board #2, Manhattan

TB/fa

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



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Gale A. Brewer, Borough President

April 30, 2015

**Recommendation on ULURP Application No. C 150146 ZSM – 41 Great Jones Street
By 41 Great Jones Holdings, LLC**

PROPOSED ACTION

41 Great Jones Holdings, LLC¹ (“the applicant”) seeks a special permit pursuant to Section 74-711 of the Zoning Resolution (“ZR”) to modify use regulations of § 42-10 to allow Use Group 2 (residential use) on the cellar, ground floor, second through fifth floors, and proposed sixth floor of an existing five story building at 41 Great Jones Street (Block 530, Lot 27) in an M1-5B zoning district within the NoHo Historic District Extension of Manhattan Community District 2.

Pursuant to ZR § 74-711, applicants may request a special permit to modify the use regulations of zoning lots that contain landmarks or are within historic districts as designated by the Landmarks Preservation Commission (“LPC”).

In order for the City Planning Commission (“CPC”) to grant use modifications, the applicant must first meet the following conditions:

1. the LPC has issued a report stating that the applicant will establish a continuing maintenance program for the preservation of the subject building or buildings and that such use or bulk modifications, or restorative work required under this continuing maintenance program will contribute to a preservation purpose;²
2. the application shall include a Certificate of Appropriateness, other permit, or report from LPC stating that such bulk modifications relate harmoniously to the subject landmark building in the Historic District³; and
3. the maximum number of permitted dwelling units is as set forth in ZR § 15-111.⁴

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

1. the modifications shall have minimal adverse effects on the structures or open space in

¹ 41 Great Jones Holdings, LLC is a New York Foreign Limited Liability Company represented by David Blumenfeld of Blumenfeld Development Group, Ltd.

² The LPC issued a report on March 5, 2014.

³ The LPC issued a Certificate of Appropriateness on March 5, 2014.

⁴ Pursuant to ZR § 15-111, up to 18 dwelling units would be permitted at this site. As proposed, this building will have three dwelling units.

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

PROJECT DESCRIPTION

The applicant seeks a special permit pursuant to ZR § 74-711 to permit a conversion from Use Group 6 (commercial office) to Use Group 2 (residential) within an existing building. The project would allow the conversion of a currently vacant five story commercial office building to a residential use. The project will consist of three residential units: a triplex occupying the cellar, ground floor and second floors with access to the rear yard; a duplex on the third and fourth floors; and a duplex on the fifth and proposed as-of-right sixth floor rooftop addition with terrace.

The project site's lot area is approximately 2,700 square feet and is located on the south side of Great Jones Street between Lafayette and Bowery Streets. The project site is located within an M1-5B district which permits light manufacturing, commercial and community facility uses; joint-live working quarters are permitted as a light manufacturing use. The manufacturing and commercial maximum floor area ratio (FAR) is 5.0 and the community facility FAR is 6.5. Buildings are allowed a front wall height of 85 feet or 6 stories, after which buildings must setback 20 feet and provide a required rear yard of 20 feet for interior lots. Residential use is not permitted as of right.

Area Context

The project site is located in a M1-5B zoning district in the NoHo Historic District Extension in Community District 2, Manhattan. The NoHo Historic District Extension was designated by the LPC in 2008 in an effort to extend the protection of the distinctive historic commercial and manufacturing district developed in the 19th and early 20th centuries. The NoHo District Extension consists of fifty-six buildings dominated by mid-rise store-and-loft, institutional and civic buildings and encompasses Bond Street, Great Jones and East 4th Streets between Lafayette and Bowery Streets, as well as the northeast corner of Bleecker and Lafayette Streets. The project area is also adjacent to the NoHo Historic District, designated in 1999, which includes buildings constructed between 1850 and 1910 and was historically the retail and wholesale dry goods commercial center. To the south of the site is the NoHo East Historic District, designated in 2003, which includes residential, commercial and institutional buildings built in the mid-19th Century.

The neighborhood generally consists of two to thirteen story loft buildings that typically contain ground floor retail, industrial uses, or a mix of commercial and residential uses. Other zoning districts within a 600 foot radius include C6-1, C6-2, C6-3, R8B, and the Special Little Italy District. While residential use is not allowed as of right, joint live/work quarters for artists (JLWQA) are a permitted conforming use within the greater NoHo and SoHo neighborhoods. In addition, any ground floor retail that does exist was generally granted by special permit – ground floor retail is not allowed in the M1-5B and M1-5A districts below the level of the second story.

The area is served by the No. 6 subway line, with an entrance located two blocks south of the site at Bleecker and Lafayette Streets. The B/D/F/M subway lines entrance is three blocks south on East Houston Street at Lafayette Street and the M5 bus line is located west of the site along Broadway. Citibike bicycle stations are located one block west, northeast and southeast of site.

Background

41 Great Jones was designed by the architecture firm Herter Brothers in the Romanesque Revival style between 1889-1890 for garment manufacturing during a time when the area was becoming more commercial and buildings were being converted to commercial use⁵. The building was home to garment, hat manufacturers, basket, caster and wheel companies until after World War II when the space became occupied by Acme Sandblasting Company. In 1989, the building owner obtained a Certificate of Occupancy (“CofO”) for joint live/work quarters for artists for the third and fifth floors and Use Group 17 (manufacturing) for the cellar, first, second and fourth floors. According to the applicant, the third and fifth floors have held commercial leases since 2004 after the JLWQA units were vacated and, according to counsel for the applicant, legally converted to commercial use. The applicant purchased the building in 2013, at which time the second through fifth floors were occupied by a conforming use (Use Group 6) until their leases expired between October 2014 and February 2015.

In response to questions raised by the Community Board and the Borough President, the applicant provided the Community Board, Borough President and CPC with a memo setting forth its position that the third, fourth and fifth floors were not subject to rent stabilization. According to applicant’s counsel, in the early 1980s the building was registered with the New York City Loft Board to lawfully convert the third, fourth and fifth floors to residential use pursuant to the Loft Law (Article 7C of the Multiple Dwelling Law). The fourth floor was abandoned by the resident during the process and returned to commercial use. In 1989, a certificate of occupancy was issued listing the third and fifth floors as JLWQA and the building left the Loft Board’s jurisdiction. In 1991, these two units were registered with the New York State Department of Housing and Community Renewal (“DHCR”) pursuant to the Loft Law and several registrations were filed, although none after 2003. According to applicant’s counsel, in 2004 the third floor residents sold their rights and improvements to the owner; the fifth floor resident was a relative of the owner and vacated the apartment. According to counsel to the applicant, the Loft Law only confers rent stabilization on the resident subject to the loft law and not on the unit and also contemplates the purchase of improvements to the owner as a means of removing from rent regulation a unit that would otherwise be subject to it by virtue of the Loft Law. Thus, the applicant concludes that the units are no longer rent regulated and were most recently occupied as valid commercial units.

Proposed Actions

The applicant seeks a special permit pursuant to ZR § 74-711 to modify use regulations in order to permit residential use of a 5-story commercial use building. A restrictive declaration will be

⁵ NoHo Historic District Extension Designation Report
<http://www.nyc.gov/html/lpc/downloads/pdf/reports/NOHOExtensionReport.pdf>

filed to set forth a continuing maintenance program for the building façade to ensure preservation of the building and fulfillment of the preservation purpose as condition of approval by the LPC.

As described in the application materials, Certificate of Appropriateness, Certificate of No Effect, and LPC report, the proposed scope of work is for restoration work on the front and rear building façades. This includes restoration of the fire escapes at the front façade, cleaning of brick and stone bands, repointing and patching, cleaning and painting of historic balcony rails, new metal cornice, replacement of non-historic doors and windows, extension of rear parapet, and the excavation of the non-complying shed in rear yard. In addition, the applicant proposes the installation of two ADA concrete ramps to the building entrance and removal of historic fire escape ladders. The applicant will add an elevator and a one-story rooftop addition which will serve as a terrace and the rear yard will be excavated to be leveled with the cellar of the building.

COMMUNITY BOARD RECOMMENDATION

At its Full Board meeting on March 19, 2015, Manhattan Community Board 2 (“CB2”) recommended disapproval with conditions of this application. CB2 requested documentation indicating the third through fifth floors are eligible for market rate residential apartments following the legalization process of the Loft Law. At the time the recommendation was submitted, the Board had not been provided with this information. CB2 wrote that the loss of JLWQA units is akin to losing affordable housing units and would negatively impact the mixed-used character of the district. CB2 voted to deny the application unless the applicant agreed to preserve two full floors of the building as JLWQA units.

BOROUGH PRESIDENT’S COMMENTS

Recommendations from this office over the last year have repeatedly raised concerns over the continued use of special permits to eliminate conforming uses in favor of residential use in the SoHo and NoHo historic districts. Once again, an application has been certified and is under review in which the applicant notes the transformation of the neighborhood from light industrial and manufacturing uses to residential use and uses the granting of prior special permits and variances for that conversion as means to justify additional waivers.

The applicant states in the findings that the use group conversion will have minimal adverse effects on the building and surrounding area because the area is drastically shifting from a light industrial neighborhood to more residential one. It goes on to identify two sites where the Board of Standards and Appeals (BSA) granted variances to a non-conforming use based upon hardship at 45 Great Jones Street and 25 Great Jones Street. In addition, the applicant points to one approved special permit pursuant to ZR 74-711 for the Skidmore House development site, 2 Cooper Square, which was previously a parking lot adjacent to Skidmore House. In that case, a special permit for a residential building with ground floor commercial space was approved for construction. The project block consists of additional M1-5B non-conforming Use Group 2 luxury and co-op residential buildings: 25 Great Jones Street, 27-29 Great Jones Street, 37 Great

Jones Street,⁶ 39 Great Jones Street, 43 Great Jones Street and 48 Great Jones Street. However, the aggregate nonconformity of a neighborhood should not be justification for additional nonconformity without comprehensive study.

As previously stated in the last two Borough President recommendations for special permits pursuant to ZR §74-711 at 102 Greene Street and 498 Broome Street in SoHo, this special permit was not created as a way to holistically change a neighborhood's character. While the Department of City Planning has committed to a future study of the zoning of SoHo and the use of special permits to add residential buildings to the neighborhood, based on the latest crop of applications the Borough President believes that NoHo should be added to this study. It is troubling that given the seemingly increasing procession of applications for these special permits there is the potential for the situation on the ground to become such that the recommendations from any study would come too late to stop a *de facto* rezoning to residential by special permit.

One of the major limitations of reviewing applications on a case-by-case basis, is it requires the commission to analyze a unique set of facts for each application, where really the commission should be reviewing whether residential is an appropriate use for this neighborhood. Because of the complicated zoning history of this neighborhood, each building contains a convoluted fact pattern and it is difficult to discern whether rent stabilization or artist use restrictions actually apply. As previously stated, if a unit is JLWQA, then the loss of this artist housing could impact the surrounding uses and character of the neighborhood. If a unit is subject to rent stabilization, the City should be aware of this to be able to judge the cumulative impact of the loss of such units and determine whether programs are required to address this. And, if there are units that are not being used as the law requires, it is important that the public know this critical information when taking into account any environmental analysis on potential impacts to land use, zoning and public policy considerations and the conforming uses of a neighborhood when analyzing neighborhood character. This disclosure is critical if the Community Board, Borough President, and City Planning Commission are to properly analyze a change of use on the existing uses in a building and in the surrounding buildings.

In this case, it is not clear that floors three and five are not still subject to rent stabilization as the applicant claims. According to this office's understanding of the Loft Board's position, the occupancy of a rent stabilized unit by a relative of an owner and such occupant's subsequent vacancy is not a qualifying event that would remove a unit from rent stabilization. Moreover, the Loft Board interprets the Rent Stabilization Laws as providing protection to units (not just occupants) in loft buildings that move from the jurisdiction of the Loft Board to that of the DHCR. Thus, in the opinion of the Loft Board, the third and fifth floors are still subject to rent stabilization. Were that to be the case, this building would have been a building with one floor of Use Group 9/Use Group 6 (art studio/gallery), three floors of Use Group 6 (office space) and two JLWQA floors. This building would have been emblematic of the type of building for which NoHo is known and this use would be the type of use that should be preserved.

⁶ Apartment listings have been posted online for 37 Great Jones Street which appear to be advertising an unlawful use given the history of this property. While the owner previously applied for a special permit to allow Use Group 2 on floors two through six, accessory residential uses on portions of the ground and cellar floors and Use Group 6 below the second story on the ground floor and cellar in 2014, that application was withdrawn prior to approval.

Regarding the preservation of a landmark, which is the key justification for the change to residential use, the findings state the applicant is required to enter a restrictive covenant for the maintenance program of the proposed development. The LPC report states the restoration work to the fire escapes will not affect the historic fabric nor detract from any significant architectural features of the site. The report states “that removal of the fire escape ladders and the non-decorative fire escape landing at the 2nd floor will eliminate the hazard created once the fire-escape becomes no longer a means of egress.” The report does not state how this change will add to the historical fabric and streetscape of the neighborhood. However, it would appear that the removal of the fire escape ladders will actually eliminate a unifying design aspect of the district in favor of solidifying the former landings as a residential amenity for tenants. Though the LPC has already approved this feature, the CPC should carefully evaluate whether the conversion of a fire escape to a residential balcony truly serves a preservation purpose, and whether a non-residential use in the building would allow for the fire escapes to be more fully preserved.

The zoning of SoHo and NoHo should be reviewed holistically and the Department of City Planning should refrain from certifying applications for special permits pursuant to ZR § 74-711 for use changes until such review is undertaken. By allowing such certifications to continue, each application requires analysis by the Loft Board, DHCR, and other agencies on the lawful uses of the units in a subject building, despite the fact the analysis of these permits should theoretically be conducted based on their preservation purposes. If these applications are to continue, though, DCP must ensure that any environmental analysis and permit findings consider such lawful uses and indicate where such uses differ from those permitted uses. In this particular application, the applicant has not sufficiently justified the appropriateness of residential use with any argument other than “other buildings are also non-conforming,” and has not sufficiently showed that the residential use is *furthering* the preservation of this building. Although the building is being restored through this residential conversion, a commercial restoration would more fully be able to honor the history of this building and district.

BOROUGH PRESIDENT’S RECOMMENDATION

Therefore, the Manhattan Borough President recommends disapproval of ULURP Application No. C 150146 ZSM.

A handwritten signature in black ink that reads "gale A. Brewer". The signature is written in a cursive, flowing style.

Gale A. Brewer
Manhattan Borough President

41 Great Jones Holdings, LLC

DECLARATION

Dated: June 10, 2015

Location: Block 530, Lot 27
New York County, New York

Record & Return to:

Fox Rothschild LLP
100 Park Avenue, Suite 1500
New York, NY 10017
Attention: Jesse Masyr, Esq.

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DECLARATION made as of the 10 day of June, 2015 by 41 Great Jones Holdings, LLC, with an address c/o Blumenfeld Development Group, Ltd., 300 Robbins Lane, Syosset, NY 11791 (referred to as the "Declarant"):

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of certain real property located in the Borough of New York City, County and State of New York, which property is designated as Block 530, Lot 27 on the Tax Map of the City of New York and by the street address 41 Great Jones Street, New York, NY and is more particularly described on Exhibit A attached hereto (the "Subject Property") and on which is located a 5-story building (the "Designated Structure");

WHEREAS, Declarant proposes to renovate the Designated Structure and add a penthouse addition;

WHEREAS, the Subject Property together with the Designated Structure constitutes the Subject Premises (the "Subject Premises"), as is described in the metes and bounds description attached hereto as Exhibit A; and

WHEREAS, Advantage Title Agency, Inc., a title company, has certified as of June 10, 2015, that Declarant and Valley National Bank are the parties in interest ("Parties in Interest"), as that term is defined in the zoning lot definition in Section 12-10 of the Zoning Resolution of the City of New York (the "Zoning Resolution"), to the Subject Premises, a copy of which certification is attached hereto as Exhibit B; and

WHEREAS, all Parties in Interest to the Subject Property have executed this Declaration or waived their rights to execute this Declaration, and a copy of such waiver is annexed hereto as Exhibit C;

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 Structure as being part of the NoHo Cast Iron Historic District Extension because of its special character or historical or aesthetic interest or value; and

WHEREAS, Declarant at the public hearing on January 21, 2014, requested the LPC issue a report to the City Planning Commission of the City of New York (the "CPC") for an application under Section 74-711 of the Zoning Resolution for a special permit (the "Special Permit") to modify the use regulations of the M1-5B district, permitting residential use in the Designated Structure; and

WHEREAS, at the public meeting on January 21, 2014, following said public hearing, the LPC voted to issue the report to the CPC as requested for the special permit application (the "Application"), and to grant a Certificate of Appropriateness ("C of A"), which allows the alteration of the Designated Structure in the NoHo Cast Iron Historic District Extension in accordance with Section 25-307 of the Administrative Code of the City of New York. On June 18, 2014 LPC staff granted an amendment of the C of A. A copy of the C of A and amendment is annexed hereto as Exhibit D; and

WHEREAS, Declarant submitted an application designated 150146 ZSM and dated October 29, 2014 to the CPC for the Special Permit; and

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

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

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

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

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

1.0 **DEFINITIONS.** The following words, when used in this Declaration, shall have the following meanings:

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

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

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

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

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

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

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

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

otherwise, or (ii) a tenant of the Subject Premises, unless such tenant holds a lease to all or substantially all of the Subject Premises.

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

1.10 "Designated Structure" shall mean the 5-story structure located on Tax Block 530, Lot 27 in Borough of Manhattan, which is a contributing structure in the NoHo Cast Iron Historic District Extension.

1.11 "Force Majeure" shall mean: strike, lockout or labor dispute(s); inability to obtain materials or reasonable substitutes therefor 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 2.1 and 6.2 hereof.

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

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

1.14 "Mortgagee" shall mean (a) the institutional first mortgagee of all or substantially all of the Subject Premises listed in Exhibit B or (b) the first mortgagee of a condominium unit within the Designated Structure, if applicable.

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

1.17 "Special Permit Use" shall mean residential use to be permitted at the Designated Structure. Notwithstanding the foregoing, no use shall be deemed a Special

Permit Use if it is permitted as-of-right within the Subject Premises by the terms of the Zoning Resolution then in effect.

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

2.0. DEVELOPMENT, PRESERVATION, REPAIR AND MAINTENANCE OF THE SUBJECT PROPERTY. The issuance of the Special Permit is premised on, inter alia, the performance of the construction of the following restoration work on the Designated Structure in conformity with the C of A, as amended, and the requirements thereof (which restoration work shall be referred to as the "Landmark Work"):

Brick Masonry:

- Retain a structural engineer who specializes in historic buildings to investigate the condition of the cracked and parged parapet at the front façade.
- Rebuild the front parapet based on the engineer's recommendations using new brick matching the original brick in size, shape, color, texture and coursing pattern.
- Undertake tests to determine the most efficacious method to clean the face brick at the front façade.
- Clean the face brick on the front façade, based on testing.
- Rake and repoint open joints with mortar, based on analysis by an architectural conservator. Color, texture, and tooling to match historic condition.
- Patch holes or spalls in brick masonry using a restoration patch mix matching the original cleaned brick in color and texture. Bricks with large holes or spalls shall be replaced with new brick matching the original in size, shape, color, texture and coursing pattern.
- Unless otherwise directed by the structural engineer, repair through-brick cracks by replacing each cracked brick with new brick matching the original in size, shape, texture, color and coursing pattern.

Stone Masonry:

- Remove non-matching patches from the surface of the brownstone sill courses and the brownstone bands at the outer piers on the front façade.
- Patch brownstone spalls and areas of non-matching patches with a restoration patch mix matching the brownstone in color, texture, historic profile and tooling. In areas where the brownstone is so severely deteriorated that it is unsound, replace brownstone sills or bands with cast stone matching the brownstone in color, texture, historic profile and tooling.

Metal Elements:

- Retain a structural engineer who specializes in historic buildings to investigate the condition of the displaced steel I-beam lintels at the front façade.
- Repair or replace steel I-beam lintels based on direction by the structural engineer. Any required replacement I-beam lintels shall match the pattern, spacing and size of the rosettes on the existing lintels.
- Install a new sheet-metal building cornice above the fifth floor, and a new sheet-metal storefront cornice above the ground floor. The cornice details, sizes and locations shall be based on historic photographs.
- Undertake tests to determine the original and subsequent paint colors of the cast-iron piers and the historic fire-escape railings on the front façade.
- Replace any missing metal elements on the cast-iron piers and fire-escape baskets with new iron to match the existing in profile, shape and size.
- Replace the non-historic fire-escape basket at the second floor with a new iron basket matching those found on the third through fifth floors.
- Scrape all loose paint and corrosion from the cast-iron piers and the fire-escape baskets at the front façade. Prime all cast-iron piers and historic fire-escape baskets with a corrosion-inhibitive primer and paint to match the historic color, based on a finish color investigation.

Wood Elements:

- Undertake tests to determine the original and subsequent paint colors of the wood piers at the upper stories, and the historic doors, transom and paneled door returns on the front façade.
- Replace all non-historic windows on the front façade with new wood two-over-two double-hung windows matching the historic in configuration, operation, dimension, profile, detail and color. The windows shall fill the entire masonry opening, as shown in historic photographs. The paint color shall be determined based on historic photographs.
- Replace the severely deteriorated wood piers at the upper stories with new wood piers to match the historic in size, shape and profile. Paint the new wood piers, based on a finish color investigation.
- Remove all non-historic lighting, signage and hardware from the building entry.
- Restore the existing historic doors, transom and paneled returns to their original locations.
- Replacement of the bottom rails on the doors may be required. Remove all non-historic bead board and replace the displaced steel lintel above the building entry.
- Patch large holes in the wood doors with small wood Dutchman repairs matching the adjacent wood in profile and texture, and sanded flush to the face of the wood. Patch small holes in the wood doors, transom and paneled returns with wood filler sanded flush to the face of the wood.
- Scrape and paint the doors, transom and door returns, based on the finish color investigation.

- Provide a new ground-floor storefront that recalls the dimensions and proportions of the historic storefront, based on historic photographs. The new storefront should use historically-appropriate detailing and materials, such as wood.

Areaway and Sidewalk:

- Remove the non-historic concrete infill and bilko doors from the areaway.
- Install a new areaway railing based on historic photographs.
- Repair the bluestone areaway and granite step at the building entry, or replace the stone to match the existing.
- Replace the concrete sidewalk with a new granite sidewalk matching the granite found on the adjacent properties' sidewalks.

Brick Masonry in the Rear Elevation and Light Well:

- Retain a structural engineer who specializes in historic buildings to investigate the condition of the cracked and displaced brick on the rear elevation.
- Repair areas of displaced and cracked brick on the rear elevation based on the engineer's recommendations. Any brick replacement shall be done using new brick matching the original brick in size, shape, color, texture and coursing pattern.
- Unless otherwise directed by the structural engineer, repair through-brick cracks by replacing each cracked brick with new brick matching the original in size, shape, texture, color and coursing pattern.
- Sound the existing cementitious coating on the rear elevation and in the light well. Where the coating is loose or blind detachment has occurred, carefully remove the coating without damaging the underlying brick.
- Rake and repoint open joints, as necessary with mortar based on analysis by an architectural conservator. Color, texture, and tooling to match historic condition.
- Retain all shutter knuckles on the rear elevation and in the light well. Scrape the knuckles, remove any corrosion, and repaint.
- Remove all conduits, wires and abandoned anchors from the rear elevation and the light well.
- Patch holes or spalls in brick masonry using a restoration patch mix matching the original, uncoated brick in color and texture. Bricks with large holes or spalls shall be replaced with new brick matching the original in size, shape, color, texture and coursing pattern.
- Replace missing bricks in the light well with new bricks matching the existing in all aspects.
- Perform tests to determine the feasibility of removing the existing cementitious coating. If it is determined that the cementitious coating cannot be removed without damaging the underlying brick, recoat the rear elevation and the light well with a new, light-colored cementitious coating after all other masonry repairs have been performed.

Bluestone Masonry:

- Retain a structural engineer who specializes in historic buildings to investigate the condition of the cracked bluestone sills and lintels on the rear elevation and in the light well.
- Repair or replace cracked bluestone sills and lintels based on the engineer's recommendations.
- Replacement sills and lintels shall be cast stone matching the existing bluestone in color, texture, tooling, size and profile.
- Replace all non-historic brick lintels with new cast-stone lintels matching the original bluestone in color, texture and tooling.
- Patch holes or spalls in the bluestone using a restoration patch mix matching the original, uncoated stone in color and texture. Stone with large holes or spalls shall be repaired with bluestone Dutchman units matching the original stone in color, texture and tooling.

Windows:

- Undertake tests to determine the original and subsequent paint colors of the wood three-over-three double-hung window on the western bay of the fifth floor, rear elevation.
- Replace all windows on the rear elevation with new wood three-over-three double-hung windows matching the historic in configuration, operation, dimension, profile, detail and color. The paint color shall be based on the finish color investigation.
- Scrape and paint all steel lintels on the rear elevation using a corrosion-inhibitive primer and finish coating.
- Replace all aluminum windows in the light well with code-compliant aluminum windows to more closely match the historic in profile and configuration. The paint color shall match the new rear windows.
- Scrape loose paint and corrosion from the iron bars at the second floor of the rear elevation, and repaint to match the existing color.

Roof:

- New leaders shall be installed from the roof to ensure positive water drainage
- Install new skylight at the lightwell.
- Installation of a new hot tub at the roof.
- Construction of a second stair bulkhead at the east portion of the roof.
- Relating the HVAC units to the rear east portion of the roof.
- Modifying the design of the roof railings to a simple picket.

2.1. Certificate of Occupancy. Written notice that the Declarant is seeking a temporary certificate of occupancy ("TCO") or permanent certificate of occupancy ("PCO") shall be provided to the LPC seven days prior to the Declarant applying for a

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

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

(d) (i) Upon application by Declarant, notwithstanding anything contained in any other provision of this Declaration, the Chairperson of the LPC, in the exercise of his or

her reasonable judgment, may certify that the performance or completion of the Landmark Work is delayed due to a Force Majeure as provided in paragraph (ii) below.

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

efforts to minimize the effects thereof. Upon cessation of the events causing such delay, the Declarant shall promptly recommence the Landmark Work.

(e) Notwithstanding anything else to the contrary contained herein, this Declaration shall not be deemed to prohibit or restrict Declarant from (i) applying for or receiving a TCO or a PCO for any floor area in the Designated Structure which is not to be used for a Special Permit Use; or (ii) obtaining permits or building notices from the Building's Department to perform work, including tenant work, in the Designated Structure prior to the completion of the Landmark Work; or entering into agreements affecting all or any portions of the space in the Designated Structure prior to completion of the Landmark Work. Declarant hereby covenants and agrees to preserve, repair and maintain the Designated Structure in sound first-class condition, at its own cost and expense, in accordance with this Declaration, the C of A and the Landmarks Preservation Law. It is understood that certain obligations and duties set forth in this Declaration are above and beyond the requirements of the Landmarks Preservation Law and do not in any way diminish Declarant's obligation and responsibility to comply with all provisions of the Landmarks Preservation Law.

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

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

(i) At Declarant's expense, an inspection (the "Periodic Inspection") shall be made every five years, on or within two weeks of the anniversary of the issuance by the LPC of the Notice of Compliance pursuant to the C of A, and thereafter, shall be made on or within every five years from the date of such initial inspection. In the event that Declarant has accepted a TCO or a PCO that permits a Special Permit Use without having first received the Notice of Compliance, the first periodic inspection shall be made on or within 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 Declarant from a list prepared by Declarant and approved by the Chairperson of the LPC as to their credentials, which approval shall not be unreasonably withheld or delayed. Declarant shall update such listing upon the request of the Chairperson of the LPC. In addition, Declarant may periodically supplement the list of Preservation Architects, subject to the approval of the Chairperson of the LPC as to their credentials. The Preservation Architect shall make a thorough inspection of the exterior of the Designated Structure and those portions of the interior, as well as those portions of the mechanical systems that are accessible to and under the control of building management, which, if not properly maintained, could affect the condition of the exterior. The Periodic Inspection shall include (but not be limited to) the following portions of the Designated Structure: (i) brick masonry at front and rear façade; (ii) stone masonry at front and rear façade; (iii) cast-iron piers and balusters; (iv) wrought-iron fire escapes, areaway fencing; (v) sheet-metal cornices; (vi) wood and aluminum windows and doors,

including perimeter sealants; (vii) wood mullions; (viii) wood and metal storefronts; and (ix) the roof.

(ii) The Preservation Architect shall, at the expense of Declarant, submit a report on each Periodic Inspection (the "Periodic Report") to Declarant and the LPC within 45 days after each Periodic Inspection. The Periodic Report shall outline the existing conditions of the Designated Structure and detail the work which should be performed in order to maintain the Designated Structure, including all architectural features and elements, in a sound first-class condition, including but not limited to caulking, painting, cleaning, repair of architectural features and elements, checking for rust and repointing of masonry.

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

(iv) Except as set forth below, Declarant shall perform all work which a Periodic Report, Facade Inspection Report or Emergency Incident Report (as defined below) identifies as necessary to maintain the Designated Structure, including architectural features and elements, in sound first-class condition. No work shall be performed except pursuant to a permit from the LPC if a permit is required under the

Landmarks Preservation Law. If the LPC determines that a specific item of work or method of work as set forth in a Periodic Report, Facade Inspection Report or Emergency Incident Report would be inappropriate or inadequate, the determination of the LPC shall control and Declarant need not and shall not have such specific item performed. Declarant shall have the right to contest in a hearing before the LPC any work called for in a Periodic Report or Emergency Incident Report. Declarant's obligation to perform such contested work or to perform it by a method acceptable to the LPC shall be stayed pending a decision in any such proceeding at the LPC. Declarant shall proceed with all work which is uncontested during the stay pursuant to a permit.

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

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

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

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

(iii) Within sixty days of such Emergency Incident, a Preservation Architect shall, at the expense of Declarant, make a thorough inspection of the Designated Structure

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

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

(v) With regard to the work to be performed pursuant to subparagraph (iii)(B), within ninety days of receiving the report of the Preservation Architect, Declarant shall apply for all necessary permits and certificates from the LPC to repair and restore or to demolish. No work on the exterior of the Designated Structure, and no work on the interior of the Designated Structure which would affect the exterior or which would require the issuance of a permit from the Department of Buildings shall be performed except pursuant to a permit from the LPC. If the LPC determines that a recommendation to demolish or to perform a specific item of work or method of work set forth in the report would be inappropriate, using the criteria set forth in the Landmarks Preservation Law, the determination of the LPC shall control and the Declarant shall not have such

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

(c) Access to Designated Structure. Declarant agrees to provide access to the Designated Structure 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 Structure is carried out in accordance with this Declaration.

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

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

3.0. CONDOMINIUM BOARD.

3.1 General. In the event that the Designated Structure is converted to a condominium in accordance with Article 9B of the New York State Real Property Law ("RPL"), the condominium board ("Board") shall have the responsibility to carry out all of Declarant's obligations and the authority to exercise all of Declarant's rights under this Declaration and upon such assumption, 41 Great Jones Holdings, LLC shall be released from its liability thereunder.

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

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

(b) Every deed conveying title to, or a partial interest in, the Subject Premises and every lease of all or substantially all of the Subject Premises shall contain a recital that the grantee is bound by the terms of the Condominium Declaration and By-laws which shall incorporate an obligation by the Board to comply with the provisions of Article 3 of this Declaration.

4.0 EFFECT AND ENFORCEMENT

4.1. Effective Date. This Declaration shall have no force and effect unless and until the occurrence of one of the following, to be referred to as the "Effective Date": (a) the expiration of 21 days after the Special Permit has been approved if no review is undertaken by the City Council pursuant to Section 197-d of the New York City Charter or (b) final approval of the Special Permit pursuant to Section 197-d of the New York City Charter. The Declaration shall become immediately effective upon the Effective Date. If, before the Effective Date, Declarant requests or causes the application for the Special Permit to be withdrawn or abandoned, or if final action has been taken having the effect of denying the Special Permit, then, upon notice to CPC and LPC, this Declaration shall not become effective, shall be automatically canceled and shall be of no force and effect.

4.2 Filing and Recording. If the Special Permit is at any time declared invalid or is otherwise voided by final judgment of any court of competent jurisdiction from which no appeal can be taken or for which no appeal has been taken within the applicable

statutory period provided for such appeal, then, upon entry of said judgment or the expiration of the applicable statutory period for such entry, as the case may be, this Declaration shall be automatically canceled without further action by Declarant and shall be of no further force or effect and the CPC shall, if requested by Declarant, provide Declarant with a letter in recordable form stating that the Declaration has been so canceled and is of no further force and effect. In the event that Declarant has obtained a certificate of occupancy allowing any Special Permit Use in the Designated Structure, Declarant shall promptly, after receipt of such letter, obtain a revised certificate of occupancy from the Buildings Department reflecting the cessation of any such Special Permit Use in the Designated Structure. Declarant shall file and record at its sole cost and expense this Declaration in the Register's Office, indexing it against the Subject Property, immediately upon the Effective Date. Declarant shall promptly deliver to the CPC and the LPC duplicate executed originals, promptly following the Effective Date and, following recordation, a true copy of this Declaration as recorded, as certified by the Register. If Declarant fails to so record this Declaration, the City may record this Declaration, at the sole cost and expense of Declarant, who shall promptly pay to the City such costs together with fees for purchase of a reasonable number of certified copies of the recorded Declaration.

4.3 Additional Remedies. Declarant acknowledges that the City is an interested party to this Declaration, and consents to enforcement by the City, administratively or at law or equity, of the restrictions, covenants, easements, obligations and agreements contained herein. Declarant also acknowledges that the remedies set forth in this Declaration are not exclusive, and that the City and any agency thereof may pursue other

remedies not specifically set forth herein including, but not limited to, the seeking of a mandatory injunction compelling Declarant, its heirs, successors or assigns, to comply with any provision, whether major or minor, of this Declaration.

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

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

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

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

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

4.6 No Other Enforceable Restrictions. Declarant represents and warrants that there are no enforceable restrictions of record on the use of the Subject Property or the Designated Structure, nor any present or presently existing future estate or interests in the

Subject Property or the Designated Structure, nor any lien, obligation, enforceable covenant, limitation or encumbrance of any kind which precludes, directly or indirectly, imposition on the Subject Premises of the restrictions, covenants, easements and obligations of this Declaration.

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

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

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

Permit or to apply to the BSA or to a court of competent jurisdiction for revocation of the Certificate of Occupancy or any permit issued by the Buildings Department.

4.10 Limitation of Liability. (a) Declarant shall be liable in the performance of any term, provision or covenant in this Declaration, subject to the following sentences and subject to Section 4.12 below. 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 Declarant in the Subject Property, on an in rem basis only, for the collection of any money judgment recovered against Declarant, and no other property of Declarant 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 Declarant 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 Declarant.

(b) The restrictions, covenants and agreements set forth in this Declaration shall be binding upon the Declarant and any successor-in-interest only for the period during which Declarant and any successor-in-interest is the holder of a fee interest in or is a party-in-interest of the Subject Premises and only to the extent of such fee interest or the interest rendering Declarant a party-in-interest. At such time as the named Declarant has no further fee interest in the Subject Premises and is no longer a party-in-interest of the

Subject Premises, Declarant's obligations and liability with respect to this Declaration shall wholly cease and terminate from and after the conveyance of Declarant's interest and Declarant's successors-in-interest in the Subject Premises by acceptance of such conveyance automatically shall be deemed to assume Declarant's obligations and liabilities here-under to the extent of such successor-in-interest's interest.

4.11 Severability. Declarant 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 Structure.

5.0 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 Declarant and only with the express written approval of the CPC and of the City Council, but only in the event that the City Council reviewed the Special Permit pursuant to Section 197-d, and no other approval or consent shall be required from any public body, private person or legal entity of any kind; provided, however, that no such approval shall be required in the case of any cancellation pursuant to paragraph 5.5.

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

5.3 Modification of Landmark Work. In the event that the Landmark Work is modified pursuant to a future approval by the LPC, a notice indicating such modification, subject to approval by the LPC, shall be recorded in the City Register's Office. Such modification to the Landmark Work shall not be considered to be or require a modification to the Declaration pursuant to Section 5.1 or 5.2. Recordation of such notice shall be in accordance with section 5.4 of the Declaration, and proof of recordation shall be provided to CPC and LPC.

5.4 Recording and Filing. Any modification, amendment or cancellation of this Declaration, except pursuant to paragraph 5.5, shall be executed and recorded in the same manner as this Declaration. Following any modification, amendment or cancellation, Declarant shall immediately record it and provide one executed and certified true copy thereof to each of the CPC and the LPC and upon failure to so record, permit its recording by the CPC or the LPC at the cost and expense of Declarant.

5.5 Surrender or Nullification. In the event that Declarant does not use the Special Permit, Declarant may surrender the Special Permit to the CPC and proceed with any use permitted by the Zoning Resolution and in accordance with the Landmarks Preservation Law as if such Special Permit had not been granted. This Declaration shall be rendered null and void upon recordation of an instrument filed by Declarant

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 Property pursuant to the Special Permit.

6.0 MISCELLANEOUS

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

6.2 Notices. All notices, demands, requests, consents, waivers, approvals and other communications which may be or are permitted, desirable or required to be given, served or deemed to have been given or sent hereunder shall be in writing and shall be sent if intended for Declarant to 41 Great Jones Holdings, LLC, c/o Blumenfeld Development Group, Ltd., 300 Robbins Lane, Syosset, NY 11791, if intended for the CPC, to the CPC at 22 Reade Street, New York, NY (or then-official address), Att: Chairperson, if intended for the LPC, to the LPC at 1 Center Street, 9th Floor, New York, NY (or then-official address), Att: Chairperson and (d) if intended for the City Council, to the City Council at the Office of the Speaker, City Council, City Hall, New York, New York 10007. Declarant, or its representatives, by notice given as provided in this paragraph may change any address for the purposes of this Declaration. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, or delivered by hand, and shall be deemed sufficiently given, served or sent for all purposes hereunder five (5) business days after it shall be mailed, or, if delivered by hand, when actually received.

6.3 Indemnification. Provided that Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration after having received written notice of such default and opportunity to cure as provided above, and such finding is upheld on final appeal, or the time for further review of such finding on appeal or by other proceeding has lapsed, Declarant shall indemnify and hold harmless the City from and against all of its reasonable legal and administrative expenses arising out of or in connection with the City's enforcement of Declarant's obligations under this Declaration.

Signature page to follow

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

41 Great Jones Holdings, LLC

By: _____
Edward Blumenfeld
Authorized Representative

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

On the _____ day of _____, 2015 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 of Subject Property |
| <u>Exhibit B</u> | - | Zoning Lot Certification |
| <u>Exhibit C</u> | - | Waiver of Declaration |
| <u>Exhibit D</u> | - | Certificate of Appropriateness and Amendment |