***CORRECTION**

The resolution adopted on June 10, 2014, under Calendar No. 164-13-A and printed in Volume 99, Bulletin Nos. 22-24, is hereby corrected to read as follows:

164-13-A
APPLICANT – Slater & Beckerman, for Grand Imperial, LLC, owner.
SUBJECT – Application May 31, 2013 – Appeal seeking to reverse Department of Buildings' determination not to issue a Letter of No Objection that would have stated that the use of the premises as Class A single room occupancy for periods of no less than one week is permitted by the existing Certificate of Occupancy. R10A zoning district.
PREMISES AFFECTED – 307 West 79th Street, northside of West 79th Street, between West End Avenue and Riverside Drive, Block 1244, Lot 8, Borough of Manhattan.
COMMUNITY BOARD #7M
ACTION OF THE BOARD – Application Denied.
THE VOTE TO GRANT –
Affirmative: 0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez 5
THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings, dated May 3, 2013, acting on Department of Buildings Application No. 320378088 reads, in pertinent part:

> This Department regrets it cannot issue a Letter of No Objection for New Law Tenant Class A M.D. & Single Room Occupancy to [be] occupied or rented for less than 30 days as per Chapter 225 of the Laws of 2010, which clarified existing provisions related to occupancy of Class A Multiple Dwellings.
> In order to allow such use, an Alteration Application must be filed with the Department to change use and Certificate of Occupancy obtained if permitted by zoning; and

WHEREAS, a public hearing was held on this application on February 4, 2014, after due notice by publication in *The City Record*, with a continued hearing on March 25, 2014, and then to decision on June 10, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, New York State Assemblymember Linda B. Rosenthal and New York City Council Member Helen Rosenthal provided testimony in opposition to the appeal, citing concerns about illegal transient hotel use including occupancy periods of just days at a time, which are disruptive to the permanent tenants and the surrounding residential uses; and

WHEREAS, the Goddard Riverside SRO Law Project and the Hotel Trades Council provided testimony in opposition to the appeal, citing concerns about a history of harassment towards permanent tenants and otherwise protecting their rights; and

WHEREAS, certain community members and building residents provided testimony in opposition to the appeal, citing concerns about transient use in a residence zoning district and within a building occupied by permanent tenants required to share space with those renting on a short term; and

WHEREAS, certain community members spoke in support of the appeal, citing concerns that the building might otherwise be converted into a homeless shelter; and

WHEREAS, the site is located on the north side of West 79th Street between West End Avenue and Riverside Drive within an R10A zoning district and is occupied by a ten-story (with a partial 11th story) building (the "Building"); and

WHEREAS, this appeal seeks reversal of the Determination, thereby directing DOB to issue a Letter of No Objection stating that the use of the Building as Class A single room occupancy for periods of no less than one week is permitted by the existing certificate of occupancy No. 53010; and

Building History

WHEREAS, the Building was constructed in 1906 as the Lasanno Court, an approximately 40-unit apartment building; and

WHEREAS, during the Great Depression, in the 1930s, the Building was subdivided into single room occupancy (SRO) units; and

WHEREAS, in 1939, the New York State Legislature adopted MDL § 248, known as the Pack Bill, which provides regulations for SRO buildings; and

WHEREAS, in 1943, the Building was altered to comply with MDL § 248 and on March 25, 1943, DOB issued the Building's first CO permitting 247 SRO units; the Building was renamed the Imperial Court Hotel; and

WHEREAS, DOB also issued COs in 1954 and September 1960; and

WHEREAS, on November 7, 1960, DOB issued the most recent CO permitting in the cellar, "one (1) superintendent's apartment, boiler room, storage and tenants' laundry"; on the first floor, "sixteen (16) rooms-single room occupancy, two (2) community kitchenettes, registration desk, manager's office and lobby of building"; on the second through tenth floors, "twenty-three (23) rooms-single room occupancy and two (2) community kitchenettes"; and in the penthouse, "four (4) rooms – single room occupancy;" and

WHEREAS, the applicant states that in total, the CO permits 227 SRO Units and that currently and historically, 64 of the 227 SRO units have been regulated through rent control or stabilization (the "Statutory Units"); and

WHEREAS, the Appellant states that since 1979, all of the 64 Statutory Units and all of the 163 non-

Statutory Units have been rented for periods of no less than seven days, in compliance with the CO and the MDL; the Appellant submitted occupancy logs for 2008, 2009, 2010, and 2011 in support of this claim; and

Procedural History

WHEREAS, on January 13, 2011, DOB issued Notices of Violation in connection with the seven-day rentals; and

WHEREAS, on January 19, 2011, the owner applied to HPD for a Certificate of No Harassment (CONH), pursuant to Administrative Code § 28-107.4 in connection with its application for a permit to build a second means of egress; and

WHEREAS, on September 13, 2011, the Department of Housing Preservation and Development (HPD) commenced a proceeding against the owner at the Office of Administrative Trials and Hearings (OATH) seeking a denial for the application for a CONH on the grounds that it had committed acts of harassment against some of the tenants; and

WHEREAS, on December 7, 2012, the OATH administrative law judge held that the owner had committed some acts of harassment against some of the tenants and recommended denial of the CONH; and

WHEREAS, in January 2013, the Environmental Control Board sustained the violations, finding that stays of less than 30 days were not permitted by the CO; and

WHEREAS, on February 11, 2013, the owner requested a Letter of No Objection (LNO) from DOB stating that the use of the Building as a Class A SRO for periods of no less than one week is permitted by the existing certificate of occupancy; DOB's denial of that request forms the basis of the subject appeal; and

WHEREAS, the Building is the subject of an Article 78 proceeding in New York Supreme Court, (Index No. 103032-2012) appealing ECB's decision to sustain the violations and is pending; and

WHEREAS, the Appellant states that since January 2011, it has attempted to rent the 163 non-statutory Units for periods of no less than 30 days, but the majority of the units have remained vacant, a condition which prompted the Appellant to seek the LNO to allow rental of the units for terms not less than one week; and

The Relevant Statutory Provisions

WHEREAS, relevant MDL provisions are provided below in pertinent pert:

1939 Text

MDL § 248 (*Single Room Occupancy)*

(16) No room shall be rented in any such building for a period of less than a week.

1946 Text

(Definitions)

MDL § 4

(16) "Single room occupancy" is the occupancy by one or two persons of a single room, or of two or more rooms which are joined together, separated from all other rooms within an apartment in a multiple dwelling, so that the occupant or occupants thereof reside separately and independently of the other occupant or occupants of the same apartment. When a class A multiple dwelling is used wholly or in part for single room occupancy, it remains a class A multiple dwelling.

MDL § 4

(8) A "class A" multiple dwelling is a multiple dwelling which is occupied, as a rule, for permanent residence purposes . . .

MDL § 4

(9) A "class B" multiple dwelling is a multiple dwelling which is occupied, as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals . . .

1960 Text

MDL § 248 (*Single Room Occupancy)*

(16) It shall be unlawful to rent any room in any such dwelling for a period of less than a week.

MDL § 4 (*Definitions)*

Class A Multiple Dwelling: a multiple dwelling which is occupied, as a rule, for residence purposes and not transiently.

Class B Multiple Dwelling: a multiple dwelling which is occupied, as a rule, transiently.

2011 MDL Amendment (Chapter 225 of 2010)

MDL § 4.8(a): A "class A" multiple dwelling is a multiple dwelling that is occupied for permanent residence purposes. This class shall include tenements, flat houses, maisonette apartments, apartment houses, apartment hotels, bachelor apartments, studio apartments, duplex apartments, kitchenette apartments, garden-type maisonette dwelling projects, and all other multiple dwellings except class B multiple dwellings. A class A multiple dwelling shall only be used for permanent residence purposes. For the purposes of this definition, "permanent residence purposes" shall consist of occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more and a person or family so occupying a dwelling unit shall be referred to herein as the permanent occupants of such dwelling unit.

MDL § 248

(1). . . A dwelling occupied pursuant to this section shall be deemed a class A dwelling and dwelling units occupied pursuant to this section shall be occupied for permanent residence purposes, as defined in paragraph a of subdivision eight of section four of this chapter.

(16) (*removed*); and

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The Appellant's Position

WHEREAS, the Appellant asserts that the LNO should be issued for the following primary reasons: (1) the use of the Building for short-term occupancy of no less than one week was permitted at the time the CO was issued and MDL § 248 allowed Class A SRO units to be rented for periods of one week or more; and (2) Chapter 225 of 2010, an amendment to the MDL which requires that short-term residences may not be less than 30 days, applies prospectively and, therefore, not to the Building; and

WHEREAS, the Appellant asserts that in 1943 and 1960, when the Building was issued COs permitting single room occupancy units, the MDL provided that SRO units may be lawfully rented and occupied for periods of no less than a week; and the legislative history of the 1939 enactment of MDL § 248(16), New York State case law, and independent scholarly research clearly support the statutory provision that there is a weekly minimum applied to the period of occupancy; and

WHEREAS, the Appellant states that in 1943, when the Building was issued a CO permitting SRO units, the plain language of MDL § 248 (16) – "No room shall be rented in any such building for a period of less than a week" - permitted the SRO Units to be rented for periods of no less than one week; and

WHEREAS, the Appellant relies on the text of MDL § 248 adopted in 1939 (the "Pack Bill") and in effect in 1943; and

WHEREAS, the Appellant states that DOB is correct that in 1960, the MDL included definitions for Class A and Class B Multiple Dwelling, however, even if the 1960 text were operative, as was the case in 1939, these definitions did not define the length of permitted occupancy for Class A and Class B Multiple Dwelling, only that Class A must have been occupied, as a rule, for permanent residence purposes and Class B, as a rule, transiently; and

WHEREAS, the Appellant also considers the MDL § 248(16) in effect when the 1960 CO was issued - "it shall be unlawful to rent any room in any such dwelling for a period of less than a week;" and

WHEREAS, the Appellant asserts that the CO permits the Building to be used for single room occupancy and that prior to the MDL Amendment, the prior use of the Building was for short-term residences, in which occupants' stay was restricted to no less than one week; and

WHEREAS, the Appellant agrees that MDL § 248(16) allows tenants to *pay* on a weekly basis, but there is not any basis to conclude that *occupancy* was for a 30-day minimum; and

WHEREAS, the Appellant asserts that the legislative history, court statements, and scholarly research support the conclusion that MDL § 248(16) expressly and implicitly permitted the SRO units to be lawfully occupied for periods of no less than a week and that it applied to both rental and occupancy; and

WHEREAS, the Appellant asserts that prior to the 2010 MDL Amendment (the "MDL Amendment"), the use of the Building was in compliance with MDL § 248(16) in that all rooms were rented for periods of no less than one week; and

WHEREAS, the Appellant asserts that based on the communication surrounding the Pack Bill's enactment during the Great Depression, it had multiple purposes including protecting occupants in multiple dwelling rooming houses from fire and to set up minimum standards for sanitation, maintenance, and operation and to provide health and safety protections for the visitors of the 1939-1940 World's Fair who sought accommodations in excess of what the city's hotels could provide; and

WHEREAS, the Appellant cites to the City of New York v. 330 Continental LLC, 60 A.D.3d 226 (1st Dept 2009) decision on whether the City was entitled to a preliminary injunction for the point that the court stated that SROs were entitled to short term rental of a week; and

WHEREAS, the Appellant also cites to scholarly research on New York City during the Great Depression which states that the city lifted regulations that prevented the operation of SROs and connected it to the World's Fair needs; and

WHEREAS, as to the use and preservation of rights, the Appellant asserts that (1) since at least 1979, and most likely since 1943, the Building has been occupied by residential stays of no less than a week; (2) the right to rent the SRO Units for residential occupancies of no less than a week has been accrued; (3) the savings clause of MDL § 366 provides that the codification of Sections 1 through 4 of Chapter 225 of the Laws of 2010 will not impair the right to continue to rent the SRO Units for occupancies of no less than one week; and (4) Section 8 of the Laws of 2010 was not codified in the MDL and did not impair the Appellant's accrued rights; and

WHEREAS, the Appellant asserts that since the existing CO permits weekly occupancy, it is irrelevant whether or not the Building had been historically occupied for stays as short as one week; and

WHEREAS, however, the Appellant asserts that it has submitted affidavits attesting to the fact that since at least 1979 (when the owner purchased the Building) and most likely since 1943 (when the first CO was issued), the policy of the Imperial Court has been that rooms may be rented and occupied for residential stays for periods of as short as one week; and

WHEREAS, the Appellant's submissions include: an affidavit from the owner's family member who has worked at the Building since 1979; an affidavit from the son of the prior owner who worked at the Building from 1979 to 2005; five affidavits from Building tenants; eight affidavits from Building employees; and affidavits from the Building's; and

WHEREAS, the Appellant represents that after January 2013, Imperial Court's policy was changed to conform to DOB's interpretation and therefore rooms are rented and occupied for periods of no less than one month; and

WHEREAS, the applicant states that DOB has failed to produce documentation to support the assertion that the MDL ever restricted occupancy of rooms rented weekly to periods of 30 days or more; and

WHEREAS, the Appellant asserts that it has accrued a right to rent and occupy the SRO units on a weekly basis as of 1943, and again in 1960, when the COs were issued based on compliance with the MDL then in effect; and

WHEREAS, as to the MDL Amendment, effective in 2011, which specifies that short-term residences may not be less than 30 days, the Appellant asserts that it applies prospectively and, therefore, not to the Building; and

WHEREAS, the Appellant states that MDL § 366 (1) and (4) are savings clauses which dictate that the MDL provisions apply prospectively; specifically, MDL § 366(1) "the repeal of any provision this chapter, or the repeal of any provisions of any statute of the state or local law, ordinance, resolution or regulation shall not affect or impair any act done, offense committed or right accruing, accrued or acquired . . . prior to the time of such repeal, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent and in the same manner as if such provisions had not been repealed;" and (4) "No existing right or remedy of any kind shall be lost or impaired by reason of the adoption of this chapter as so amended unless by specific provision of a law which does not amend all articles of this chapter;" and

WHEREAS, the Appellant asserts that the MDL Amendment does not contain any "specific provision" that an existing right to rent for seven days or more has been "lost or impaired" as a result of the MDL Amendment therefore the "right" or the owner to rent units for periods of seven days or more may be continued; and

WHEREAS, the Appellant also cites to MDL § 13, which provides that "nothing . . . shall be construed to require any change in the construction, use or occupancy of any multiple dwelling lawfully occupied as such on April eighteenth, nineteen hundred twenty-nine, under the provisions of all local laws, ordinances, rules and regulations applicable thereto on such date; but should the occupancy of such dwelling be changed to any other kind or class after such date, such dwelling shall be required to comply with the provisions of section nine;" and

WHERERAS, the Appellant asserts that the Building was constructed as a "tenement" in 1906 and lawfully occupied on April 18, 1929, so nothing in the MDL requires any change in the use or occupancy of the Building; and

WHEREAS, the Appellant asserts that because the Building was operated in compliance with the MDL prior to the MDL Amendment, the use of the Building for stays of no less than one week may be continued; and

WHEREAS, accordingly, the Appellant states that if the Board determines that MDL § 248(16) applied both to rental and occupancy, then MDL § 366 would permit the Appellant to continue to rent the SRO Units for weekly occupancy; and

DOB's Position

WHEREAS, DOB asserts that its denial of the LNO request was proper for the following primary reasons: (1) the Building has a CO and the CO does not permit the Class A New Law tenement to be occupied for periods of less than 30 days; and (2) the MDL Amendment did not change DOB's interpretation of the occupancy authorized by the CO, but rather clarified existing provisions related to occupancy of Class A Multiple Dwellings; and

WHEREAS, DOB asserts that contrary to the Appellant's arguments, the MDL never permitted weekly occupancy of the Building and the 1943 and 1960 COs are consistent with that position; and

WHEREAS, DOB asserts that the 1960 version of the MDL is applicable and not the 1939 version since the most recent CO (issued in 1960) resulted from a 1958 Alteration Application; however, both versions of the MDL distinguish transient occupancy from permanent occupancy and would therefore be consistent with DOB's interpretation; and

WHEREAS, DOB notes that under both the 1939 MDL and the 1960 MDL, Class A use was distinguished from "transient" use; weekly occupancy is more appropriately associated with transient use; and

WHEREAS, thus DOB cites to the 1958-2011 text of MDL § 248 (16): "it shall be unlawful to *rent* [an SRO room] for less than a week." (emphasis added); and

WHEREAS, DOB's position is that the former MDL § 248 (16) restricts the payment term to a minimum of one week but does not similarly identify the minimum occupancy period; and

WHEREAS, DOB also notes that the term "occupancy" appears throughout the MDL and could have been used in lieu of "rental" if the weekly rental minimum requirement were intended to authorize weekly occupancy; and

WHEREAS, DOB asserts that the weekly rental provision of the 1939 Pack Bill explained that the bill's weekly rental provision governed only rental payments and not occupancy; and

WHEREAS, DOB states that while there is no definition of the term "rental" in the MDL, the common understanding of the word is that it governs payment, and not occupancy and in the definition of "Class A" the MDL does not provide that it should be "rented" for permanent residence purposes, but uses the term "occupied;" and

WHEREAS, DOB states that there is nothing in the statute to suggest that rental and occupancy should be treated as equivalents; and

WHEREAS, DOB notes that in 1958, the MDL contained the term "permanent residence purposes" and defined a "Class A multiple dwelling as a multiple dwelling which is occupied, as a rule, for permanent residence purposes;" it defined a "Class B multiple dwelling" as "a multiple dwelling which is occupied as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals;" and

WHEREAS, DOB states that according to the 1960 CO, the building is a "New Law Tenement Class 'A' Multiple Dwelling and Single Room Occupancy" which means that it must be occupied as a Class A multiple dwelling which mandates occupancy be for "permanent residence purposes;" and

WHEREAS, DOB asserts that it is consistent with the principle of statutory construction that a statute or ordinance be construed as a whole and that its sections be considered together and with reference to each other; and

WHEREAS, accordingly, DOB asserts that MDL § 248(16) must be read in conjunction with the MDL §§ 4(8) and (9) in effect in 1960 which define Class A and Class B occupancies; and

WHEREAS, DOB cites to MDL §§ 4(8) and (9) which define the terms "Class A" and "Class B" multiple dwellings, use the term "occupied," and provide that a Class A multiple dwelling is to be occupied for "permanent residence purposes", while a Class B multiple dwelling is to be occupied transiently;" and

WHEREAS, DOB notes that MDL § 248 states that "a dwelling occupied pursuant to [section 248] shall be deemed a Class A dwelling;" the definition of "single room occupancy in MDL § 4(16) further states that "When a class A multiple dwelling is used wholly or in part for a single room occupancy, it remains a Class A multiple dwelling;" and

WHEREAS, DOB states that according to MDL § 4 (8), a Class A multiple dwelling is to be occupied for "permanent residence purposes;" and

WHEREAS, DOB consulted Merriam Webster's dictionary which defines the word "permanent" as "continuing or enduring without fundamental or marked change," while the word "transient" is defined as "not lasting long" and "passing through or by a place with only a brief stay or sojourn;" and

WHEREAS, DOB states that the plain meaning of "permanent" resident cannot be construed to include a person who occupies a hotel room for only a week; and

WHEREAS, DOB asserts that common sense supports a conclusion that one does not become a permanent resident of a location by virtue of a one-week stay and that such stay is more consistent with a "transient" occupancy See Connors v. Boorstein, 4 N.Y. 2d 172, 175(1958) (interpreting statutory terms as matter of common sense."); 440 East 102nd Street Corp. v. Murdock, 285 N.Y. 298, 309 (1941)(citing "common use and understanding" in defining statutory terms); Kupelian v. Andrews, 233 N.Y. 278, 284 (1922) (statutory terms construed in a manner consistent with "common experience"); and

WHEREAS, DOB notes that pursuant to NYC Charter § 643, DOB is the agency responsible for interpreting the MDL in the first instance and DOB has consistently interpreted Class A permanent residence to require a minimum occupancy of 30 days, treating Class A "permanent" occupancy as the equivalent of J-2 Building Code occupancy and Class B "transient" occupancy as the equivalent of J-1 day-to-day or weekly occupancy; and

WHEREAS, DOB asserts that its interpretation is consistent with the principles of statutory interpretation that a statute be interpreted consistent with common sense - in this case weekly turnover would not commonly be understood to be permanent occupancy – and that a statute must be construed as a whole such that MDL§ 248(16) which prohibits rental of any room in and Class A SRO for a period of less than one week must be interpreted in conjunction with MDL §§ 4(8) and (9) which define Class A and Class B occupancies in terms of occupancy and not rental; and

WHEREAS, DOB notes that single room occupancy units are suitable only for permanent residence purposes, because while MDL § 248 required some upgrades, there was no requirement that these units comply with the more stringent fire safety requirements applicable to transient units; and

WHEREAS, DOB also notes that MDL § 248 was enacted in 1939, during the Great Depression, when weekly rates might be preferred over daily rates which would likely result in a higher weekly cost and that weekly rates would be preferred to monthly rates, because those sums would be potentially easier for people to save than a higher monthly sum; and

WHEREAS, DOB states that the Court's decision in City of New York v. 330 Continental LLC was not a decision on the merits and the Appellant's citations are *dicta*; and

WHEREAS, DOB states that the decision issued in Continental was issued in response to the City's request for a preliminary injunction to enjoin the defendants in that case from using the disputed premises transiently, pending final determination of the action of the case and that the excerpts cited from that case are non-binding dicta used to explain the court's determination that the City had failed to establish a right to a preliminary injunction; and

WHEREAS, DOB notes that the court stated that, "[i]n view of the as-yet unresolved vagueness and ambiguity of the language of the MDL and the ZR that the City seeks to enforce, it cannot be said that the City has demonstrated a clear right to the drastic remedy of preliminary injunction;" the decision was not a final ruling on the case which ultimately settled with the defendants agreeing to use the subject premises for "permanent residence purposes" consistent with the City's interpretation of the term, meaning for thirty consecutive days or longer; and

WHEREAS, DOB concludes that since the Continental litigation settled and since it was only a decision on the preliminary injunction motion and not a decision on the merits of the case, the City had no basis to appeal; the City then clarified this historical interpretation in Chapter 225 of the Laws of 2010; and

WHEREAS, as to the MDL Amendment, DOB asserts that the amendments contained in Chapter 225 of the Laws of 2010 (and the 1960 change to MDL § 248) did not change what had been its interpretation (for at least 40 years) of what "permanent residence purposes" meant, which was the occupancy of a dwelling unit by the

same natural person or family for thirty consecutive days or more;" and

WHEREAS, DOB states that, instead, the purpose of the amendments was as stated in the law, a "clarification" of the DOB's historical interpretation relating to occupancy of Class A multiple dwellings;" and

WHEREAS, DOB notes that the bill was enacted "to fulfill the original intent of the law as construed by enforcing agencies, including the New York City Department of Buildings" (See "New York State Senate Introducer's memorandum in Support, reprinted in New York State Archives' Legislative History/Bill Jacket for the Laws of 2010, Chapter 225); and

WHEREAS, finally, DOB notes that Section 8 of the amendments provides that it "shall apply to all buildings in existence on such effective date and to buildings constructed after such effective date;" therefore, as clarifying amendments, the amendments are not to be applied only prospectively; and

WHEREAS, DOB asserts that since the Building was required to be occupied permanently (for 30 days or more) both prior to Chapter 225 and after, no existing right to rent for seven or more days has been lost or impaired as a result of the MDL amendments and transient use which was never permitted cannot be continued pursuant to the MDL savings clauses; and

WHEREAS, DOB states that prior to the adoption of Chapter 225, MDL §§ 4(16) and 248(1), the Building was a Class A multiple dwelling subject to MDL § 4(8)'s requirement that it be occupied for permanent residence purposes with "permanent residence" meaning occupancy of 30 days or more and not weekly occupancy; and

WHEREAS, DOB notes that it issued violations for illegal transient occupancy prior to the 2011 enactment of the MDL Amendment; and

The Board's Conclusion

WHEREAS, the Board agrees with DOB that the Multiple Dwelling Law and the Building's COs never permitted occupancy of the premises for weekly stays, and therefore there is no "existing right or remedy that is lost," and the MDL's savings clauses do not apply; and

WHEREAS, the Board agrees that the provisions of the MDL must be read together and that (1) the CO classification of Class A SRO is informed by the definition of Class A occupancy as permanent occupancy; and (2) the internal MDL references, dictionary definitions, plain meaning, common sense, and the legislative intent all support DOB's conclusion that permanent occupancy requires stays of periods of at least 30 days; and

WHEREAS, the Board agrees with DOB that the text in effect at the time of the 1960 CO issuance applies, but would reach the same conclusion even if the text in effect in 1943 applied; and

WHEREAS, the Board notes that although the relevant MDL text has been amended since 1939, the underlying principles, including common sense concepts of time and residency, have not been redefined and that a seven-day stay would have never satisfied a requirement for permanent occupancy; and

WHEREAS, the Board finds that the distinctions between Class A and Class B and permanent and transient were understood at the time the CO was issued and there is not any evidence that in 1943 or 1960, at the issuance of the COs, that DOB accepted a rental term of any less than a month; and

WHEREAS, the Board does not find support for the Appellant's assertion that the MDL in effect in 1943 expressly or implicitly reflected that the SRO Units could be lawfully rented and occupied for weekly periods; and

WHEREAS, the Board does not see any indication in the legislative history that there was a greater need for transient (weekly) occupancy rather than for shorter payment terms; and

WHEREAS, further, the Board notes that DOB is the agency empowered to interpret the MDL in the first instance and that the MDL allows it to create greater restrictions; and

WHEREAS, the Board accepts DOB's interpretation of the legislative history and finds that the Appellant's focus on the fleeting goals of the World's Fair, derived from trade organizations' interests and the scholarly discussion of housing during the Great Depression is unpersuasive; and

WHEREAS, the Board notes that there are public policy reasons to require greater safety measures for transient or truly temporary accommodations and permanent accommodations and finds the fact that the Pack Bill only required that the Building comply with MDL § 248 is consistent with a finding that Class A SROs are a form of permanent occupancy rather than transient; and

WHEREAS, the Board notes that the 1939 amendments encouraged the improvement of conditions of buildings which had been built for one form of Class A permanent use but have been converted to another much denser Class A occupancy; and

WHEREAS, the Board notes that the issuance of the CO in 1960 with the occupancy classification of Class A for the first time – meaning permanent occupancy – supports DOB's conclusion that the approval was reviewed pursuant to the 1958 MDL because if the owner at the time believed that the newly defined Class A classification changed the meaning of the operative MDL provisions then he would have had an interest in revising the classification of the Building rather than obtaining a new CO with the new Class A classification; and

WHEREAS, the Board notes that the Appellant contends that the issuance of a CO certifies that the Building "conforms substantially to the approved plans and specifications, and to the requirements of the building code and all other laws and ordinances, and of the rules and regulations of the Board of Standards and Appeals, applicable to a building of its class and kind at the time the permit was issued" and that such reliance actually supports a conclusion that DOB issued the CO

pursuant to the 1958 clarified text, which the owner would have been aware of; and

WHEREAS, the Board notes that the 1943 CO only identifies the building as a New Law Tenement and Single Room Occupancy but not also as Class A; and

WHEREAS, the Board notes that tenements are within the MDL § 4 definition of Class A; and

WHEREAS, the Board finds it logical to conclude that the 1943 CO classification and the 1960 CO classification had the same meaning, just as the 1939 MDL text and 1958 MDL text did; and

WHEREAS, the Board finds that all three discussed versions of the MDL support the point that there is a distinction between Class A and Class B occupancy in that Class A and its regulatory provisions apply to permanent occupancy and Class B applies to transient; and

WHEREAS, the Board notes that the 1946 MDL defined "single room occupancy" as the occupancy of a single room separated from all other rooms within an apartment in a multiple dwelling and that "[w]hen a class A multiple dwelling is used wholly or in part for single room occupancy, it remains a class A multiple dwelling;" and

WHEREAS, accordingly, accordingly, the Board finds that MDL § 248 clearly establishes SROs within the definition of Class A multiple dwellings and Class A multiple dwellings are to be occupied "as a rule for "permanent residence purposes," which is not satisfied by stays of one week; and

WHEREAS, as to the MDL Amendment and the Appellant's invocation of the savings clauses, the Board accepts DOB's position that the amendment served to clarify language and clearly articulate the position that it had held for decades that permanent occupancy requires a minimum stay of 30 days; the Board does not see any support for a conclusion that a Class A SRO with a minimum seven-day term is a separate protected class of occupancy; and

WHEREAS, the Board agrees with DOB that no right was ever established or accrued for seven-day occupancy and thus there is no right to save; and

WHEREAS, the Board notes that the MDL Amendment does not allow property owners to maintain transient use with permanent use fire safety conditions; transient use must meet transient use requirements; and

WHEREAS, the Board finds that there has always been a necessary distinction between transient and permanent occupancy and that is furthered by the CO identification of Class A and Class B occupancies; and

WHEREAS, the Board notes that the Building was constructed and occupied for several decades as a New Law Tenement Multiple Dwelling and that it was converted to a New Law Tenement Class A Multiple Dwelling SRO building; in both iterations, the Building accommodated permanent occupancy, identified as Class A since 1960; based on the legislative history and the economic climate, DOB's assertion that the rental payment system and not the need for more transient occupancy is the change which sparked the 1939 amendments and the Building's conversion; and

WHEREAS, the Board notes that approximately one-quarter of the Building is occupied by the Statutory Units which are permanent tenancies; and

WHEREAS, the Board notes that the Appellant sought to gather additional Building occupancy records, but the Board does not find those records to be relevant because the Building was constructed as a Class A apartment building, and has since then had COs only for a Class A SRO, there is no basis to assert that it was actually a Class B use; and

WHEREAS, the Board does not find that evidence related to the occupancy of the Building is relevant to the interpretation of the MDL text; and

Therefore it is Resolved, that the Board denies the appeal and affirms DOB's denial of a request for a Letter of No Objection, which would authorize occupancy of the Building for a minimum period of seven days rather than 30 days.

Adopted by the Board of Standards and Appeals, June 10, 2014.

The resolution has been amended. Corrected in Bulletin No. 26, Vo. 99, dated July 2, 2014.

A true copy of resolution adopted by the Board of Standards and Appeals, June 10, 2014.
Printed in Bulletin Nos. 22-24, Vol. 99.

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