



## CITY PLANNING COMMISSION

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June 4, 2008/Calendar No.11

C 070575 ZMM

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**IN THE MATTER OF** an application submitted by 627 Greenwich LLC and KMG Greenwich LLC pursuant to Sections 197-c and 201 of the New York City Charter for an amendment of the Zoning Map, Section No. 12a, changing from an M1-5 District to an M1-5/R7X District property bounded by Barrow Street, a line 100 feet westerly of Hudson Street, Morton Street, Hudson Street, Clarkson Street, Greenwich Street, Leroy Street, West Street, Morton Street, and Washington Street, within a Special Mixed Use District (MX-6), Borough of Manhattan, Community District 2, as shown on a diagram (for illustrative purposes only) dated January 7, 2008, and subject to the conditions of CEQR Declaration E-211.

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This application for an amendment to the zoning map, Section No. 12a, was filed by 627 Greenwich LLC and KMG Greenwich LLC on June 28, 2007.

### **BACKGROUND**

The applicant is proposing the rezoning of five and a half blocks in the Hudson Square area of Community District 2. The proposed rezoning area is generally bounded by Clarkson, Leroy, West, Morton, Barrow, and Hudson streets. There is a substantial residential community in the rezoning area as a result of previously approved variances granted by the Board of Standards and Appeals. Included within the rezoning area are four residential buildings; three mixed residential/commercial buildings; six commercial and mixed industrial/commercial buildings; two industrial buildings, including one chocolate manufacturer and one meat processor; one building occupied as a dormitory by NYU; one vacant industrial loft building; and two parking lots.

Buildings in the rezoning area range from several low-rise buildings of less than 30 feet to the bulky, full-lot coverage taller buildings which characterize the greater Hudson Square neighborhood. Of the 22 lots in the rezoning area, 13 lots (59%) have existing developments with FARs greater than 5.0, while four lots (18%) contain development with FARs of 2.0 or less. While the aforementioned bulky loft buildings generally characterize the rezoning area, low-density sites are interspersed throughout. Building heights within the rezoning area are

generally highest along Morton and Hudson Streets, with most buildings ranging between seven and 14 stories in height.

The applicant's property on Block 602, bounded by Greenwich, Morton, Hudson and Leroy Streets, includes 627 Greenwich Street, a vacant 12-story, 107,000 square foot manufacturing building located at the southeast corner of Greenwich and Morton streets; a 13,100 square foot, 98-space public parking lot located at the northeast corner of Leroy and Greenwich streets and 623 Greenwich Street, a one-story mixed residential/commercial building located adjacent to the aforementioned parking lot. 111 Leroy Street, a vacant two-story mixed industrial/commercial building, is owned by an entity affiliated with one of the applicants, and the affiliated entity is party to an agreement for use of unused development rights from the property located at 78 Morton Street, a vacant three-story industrial/commercial building. The applicant does not own 625 Greenwich Street, a six-story mixed residential/commercial building located between the 623 and 627 Greenwich Street structures, or 423 Hudson Street, a nine-story commercial building.

In 2003 the Department of City Planning (DCP) proposed rezoning two non-contiguous areas of the Hudson Square area. One area was comprised of the same five and one-half blocks as the subject application ('Northern Portion'); and the second area was comprised of three blocks in the southern portion ('Southern Portion'), generally bounded by Canal, Washington, Spring, and Hudson streets. The rezoning was intended to implement the recommendations in the Department's 2002 *Hudson Square Rezoning* report which studied an area approximately 34 blocks in size; generally bounded by the West Side Highway on the west, Morton and Barrow streets on the north, Sixth Avenue and Hudson Street on the east, and Canal Street on the south.

DCP proposed rezoning the Northern Portion from M1-5 to a M1-5/R7X Special Mixed Use District, and rezoning the Southern Portion from M2-4 and M1-6 to C6-2A. The rezoning (C 030237 ZMM) was approved by the City Planning Commission on June 18, 2003. The City Council modified the Commission's approval on August 19, 2003 by removing the northern portion from the rezoning. The 2003 rezoning, as approved by the City Council, also

included the approval of a zoning text amendment (N 030236 ZRM) specifying a Special Mixed Use District-6 in Hudson Square.

The blocks surrounding the current proposed rezoning area are developed with a variety of uses. The heavily residential West Village neighborhood is located to the north and east of the rezoning area. The low-rise West Village Houses residential development is located immediately to the north of the subject blocks. The blocks to the south of the rezoning area comprise the core of the Hudson Square neighborhood. This area is occupied by a mix of commercial and industrial uses, including a United Parcel Service distribution facility.

The M1-5 district permits a maximum FAR of 5.0 for commercial and light manufacturing developments. Residential use is not permitted in M1-5 districts. There is no maximum height regulation; building envelopes are governed by the sky exposure plane.

The proposed M1-5/R7X Use District would allow medium density commercial, community facility, residential, and manufacturing uses as-of-right. The proposed contextual zoning district would mandate a built form similar to that of surrounding buildings. While the rezoning would retain the existing allowable FAR of 5.0, it would require buildings to be constructed at or near the street line with a street wall height of 60 to 85 feet and a maximum height of 125 feet. The proposed zoning would allow residential conversions and new residential development as-of-right, and allow expansion of existing industrial and commercial uses.

If the application is approved, the applicant intends to convert the building at 627 Greenwich to 41 residential units. The parking lot, 111 Leroy Street and 623 Greenwich Street would be cleared and a residential building constructed on the site. The applicant originally proposed a 79,554 SF residential building that included 35,705 square feet of floor area derived from a Department of Buildings “pre-Consideration”, dated January 19, 2006, pursuant to which additional floor area was authorized pursuant to Section 43-121 of the Zoning Resolution. The building would contain approximately 20 units.

The applicant's proposed residential conversion and, based on the Pre-Consideration, new construction would be allowed as-of-right pursuant to the proposed M1-5/R7X district. Further, the existing residential uses in the area would become conforming under the proposed rezoning.

## **ENVIRONMENTAL REVIEW**

This application (C 070575 ZMM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et. seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 07DCP095M. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action (C 070575 ZMM), a Negative Declaration was issued on January 7, 2008. The negative declaration included an (E) designation for air quality and hazardous materials. Subsequent to issuing the Negative Declaration, the City Planning Commission modified the proposed action and a revised Negative Declaration was issued on June 2, 2008. The revised negative declaration also included an (E) designation for air quality and hazardous materials. The revision reduced the area of the rezoning to portions of only two blocks within the previously considered area: the properties owned by the applicant (Block 602, Lots 55, 58, 83, and 85); projected Site 3 (Block 602, Lot 64); and projected Site 8 (Block 602, Lot 28). The provisions of the (E) designations on those sites would remain unchanged. The placement of the (E) designation (E-211) on Zoning Map 12a would eliminate the potential for significant adverse impacts.

To avoid any potential impacts associated with emissions, the proposed action will include an (E) designation for air quality on the following properties, which includes one of the applicant's properties (Site 2) and projected Site 3:

Block 602, Lots 55, 64, 83, 85

With the implementation of the above (E) designation, no significant adverse impacts related to air quality would occur. The text of the (E) designation would remain as follows:

Block 602, Lots 55, 83, 85:

**Any new residential and/or commercial development on the above-referenced property must ensure that the heating ventilating and air conditioning stack(s) be located at least 55-feet if firing No. 2 oil, or 42-feet if firing natural gas, from the lot line adjacent to Block 602, Lot 58 and facing Morton Street and parallel with Greenwich Street; and at least 55-feet if firing No. 2 oil, or 42-feet if firing natural gas, from the lot line facing Hudson Street and parallel with Leroy Street, to avoid any potential air quality impacts.**

Block 602, Lot 64:

**Any new residential and/or commercial development on the above-referenced property must ensure that the heating ventilating and air conditioning stack(s) be located at least 25-feet from any operable windows or the heating ventilating and air conditioning stack(s) are located at least 3-feet above the roof of the existing building at 423 Hudson Street, to avoid any potential air quality impacts.**

The above (E) designations for air quality would ensure that the proposed action would not result in significant adverse impacts due to noise.

In order to avoid any potential impacts related to hazardous materials (E) designations for hazardous materials would be also be included on two projected sites (Sites 3 and 8):

Block 602, Lots 28 and 64

The text of the (E) designation is as follows:

**Due to the possible presence of hazardous materials on the aforementioned designated sites there is potential for contamination of the soil and groundwater. To determine if contamination exists and perform and appropriate remediation, the following tasks must be undertaken by the fee owners(s) of the lot restricted by this (E) designation prior to any demolition or disturbance of soil on the lot.**

**Task 1**

**The fee owner(s) of the lot(s) restricted by this (E) designation will be required to prepare a scope of work for any soil, gas, or groundwater**

**sampling and testing needed to determine if contamination exists, the extent of the contamination, and to what extent remediation may be required. The scope of work will include all relevant supporting documentation, including site plans and sampling locations. This scope of work will be submitted to DEP for review and approval prior to implementation. It will be reviewed to ensure that an adequate number of samples will be collected and that appropriate parameters are selected for laboratory analysis.**

**No sampling program may begin until written approval of a work plan and sampling protocol is received from DEP. The number and location of sample sites should be selected to adequately characterize the type and extent of the contamination, and the condition of the remainder of the site. The characterization should be complete enough to determine what remediation strategy (if any) is necessary after review of the sampling data. Guidelines and criteria for choosing sampling sites and performing sampling will be provided by DEP upon request.**

#### **Task 2**

**A written report with findings and a summary of the data must be presented to DEP after completion of the testing phase and laboratory analysis for review and approval. After receiving such test results, a determination will be provided by DEP if the results indicate that remediation is necessary.**

Due to the potential presence of hazardous materials on the applicant's properties (Block 602, Lots 55, 58, 83, and 85), the applicant has entered into a restrictive declaration requires that requires the applicant to prepare a hazardous materials sampling protocol including a health and safety plan, which would be submitted to the Department of Environmental Protection (DEP) for approval. The applicant has agreed to test and identify any potential hazardous material impact pursuant to the approved sampling protocol and, if any such impact is found, submit a hazardous material remediation plan including a health and safety plan to DEP for approval. If necessary, remediation measures would be undertaken pursuant to the remediation plan.

The restrictive declaration would serve as a mechanism to assure that the potential for hazardous materials contamination would be characterized prior to any site disturbance (i.e. site grading, excavation, demolition, or building construction) and is binding upon the property's successors and assigns. The restrictive declaration would ensure that the proposed action would not result in significant adverse impacts related to hazardous materials.

Due to the potential presence of archeological resources on the applicant's properties (Block 602, Lots 55, 58, 83, and 85), the applicant has entered into a restrictive declaration requires that requires the applicant to prepare the applicant perform Stage 1B testing, including soil borings to determine subsurface conditions, such as fill layers, to be carried out with the review and approval of the Landmarks Preservation Commission (LPC). Should testing indicate that the site contains artifacts, mitigation measures which could include a full-scale evacuation to be conducted under the supervision of LPC, may be required.

The restrictive declaration would serve as a mechanism to assure that the potential for recovering archeological resources would be characterized prior to any site disturbance (i.e. site grading, excavation, demolition, or building construction) and is binding upon the property's successors and assigns. The restrictive declaration would ensure that the proposed action would not result in significant adverse impacts related to historic resources

## **UNIFORM LAND USE REVIEW PROCEDURE**

This application (C 070575 ZMM) was certified as complete by the Department of City Planning on January 7, 2008, and was duly referred to Manhattan Community Board 2 (CB2) 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 a public hearing on this application (C 070575 ZSM) on February 14, 2008, and on February 21, 2008, by a vote of 28 in favor, 1 opposed, and 2 recusals, adopted a resolution recommending disapproval of the application with the following comments:

requests that the City Planning Commission engage with the community and the Board to develop a better community based zoning plan that includes the M1-6 and M2-4 zoning districts immediately to the south, And,

requests that any zoning changes in this area include Contextual Zoning with appropriate height caps and Quality Housing and require a Special Permit for conversion of existing buildings to residential, And,

requests that the New York City Board of Education engage with the Board to devise a plan to address the need for additional classroom space in local Schools.

### **Borough President Recommendation**

This application (C 070575 ZMM), was considered by the Borough President, who issued a recommendation on April 14, 2008 disapproving the application subject to the following conditions:.

1. The proposed map change is amended to exclude the site of the New York State office building and parking lot (Block 603, Lots 49 and 53); and
2. That the Department of City Planning agree to pursue a zoning text amendment to amend Article XII (Special Purpose Districts), Chapter 3 (Special Mixed Use Districts) to require that residential conversions, enlargements of non-residential buildings for residential dwelling units, and new residential developments be permitted in Special Mixed Use District-6, Hudson Square, Community Board 2, Manhattan only by Special Permit.

### **City Planning Commission Public Hearing**

On April 9, 2008, (Calendar No. 4), the City Planning Commission scheduled April 23, 2008 for a public hearing on this application (C 070575 ZMM). The hearing was duly held on April 23, 2008 (Calendar No. 22). There were five speakers in favor of the application and seventeen speakers in opposition.

Those speaking in favor of the application included representatives of the applicant, owners of two area businesses, and an area resident. A representative of the applicant gave a brief history of the rezoning proposal, including a review of the 2002 DCP Hudson Square study and subsequent rezoning application. The representative described the building proposed for the 111-115 Leroy Street site.

A representative of the applicant's environmental consultant reviewed the assessment of the number of jobs which would be displaced by the proposed rezoning. The speaker stated that the number recorded in the EAS was likely greater than what would actually occur.



The two business owners stated that it has become increasingly difficult to operate their businesses in the area. Both speakers noted the conflicts between the growing number of pedestrians in the area and the forklifts and trailers used by their businesses. One of the owners stressed that the company was very successful and as such they are seeking to sell their property and move to a location where they could continue to operate. The second owner stated that they intend to remain at their location as long as they can continue to operate.

A resident of the building adjacent to one of the aforementioned businesses stated that he was in favor of the rezoning since he believed that it would improve the neighborhood. He stated that the area was moving in the direction of becoming residential and therefore he didn't believe that property owners should need to pursue a variance from the Board of Standards and Appeals in order to convert a building to residential use.

Speakers testifying in opposition of the proposed applications included area residents and representatives of civic and community organizations including representatives from Community Board 2, the Morton Street Block Association, the St. Luke's Place Homeowner's Association, the Greenwich Village Society for Historic Preservation, the Greenwich Village Community Task Force, the New York Industrial Retention Network, and the Federation to Preserve the Great Port and Waterfront. Representatives of elected officials including the Director of Land Use for the Manhattan Borough President, State Senator from the 29<sup>th</sup> District and the State Assemblymember from the 66<sup>th</sup> District, also spoke in opposition.

The speakers in opposition stated that they believed that the proposed zoning changes would alter the mixed use character of the neighborhood. The speakers stated that the rezoning would create an impetus for property owners to convert their properties to residential use, thereby displacing jobs. A number of speakers noted the growing presence of media businesses in the area that would be in danger of being displaced by the rezoning.

Representatives of the Community Board and the elected officials stated that they were seeking a comprehensive rezoning that would also study the area zoned M1-6 located immediately to the south of the proposed rezoning area.

Representatives of the Community Board and neighborhood associations stated that there were several issues such as the available sewage capacity, and the shortage of school seats in the area which needed to be considered.

There were no other speakers and the hearing was closed.

### **CONSIDERATION**

The Commission believes that the amendment of the Zoning Map, as modified herein, is appropriate.

The Commission notes that the northern portion of Hudson Square has been undergoing a steady transformation over the past number of years regarding land use. A substantial residential community has developed, due in part to previously approved variances granted by the Board of Standards and Appeals (BSA) and the close proximity to residential portions of the West Village. Other buildings changed from printing and manufacturing to commercial and office-based uses; and industrial activity contracted and currently primarily includes package delivery facilities, food production, and parking and other smaller auto-related uses. The Commission believes it is appropriate to rezone part of this area to more accurately reflect changing land use patterns. Further, the contextual envelope required by the M1-5/R7X zoning district will ensure that new construction be in keeping with the character of the neighborhood.

The Commission notes that the rezoning will allow the as-of-right residential conversion of the vacant building owned by the applicant at 627 Greenwich Street as well as the as-of-right construction of a residential building at the 111-115 Leroy Street site.

The Commission notes that while the proposed M1-5/R7X district would maintain the existing permitted densities and uses, allow the expansion of existing industrial and commercial uses, and

allow residential development as-of-right, it would also allow the as-of-right residential conversion of the commercial and mixed industrial/commercial buildings in the area. In this regard, the Commission notes the inclusion of six Class B and C office buildings within the proposed rezoning area. The Commission believes that, given changes since 2003 affecting the supply of Class B and C office buildings in Manhattan, further study is necessary to determine whether as-of-right conversion of these buildings would be appropriate. The Commission therefore believes that it is appropriate to reduce the area being rezoned.

The modified rezoning area is comprised of Block 602 lots 28, 55, 56, 58, 64, 83, 85, and a portion of lot 30. In addition to the applicant's site which consists of two vacant small commercial/industrial buildings of two and three stories, respectively; a vacant 12-story manufacturing building, a one-story mixed residential/commercial building, and a parking lot; the rezoning area also contains a six-story mixed residential/commercial building, a six-story residential building converted to residential use pursuant to a BSA variance, a meat wholesaler, and an art gallery. The Commission notes that a representative of the meat wholesaler testified in favor of the rezoning at the Commission's public hearing. The speaker stated that the location was no longer suitable for the business because of the conflicts with the residential uses in the area.

The Commission notes that reducing the area being rezoned also responds to comments made during the public review of the application to exclude the State Office Building located at 633 Greenwich Street, at the southeast corner of Greenwich and Morton streets, across the street from the revised northern boundary of the proposed zoning district.

The Commission notes as well that the applicants have modified the plans for the proposed building at 111-115 Leroy Street. The proposed building would have had a floor area of 79,554 SF, with 35,705 SF consisting of floor area allowed pursuant to the January 19, 2006 pre-Consideration issued by the Department of Buildings. In response to concerns raised by the Commission regarding the compatibility of such building within the context of the proposed rezoning, the applicants have revised the plans for the building with the zoning proposal, the applicants have revised the plans for the building proposed for 111-115 Leroy Street such that

the plans no longer include the 35,075 sf of floor area. The Commission notes that the applicants have advised the Department of Buildings that they will not seek to utilize the pre-consideration and that the Department of Buildings has acknowledged this in a determination of intent to revoke a zoning lot subdivision approval previously made in reliance upon the pre-consideration. The applicants have also executed a restrictive declaration by which they commit not to seek or use the 35,705 sf of floor area at any time in the future and to build on the development site with no more than a 5 FAR, 43,872 square feet building.

The Commission believes that the proposed rezoning, as modified, strikes a careful balance between allowing residential development and the maintenance of existing businesses in the area. The Commission therefore believes that this amendment of the Zoning Map (C 070575 ZMM) as modified is appropriate.

## **RESOLUTION**

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter and Section 5-430 et seq. of the New York City Administrative Code, that based on the environmental determination, and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently modified, is further amended by changing the Zoning Map, Section No. 12a, from an M1-5 District to an M1-5/R7X District property bounded by Morton Street, a line 120 feet westerly of Hudson Street, Leroy Street, Washington Street, a line 75 feet southerly of Morton Street, and Greenwich Street, within a Special Mixed Use District (MX-6), Borough of Manhattan, Community District 2, as shown on a diagram (for illustrative purposes only) dated January 7, 2008, modified by the City Planning Commission on June 4, 2008, and subject to the conditions of CEQR Declaration E-211 and be it further;

**RESOLVED**, that no building permit for construction on Block 602, Lots 55, 83, and 85, or for the conversion to residential use of the building or improvements on Block 602, Lot 58, may be issued unless and until : the Declaration of Restrictions annexed hereto as Exhibit A shall have been executed, or a written waiver of right to execute shall have been executed, by all parties in interest, as such term is defined under Section 12-10 of the Zoning Resolution; such Declaration

of Restrictions shall have been recorded in the Office of the Register of the City of New York for New York County against Block 602, Lots 55, 58, 83 and 85;and proof of such recording satisfactory to the General Counsel to the Department of City Planning has been received by the General Counsel.

The above resolution, duly adopted by the City Planning Commission on June 4, 2008 (Calendar No. 11), is filed with the Office of the Speaker, City Council, and Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

**AMANDA M. BURDEN, FAICP, Chair**  
**KENNETH J. KNUCKLES, Esq., Vice Chairman**

**ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, R.A.,  
ALFRED C. CERULLO, III, MARIA M. DEL TORO, RICHARD W. EADDY,  
NATHAN LEVENTHAL, SHIRLEY A. MCRAE, JOHN MEROLO,  
KAREN A. PHILLIPS, Commissioners**

Exhibit A

## DECLARATION OF RESTRICTIONS

**DECLARATION** (the "**Declaration**"), made as of this <sup>24<sup>th</sup></sup> day of May, 2008, by **KMG GREENWICH, LLC** ("**Greenwich**"), a New York limited liability company having an office at c/o PMA Associates, 515 Canal Street, New York, New York 10013, **KMG PMA LEROY, LLC** ("**Leroy**"), a New York limited liability company having an office at c/o PMA Associates, 515 Canal Street, New York, New York 10013 and **627 GREENWICH, LLC** ("**627**"), a New York limited liability company having an address c/o PMA Associates, 515 Canal Street, New York, New York 10013 (each of 627, Greenwich and Leroy, a "**Declarant**" and all of them, collectively, "**Declarants**").

### **RECITALS:**

A. 627 is the owner in fee title of certain land, with the buildings and improvements thereon, known as 627 Greenwich Street, New York, New York, and identified on the Tax Map of the City of New York, County of New York (the "**Tax Map**") as Block 602, Lot 58, which is more particularly described in Schedule "A" annexed hereto (said land being herein called "**627's Land**," said buildings and improvements, together with any future additions, alterations and replacements thereof being herein called "**627's Building**," and 627's Land and 627's Building sometimes being referred to hereafter collectively as "**627's Property**");

B. Greenwich is the owner in fee title of certain land, with the buildings and improvements thereon, located at 621 Greenwich Street a/k/a 115 Leroy Street and 623 Greenwich Street, and identified on the Tax Map as Block 602, Lots 85 and 55, respectively (Lot 85, hereafter, individually, "**Lot 85**"), which is more particularly described in Schedule "B" annexed hereto (said land being herein called "**Greenwich's Land**");

C. Leroy is the owner in fee title of certain land, with the buildings and improvements thereon, located at 111 Leroy Street and identified on the Tax Map as Block 602, Lot 83, which is more particularly described in Schedule "C" annexed hereto (said land being herein called "**Leroy's Land**")(Greenwich's Land and Leroy's Land, collectively, the "**Leroy Lots**")(627's Land and the Leroy Lots, collectively, the "**Approval Lots**" and any one of them, individually, an "**Approved Lot**");

D. Leroy's predecessor-in-title to Leroy's Land has heretofore entered into that certain Zoning Lot and Development Agreement dated as of December 20, 2006, and recorded in the Office of the City Register for New York County (the "**Register's Office**") at CRFN #200700000180 on January 2, 2007 (the "**78 Morton ZLDA**"), as well as that certain Declaration of Zoning Lot Restrictions dated December 20, 2006 and recorded in the Register's Office at CRFN 2007000001751 on January 2, 2007, both with Ti Takk, LLC, the owner of the property located at 78 Morton Street, New York, New York, Block 602, Lot 64 ("**Lot 64**") on the tax map, more particularly described in Schedule "D" which provide for the merger of the properties at 111 Leroy Street, New York, New York and Lot 64 into a single zoning lot of record;

E. Greenwich and Leroy are affiliated entities that have heretofore agreed to merge the Leroy Lots and Lot 64 into a single zoning lot and construct a new residential building (any

such new residential building, with any future replacements thereof or alterations or additions thereto, being herein called "**Leroy's Building**") utilizing all of the floor area available to the Leroy Lots under the New York City Zoning Resolution (hereafter defined), as well as the floor area made available under the 78 Morton ZLDA:

F. In connection with an approval by the City Planning Commission of ULURP #070575ZMM the City Planning Commission has requested that each of the Parties agree to submit the Approval Lots to certain development restrictions.

NOW, THEREFORE, Declarants hereby declare and agree that the Approval Lots shall be held, sold, transferred, conveyed, developed and occupied subject to the following restrictions, covenants, obligations and agreements, which shall inure to the benefit of the city of New York and shall run with each of the Approval Lots, and shall bind Declarants so long as any of them has any right, title or interest in an Approval Lot or any part thereof.

1. By its execution of this Declaration, each of Declarants: (a) relinquishes any and all rights it may heretofore have had, now has and hereafter may ever have under that certain preconsideration dated January 19, 2006, signed by Kenneth Fladan, then Chief Examiner for the Manhattan Office of the Department of Buildings, and perforated as "Approved" on September 6, 2007, pursuant to which Declarants were authorized to recalculate the zoning floor area in 627's Building pursuant to Zoning Resolution §43-121 and subdivide the zoning lot that formerly included tax lots 58 and 85 (the "**Preconsideration**"), (b) agrees that it will not seek at any time in the future any approval at the Department of Buildings that would augment the zoning floor area available for use on any of their respective properties on the basis set forth in the Preconsideration, and (c) agrees that any development on the Leroy Lots shall be limited to approximately 43,872 square feet of zoning floor area, with the use of floor area made available under the 78 Morton ZLDA and to approximately 36,619 square feet of zoning floor area without the use of floor area made available under the 78 Morton ZLDA, unless a greater amount is hereafter authorized by an amendment to the Zoning Resolution that increases the amount of floor area authorized to be constructed in the zoning district in which the Approval Lots are located or by special permit granted by the City Planning Commission or variance granted by the New York City Board of Standards and Appeals or any other floor area authorized to be constructed by act of any other City, State or federal administrative body or legislature, provided same does not arise out of the Preconsideration or the theories noted therein.

2. By execution of this Declaration, each of Declarants agrees that it shall neither apply for nor accept from the Department of Buildings a building permit for the construction of Leroy's Building or the conversion to residential use of 627's Building unless and until each and every party in interest, as such term is defined in Section 12-10 of the Zoning Resolution, with respect to any zoning lot that includes the Approval Lots has either executed this Declaration or executed a written Waiver of its right to execute this Declaration, this Declaration and the Waivers have been recorded in the Office of the Register of the City of New York for New York County against each of the Approval Lots and proof of such recording reasonably satisfactory to the General Counsel for the Department of City Planning (the "**GC**") has been received by such GC. The parties in interest shall be those parties so identified in a written certification by a title company authorized to do business in New York (the "**Certification**") at the time of Declarants' application for a building permit.



3. The original executed copies of this Declaration shall be held in escrow by the GC and shall not be released until Declarants provide the GC with a Certification and either copies of original counterpart signature pages containing the signatures of all parties in interest identified in the Certification or copies of executed Waivers by such parties in interest (other than Declarants)(such signature pages or Waivers, collectively, the "**Completion Documents**"). Within five (5) days of receipt of the Completion Documents, the GC will release the original executed copies of the Declaration to Declarants for recording.

5. Upon recording, the provisions of this Declaration shall be considered covenants running with the land and bind all heirs, successors, legal representatives, assigns, lessees and mortgagees of Declarants' interest or any portion thereof in the Approval Lots, provided that, upon the sale, transfer, assignment or conveyance of a Declarant's entire interest in an Approval Lot, such Declarant shall be released from and have no further obligations with respect to this Declaration or any covenant, obligation or undertaking provided or given hereunder.

6. The Chair, may by express written consent, administratively approve modifications of this Declaration requested by any of Declarants, provided that no such administrative modification of the provisions of paragraphs 1 or 2 of this Declaration shall be permitted. Any amendment or modification of this Declaration shall be executed and recorded in the same manner as this Declaration. Declarant shall execute and record such modification immediately upon approval and provide a certified copy thereof to the GC.

7. Declarants acknowledge that the City is an interested party to this declaration, and consent to enforcement by the City, administratively or at law or equity, of the restrictions, covenants, obligations and agreements contained herein. no person or entity other than the city shall have any right to enforce the provisions of this Declaration and nothing contained herein shall be deemed to allow any other person or entity, public or private, any interest or right of enforcement of any provision of this Declaration.

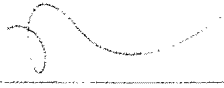
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**[Signature Page Follows]**

**IN WITNESS WHEREOF**, the undersigned have executed this Declaration as of the day and year first hereinabove set forth.


KMG GREENWICH, LLC

By: 627 Greenwich Management Corp.  
its Manager

By:   
Peter Moore, President

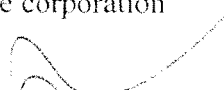
KMG PMA LEROY, LLC

By: KMG-PMA Leroy Manager, Inc.,  
Its Manager

By:   
Peter Moore, President

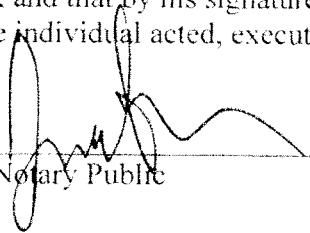
627 GREENWICH, LLC

By: 627 Greenwich Management Corp.  
a Delaware corporation

By:   
Peter Moore, President

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

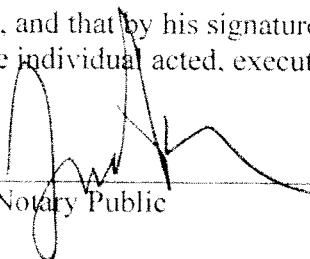
On the 30<sup>th</sup> day of May in the year 2008 before me, the undersigned, personally appeared Peter Moore, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

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

JONATHAN D. MORSE  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 02MO6177560  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES 11/13/2011

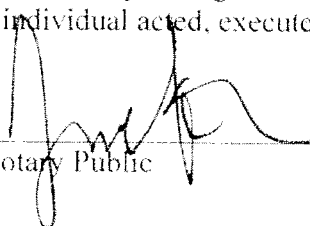
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COMMISSION EXPIRES 11/13/2011

Schedule "A"

Legal Description Lot 58, Block 602

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

BEGINNING at the corner formed by the intersection of the southerly side of Morton Street and the easterly side of Greenwich Street:

RUNNING THENCE Southwardly along the easterly side of Greenwich Street, 100 feet 4 inches to a point;

THENCE Eastwardly along a line parallel with the southerly side of Morton Street, 63 feet 10-1/2 inches to a point;

THENCE Southwardly along a line at right angles to Morton Street, 18 feet 5 inches to a point;

THENCE Eastwardly along a line parallel with the southerly side of Morton Street, 2 feet 3-1/2 inches to a point;

THENCE Southwardly along a line making an angle of 90 degrees 00 minutes 00 seconds with the preceding course, 1 foot 4-1/2 inches a point;

THENCE Eastwardly along a line parallel with the southerly side of Morton Street, 25 feet 9-1/2 inches to a point;

THENCE Northwardly along a line making an angle of 90 degrees 00 minutes 00 seconds with the preceding course, 4 feet 1-1/8 inches to a point;

THENCE Eastwardly along a line parallel with the southerly side of Morton Street, 34 feet 4-5/8 inches to a point;

THENCE Northwardly along a line making an angle of 89 degrees 48 minutes 00 seconds on its westerly side with the preceding course, 15 feet 8-1/2 inches to a point; said point being 160 feet 0 inches from Hudson Street;

THENCE Eastwardly along a line parallel with the southerly side of Morton Street, 9 feet 6 inches to a point;

THENCE Northwardly along a line making an angle of 89 degrees 48 minutes 00 seconds on its westerly side with the preceding course, 100 feet 0 inches to a point in the southerly side of Morton Street;

THENCE Westwardly along the southerly side of Morton Street, 127 feet 4 inches to the point or place of BEGINNING.

Schedule "B"

Legal Description Lots 85 and 55, Block 602

**Parcel I**

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

Beginning at the corner formed by the intersection of the Northerly side of Leroy Street and the Easterly side of Greenwich Street:

Running thence Eastwardly along the Northerly side of Leroy Street 134 feet 9 inches to a point, said point being 160 feet 0 inches West of the corner formed by the intersection of the Westerly side of Hudson Street & the Northerly side of Leroy Street, and said point also being at the South West corner of lot 83:

Thence Northwardly along a line perpendicular to the Northerly side of Leroy Street, along the westerly line of lot 83, 100 feet 1-5/8 inches to a point in the center line of the block;

Thence Eastwardly along the center line of block 9 feet 3-1/2 inches to a point:

Thence Northwardly along a line making an angle of 89 degrees 56 minutes 25 seconds on its Westerly side with the preceding course and part of the distance along the Westerly face of the independent wall of the three story brick building known as 78 Morton Street, 100 feet 1-5/8 inches to a point in the Southerly side of Morton Street:

Thence Westwardly along the Southerly side of Morton Street 25 feet 4-1/4 inches to a point; said point being 102 feet 4-1/4 inches Easterly from the corner formed by the intersection of the Southerly side of Morton Street and the Easterly side of Greenwich Street:

Thence Southwardly along a line making an angle of 90 degrees 12 minutes 00 seconds on its Westerly side with the Southerly side of Morton Street 100 feet 0 inches to a point;

Thence Westwardly along a line parallel with the Southerly side of Morton Street 46 feet 11-1/4 inches to a point;

Thence Southwardly along a line at right angles to Morton Street 18 feet 5 inches to a point:

Thence Westwardly along a line parallel with the Northerly side of Leroy Street 21 feet 9-3/4 inches to a point;

Thence Southwardly along a line at right angles to the Northerly side of Leroy Street 7 feet 10 inches to a point:

Thence Westwardly along a line parallel with the northerly side of Leroy Street 0 feet 3-1/8 inches to a point:

Thence southwardly along a line at 90 degrees 00 minutes 00 seconds to the northerly side of Leroy Street 18 feet 4-1/4 inches to a point:

Thence Westwardly along a line parallel with the Northerly side of Leroy Street 45 feet 5 inches to a point in the Easterly side of Greenwich Street:

Thence Southwardly along the Easterly side of Greenwich Street 55 feet 10-1/8 inches to the point or place of beginning.

**Parcel II**

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

BEGINNING at a point on the easterly side of Greenwich Street distant 56 feet (55 feet 10 1/8 inches per survey) northerly from the northeasterly corner of Greenwich and Leroy Streets:

RUNNING THENCE easterly parallel with Leroy Street, 45 feet 5 inches:

THENCE northerly at right angles to Leroy Street, 18 feet 6 inches (18 feet 4 1/4 inches per survey):

THENCE westerly parallel with the first mentioned line 43 feet 9 inches (43 feet 11 1/8 inches per survey) to the easterly side of Greenwich Street: and

THENCE southerly along the easterly side of Greenwich Street, 18 feet 5 inches to the point or place of BEGINNING.

Schedule "C"

Legal Description Lot 83, Block 602

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

Beginning at a point on the Northerly side of Leroy Street distant 134 feet 9 inches Easterly from the corner formed by the intersection of the Northerly side of Leroy Street and the Easterly side of Greenwich Street; said point being 160 feet 0 inches West of the corner formed by the intersection of Hudson Street & Leroy Street and said point also being at the South East corner of Lot 85.

Running Thence Northwardly along a line at right angles to the Northerly side of Leroy Street, along the line of lot 85, a distance of 100 feet 1-5/8 inches to a point in the center line of block;

Thence Eastwardly along the center line of block 39 feet 7-3/4 inches to a point;

Thence Southwardly along a line making an angle of 90 degrees 12 minutes 00 seconds its Westerly side with the preceding course 100 feet 1-5/8 inches to a point in the Northerly side of Leroy Street;

Thence Westwardly along the Northerly side of Leroy Street 40 feet 0 inches to the point or place of beginning.