



IN THE MATTER OF an application submitted by 419 MM LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify:

1. the use regulations of Section 42-14(D)(2)(b) to allow Use Group 6 uses (retail uses and office use) on the ground floor and cellar; and
2. the height and setback regulations of Section 43-43 (Maximum Height of Front Wall and Required Front Setbacks);

of an existing 3-story building and proposed 8-story enlargement on property located at 419-423 Broadway a.k.a. 301 Canal Street (Block 231, Lot 1), in an M1-5B District, within the SoHo Cast-Iron Historic District, Borough of Manhattan, Community District 2.

The application was filed on January 10, 2019 for a special permit pursuant to Section 74-711 of the Zoning Resolution (ZR) to modify the use regulations of Section 42-14(D)(2)(b) to allow Use Group 6 uses (retail uses and office use) on the ground floor and cellar, and to modify the height and setback requirements of Section 43-43 (Maximum Height of Front Wall and Required Front Setbacks), to facilitate the construction of a new eight-story commercial building and the preservation of a three-story historic federal-style rowhouse, and to allow retail use below the level of the second story in both buildings, on the property located at 419 Broadway in Manhattan (Block 231, Lot 1), within the SoHo Cast-Iron Historic District, Manhattan Community District 2.

BACKGROUND

419 Broadway (Block 231, Lot 1) is located at the northwestern corner of Broadway and Canal Street, both of which are wide streets. It is zoned M1-5 and is located within the SoHo Cast-Iron Historic District, which adjoins the Tribeca, Little Italy and Chinatown neighborhoods. M1-5 zoning districts allows up to 5.0 FAR for commercial uses and light manufacturing uses and 6.5 for community facility uses. Use Group 17D Joint Living-Work Quarters for Artist (JLWQA) is allowed as-of-right in buildings that pre-date 1961 and have a lot coverage of less than 5,000 square feet (3,600 square feet on Broadway). For buildings in an M1-5B district, residential use

(Use Group 2) is not permitted as-of-right; the space below the floor level of the second story can only be occupied by Use Group 7, 9, 11, 16, 17A, 17B, 17C, and 17E uses. With regards to bulk, the maximum front wall height within an initial setback distance of 20 feet, for a narrow street, or 15 feet, for a wide street, is six stories or 85 feet, whichever is less. Above such maximum height and beyond the initial setback distance, a building may not penetrate the sky exposure plane defined by a slope of 2.7 to 1, on a narrow street, or 5.6 to 1, on a wide street.

Once entirely manufacturing, SoHo today is a dynamic mixed-use district with Broadway being a regional shopping corridor. The area around the project site is almost entirely built up with structures dating from the 19th century, with little vacant land remaining. Mid- to late-19th century loft-style office and factory buildings define the general character of the area and line Broadway; Mercer, Greene, Grand, Howard, Crosby, and Walker Streets; and, to a lesser extent, Canal Street. These buildings generally rise to a five- to nine-story height without setback and are occupied on their upper stories by residences, including JLWQA, Interim Multiple Dwellings (IMDs) and residential lofts. Few conforming heavy commercial and light manufacturing uses remain in the area, including industrial supplies wholesalers along Canal Street, as well as food production, wholesale and distribution businesses along Centre, Baxter, and Hester Streets.

The zoning lot of the project site measures approximately 6,090 square feet. The zoning lot is currently developed with three buildings, including a three-story Federal-style historic rowhouse housing retail on the ground floor and office above, a two-story office over retail building, and a one-story retail building. The rowhouse is considered a contributing building in the historic district, whereas the other the two buildings are not. The Canal Street station on the N/Q/R/W subway lines is immediately adjacent to the site.

The rowhouse was built in 1823 and it represents a surviving example of the type of residential home with ground-floor retail that was constructed along Broadway in the 1820s. Built in the modified Federal-style, it is clad in brick with brownstone details, including an Italianate cornice and carved brownstone lintels. The original storefront on the ground floor has been modified with aluminum cladding. In recent years, according to the applicant's research, the building has been occupied by retail uses on the ground floor and office use on the second and third floors. As part

of the proposal, the building would be preserved and restored pursuant to approvals from the Landmark Preservation Commission (LPC). Specifically, the proposed work includes masonry repair and cleaning, metal cornice repair and painting, replacement of wood windows at the primary and rear facades, the installation of new metal roofing at the front of the building and slate roofing at the rear, and the installation of a new wood storefront and entry door featuring a cast iron cornice and piers. Additionally, a dormer would be reconstructed at the rear sloped roof and to alter existing fire escapes on the exterior of the building. It would also connect internally to the proposed commercial building, described below, necessitating changes the existing rowhouse's floor heights, partial removal of a party wall, and additional excavation of the existing cellar as approved by the LPC.

As proposed, a new eight-story commercial building would replace the two noncontributing low-rise buildings on the site. The proposed new building would rise to a height of eight stories, or 115 feet, at the Canal Street and Broadway street lines before setting back to accommodate mechanical and elevator bulkheads. Its eighth floor would be marked at the street line by an open colonnade and cornice, with the enclosed portion of the floor being visibly set back from the street line by 8 to 8.5 feet. The building would feature a contemporary design with ornamental cast zinc panels, painted metal panels with a channel profile, and glass and aluminum windows. The proposed project, including the historic rowhouse and the new commercial building, would contain 30,360 square feet of commercial floor area (4.98 FAR), including 6,030 square feet of retail and office uses on the ground floors, and additional 6,066 gross square feet of retail and office uses in the cellar.

To facilitate the propose project, the applicant requests the grant of a special permit pursuant to ZR Section 74-711 to modify the use regulations in ZR Section 42-14(D)(2)(b) to allow Use Group 6 retail and office use on the ground floor and cellar of the new building and historic building, and modify ZR Section 43-43 (Maximum Height of Front Wall and Required Front Setbacks) to allow the proposed building to rise to 115 feet at street line before setbacks.

On February 20, 2018, the LPC approved the proposed new building, restoration and alterations to the rowhouse (Certificate of Appropriateness 19-20730, Status Update Letter 19-16588), and

issued a report (MOU 19-21537) stating that a program has been established for continuing maintenance, and that the proposed restorative work required under the program contributes to a preservation purpose.

ENVIRONMENTAL REVIEW

This application (C 190250 ZSM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 19DCP042M. The lead agency is the City Planning Commission. After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on June 17, 2019.

UNIFORM LAND USE REVIEW

This application (C 190250 ZSM) was certified as complete by the Department of City Planning on June 17, 2019, and was duly referred to Manhattan Community Board 2 and 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 on July 18, 2019, and that date by a vote of 34 to 1 with 0 abstentions, adopted a resolution recommending disapproval with conditions as described below:

“unless the applicant agrees to insert provisions in the retail leases that restrict deliveries to daytime hours and prohibits the retail tenants from blocking the sidewalk with garbage, and prohibit illuminated or animated signage in the retail spaces”, and disapproval of the proposed bulk modifications “unless the applicant works with the Metropolitan Transportation Authority (MTA) to see that an entrance (preferably ADA-compliant) is incorporated into the building to ameliorate the worsening

congestion that will be caused by the increased number of pedestrians directly generated by the retail and office uses of the proposed building”.

Borough President Recommendation

The application was considered by the Borough President, who on August 26, 2019 issued a recommendation to approve the application with the following conditions:

- “1. The Applicant works with the MTA to determine the feasibility of incorporating the existing subway entrance adjacent to the project site into the building; and
2. The Applicant provides relocation assistance during construction and right-of -return to existing retail tenants at the Project Site.”

City Planning Commission Public Hearing

On August 14, 2019 (Calendar No. 10), the City Planning Commission scheduled August 28, 2019, for a public hearing on this application (C 190250 ZSM). The hearing was duly held on August 28, 2019 (Calendar No. 30). There were three speakers in favor and one opposed.

A three-person applicant team, comprising of a land use attorney, a representative of the owner, and the project architect, testified in favor of the application. The applicant team described the proposed project and land use action, the design of the new commercial building and the proposed preservation work to be done on the rowhouse. They also described the relationship of the project with the surrounding neighborhood., The land use attorney stated, in response to Community Board 2’s recommendation, that incorporating an ADA-accessible subway entrance into the proposed project is not feasible, due to the limited size of the development site, modest scale of the project, and engineering difficulties related to site constraints and excavation.

A member of the public spoke in opposition, questioning the proposal.

There were no other speakers and the hearing was closed.

CONSIDERATION

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

The special permit to modify the use regulations of Section 42-14(D)(2)(b) and to modify the bulk regulations of Section 43-43 would facilitate the preservation of a three-story historic federal-style rowhouse, the construction of a new eight-story commercial building, and the use of the ground floors and cellar space in the two buildings for Use Group 6 retail and office.

The Commission believes that the modification of bulk regulations to allow the proposed eight-story commercial building to rise to 115 feet at street line, without setbacks, would have minimal adverse effects on the structures or open space in the vicinity in terms of scale, location and access to light and air. The Commission observes that the project site is a corner lot located on two wide streets. The buildings along Broadway in the immediate proximity of the project site in the SoHo Cast-iron Historic District are typically loft-style buildings ranging from five stories and 80 feet to nine stories and over 130 feet. Canal Street, on the other hand, has a more varied built context, interspersed with low-rise rowhouses, tenements, and loft buildings up to nine stories and over 120 feet in height. Therefore, the Commission believes that the modification of the bulk regulations would facilitate a building form that is more consistent with the surrounding loft buildings, which rise without setback and through its architectural expression contributes to the built character of the historic district. The Commission also notes that the height of the commercial building would be consistent with other tall buildings along Broadway and Canal Street, and the distribution of the bulk across the zoning lot is in keeping with the variety of scale found along Canal Street and elsewhere in the surrounding area. Given the prominent location of the project site, the Commission believes the proposed project would enhance the continuity of the surrounding area's street walls and better anchor the corner of the block and the southern end of SoHo's Broadway corridor.

The Commission believes that the modification of use regulations to allow Use Group 6 uses in the two buildings would not adversely affect any conforming uses within the buildings, as such

retail uses exist on the project site today, and the allowance for office would provide lobby area, storage and access to the upper floor as-of-right office uses.

The Commission also believes that such use modification would have minimal adverse effects on the conforming uses in the surrounding area. The Commission recognizes that over the years, the surrounding SoHo neighborhood has evolved from a primarily manufacturing district to a mixed-use area with a dynamic mix of retail, office, a variety of dwellings, including JLWQAs, residential lofts and Use Group 2 residences, and a handful of remaining industrial uses. The Commission observes that the buildings along the Broadway and Canal Street typically contain commercial uses on the ground floor, including retail establishments and office lobbies. The Commission therefore believes that the proposed ground floor Use Group 6 retail and office uses are analogous to the uses occupying most of the surrounding buildings, and that the proposed project is consistent with the prevailing land use pattern found in the surrounding area.

The Commission appreciates the community's desire to have an ADA-accessible subway entrance to the N/Q/R/W Canal Street Station as part of this project. However, the Commission believes that, given the small size of the site and the modest scale of the development, the proposed project is not a feasible site for this type of improvement. The Commission also recognizes that there is an ADA accessible station at the J/Z Canal Street station, two blocks away.

The LPC report states that a program has been established for continuing maintenance that will result in the preservation of the Historic Rowhouse, and that the required restoration 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. The Commission believes that the renovation and preservation of the Historic Rowhouse, to be accomplished as a result of the special permit, will enhance the architectural and historic fabric of the SoHo Cast-Iron Historic District.

FINDINGS

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

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

RESOLUTION

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

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by 419 MM LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use regulations of Section 42-14(D)(2)(b) to allow Use Group 6 uses (retail uses and office use) on the ground floor and cellar, and to modify the height and setback regulations of Section 43-43 (Maximum Height of Front Wall and Required Front Setbacks) of an existing 3-story building and proposed 8-story enlargement on property located at 419-423 Broadway a.k.a. 301 Canal Street (Block 231, Lot 1), in an M1-5B District, within the SoHo Cast-Iron Historic District, Borough of Manhattan, Community 2, is approved subject to the following terms and conditions:

1. The property that is the subject of this application (C 190250 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Morris Adjmi Architects filed with this application and incorporated in this resolution:

<u>Dwg. No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-001	Zoning Analysis	6/11/19
Z-002	Zoning Lot Site Plan	6/11/19
Z-010	Waiver Plan - Site	6/11/19
Z-011	Waiver Plan - Cellar	6/11/19
Z-012	Waiver Plan – Ground Floor	6/11/19
Z-020	Waiver Section – East-West	6/11/19
Z-021	Waiver Section – North-South	6/11/19

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this resolution and the restrictive declaration described below and any subsequent modifications to either document shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.
5. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
6. Development pursuant to this resolution shall be allowed only after the restrictive declaration is executed by 419 MM LLC, the terms of which are hereby incorporated in

this resolution, shall have been recorded and filed in the Office of the Register of the City of New York, New York County.

7. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution and the attached restrictive declaration whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure or breach of any of the conditions as stated 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 or of the attached restrictive declaration.
8. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 190250 ZSM), duly adopted by the City Planning Commission on September 25 (Calendar No. 16), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

MARISA LAGO, *Chair*
KENNETH J. KNUCKLES, ESQ., *Vice Chairman*
DAVID J. BURNEY; ALLEN P. CAPPELLI, Esq.,
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HOPE KNIGHT, ANNA HAYES LEVIN, ORLANDO MARIN,
LARISA ORTIZ, RAJ RAMPERSHAD *Commissioners*

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July 19, 2019

Marisa Lago, *Chair*
City Planning Commission
22 Reade Street
New York, NY 10007

Dear Ms. Lago:

At its Full Board meeting on July 18, 2019, CB#2, Manhattan (CB2, Man.), adopted the following resolution:

***419 Broadway** (on the corner of Canal St.) and also known as **301 Canal St.** – DCP 190250 ZSM is an application for a special permit pursuant to ZR Section 74-711 to facilitate the construction of a new eight-story commercial office building with ground-floor and cellar retail use and the preservation of a three-story federal-era row house; a modification of Section 42-14D(2)(b) to allow UG 6 below the second floor; and a modification of Section 43-43 to allow the proposed development to encroach within the initial setback distance above the maximum front wall height of 85 feet.

Whereas:

1. The project area is in an M1-5B zoning district that is in the SoHo-Cast Iron Historic District and the SoHo Historic District.
2. The tax lot in question was created in 2017 by merging three previously-existing tax lots, which correspond to three existing buildings: Lot 11 is a three-story, contributing building in the SoHo Historic District (known as 423 Broadway) with no Certificate of Occupancy (C of O) on record. Lot 1 is occupied by a two-story building with office over retail with no C of O; Lot 12 is occupied by a one-story retail building with a C of O.
3. The applicant proposes to demolish these last two buildings and construct a new eight-story building with internal connections to the historic building and containing UG 6 retail and UG 6 offices on the ground floor and UG 6 office above.
4. The proposed development would rise to its full height of eight stories, or 115 feet at the Canal St and Broadway street lines before setting back to accommodate mechanical and elevator bulkheads, hence the request for a modification of Section 43-43.
5. At completion, the FAR for the site would be 5, the maximum permitted for commercial uses in M1-5B.

6. The vast majority of properties within 600 feet of the development site date from the 19th century and have been improved with commercial or mixed-use residential and commercial buildings with retail on the ground floor.
7. The architect informed the committee that there will be 5,170sf of retail space on the ground floor, and 3,070sf of retail space in the cellar, excluding the lobby and mechanicals.
8. The Land Use committee favored the applicant's suggested division of the retail space into three smaller spaces with access on Broadway. However, the applicant suggested that deliveries would occur on Canal St., i.e., in front of the two subway entrances and the entrance to the office space. Not only is the sidewalk narrow all around the site, but it narrows further in front of the proposed delivery zone, and near the corner, it is encumbered with two subway staircases, two light posts and a fire hydrant--which already leads to bottlenecks and crowding.
9. The Canal St. subway stop of the N/Q/R lines has no ADA access; the nearest MTA elevator is at Lafayette and Canal Sts., which is more than 500' away and serves only the northbound line, offering no accessible transfer between the northbound and southbound platforms.
10. During the CPC Review Session for 419 Broadway, Commissioners Levin and de la Uz raised the issue of subway station access, calling the proposed plan that leaves subway stairs on the public sidewalk, a "missed opportunity." The Commissioners noted that when possible, the Commission looks to include better access to the subway. Indeed, it is City policy as stated by MTA President Andy Byford and noted in the MTA's May 2018 [Fast Forward](#) Plan.
11. During the Land Use committee meeting, several members of the public spoke to the need to improve pedestrian circulation on the corner of Canal and Broadway and the need for ADA accessibility. CB2 received correspondence from the public on this subject as well.

Therefore, CB2 recommends:

- 1. Denial of the modification (Section 42-14D (2)(b)) to allow UG 6 retail below the second floor unless the applicant agrees to insert provisions in the retail leases that:**
 - a. Restrict deliveries to daytime hours and prohibits the retail tenants from blocking the sidewalk with garbage.**
 - b. Prohibit illuminated or animated signage in the retail spaces.**
- 2. Denial of the bulk waiver (Section 43-43) unless the applicant works with the MTA to see that an entrance (preferably ADA-compliant) is incorporated into the building to ameliorate the worsening congestion that will be caused by the increased number of pedestrians directly generated by the retail and office uses of the proposed building.**

Vote: Passed with 34 Board members in favor and 1 Board members opposed (J. Liff).

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

Sincerely,



Carter Booth Chair
Community Board #2, Manhattan



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



Frederica Sigel, Co-Chair
Land Use & Business Development Committee
Community Board #2, Manhattan

CB/jt

- c: Hon. Jerrold Nadler, Congresswoman
Hon. Brian Kavanagh, State Senator
Hon. Deborah Glick, Assembly Member
Hon. Gale A. Brewer, Manhattan Borough President
Hon. Margaret Chin, Council Member
Andrew Cantu, Dept. of City Planning



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Gale A. Brewer, Borough President

August 26, 2019

**Recommendation on ULURP Application C 190250 ZSM
419 Broadway by 419 MM LLC**

PROPOSED ACTIONS

419 MM LLC (the “Applicant”) is seeking a special permit pursuant to § 74-711 of the New York City Zoning Resolution (“ZR”) to modify the following sections:

- § 42-14D(2)(b): restricting the uses permitted below the second floor to those in Use Groups 7, 9, 11, 16, 17A, 17B, 17C, and 17E; and
- § 43-43 (Maximum Height of Front Wall and Required Front Setbacks): requiring a 15-foot setback at a front wall height of 85 feet.

This Applicant seeks this permit to allow for the construction of a new eight-story commercial office building with ground-floor retail use located at 423 Broadway (Block: 231 Lot:1). Additionally, the Applicant will preserve and restore the three-story, federal-era row house adjacent to the new building at 419 Broadway, (Block: 231, Lot: 11) within the M1-5 Zoning district of the SoHo-Cast Iron Historic District of Manhattan Community District 2 (CD2).

BACKGROUND

Area Context

The Project Site is located in CD2 of Manhattan. It is in the SoHo-Cast Iron Historic District and is located in a M1-5B zoning district. In 1973, the SoHo Historic District was designated by the Landmark Preservation Commission (LPC). The area is approximately 26 blocks and includes 500 buildings. The district is bounded by West Houston Street, Crosby Street, Howards Street, Broadway, Canal Street and West Broadway. The neighborhood largely consists of five to eight-story building with residential, commercial and manufacturing uses. The Project Site is on the northwest corner of Canal Street and Broadway. The immediate area surrounding the site largely

consists of buildings around five to eight-stories in height, with retail on the ground floor and commercial uses on the upper floors.

The area is served by the N/Q/R/W trains at Canal Street, with an entrance located alongside the Project Site on Canal Street. The 6 and J/M/Z trains are located 0.2 miles to the east of the Project Site. The M55 bus, which runs south along Broadway, has a stop approximately 400 feet from the Project Site.

Site Description

The Project Site has a lot area of approximately 6,090 square feet, with approximately 77 feet of frontage along Canal Street and 79 feet of frontage along Broadway. The site is located in a M1-5B zoning district. The project site was originally comprised of three lots located on Block 231: 1, 11, and 12. Lot 1, located on Canal Street, is currently occupied by a two-story building containing retail on the ground floor and office use on the second floor. Lot 12, located at the corner of Canal Street and Broadway, is currently occupied by a 1-story structure with retail use. The Certificate of Occupancy of this lot, dating back to 1953, indicates a ground floor use of “stores”. Lot 11 contains a three-story historic building, which according to the Applicant, was constructed in 1823 and is a Federal-style building. The building’s ground floor has retail space and the upper floors contain office space. The lots were merged in 2017 to facilitate the Proposed Development.

Project Description

The Applicant is seeking a special permit regarding § 74- 711 ZR to facilitate the building of an eight-story commercial office building with ground-floor retail use. The structures on former lots 1 and 12 will be demolished and the exterior of the historic building on former lot 11 will be restored and maintained in perpetuity according to LPC standards by a memorandum of understanding. The Proposed Development on the Project Site would result in an eight-story building containing retail (Use Group 6C) on the ground floor and office space (Use Group 6B) on the upper floors. The historic building would be connected internally to the new building and would have the same uses on the ground floor and upper floors as the new building.

In a special agreement the Applicant has promised to restore the historic building. The repairs have been approved through special permit LPC 19-21537 and will include:

- 1) Repairs to cracked bricks and mortars;
- 2) Removal of the non-historic, aluminum storefront;
- 3) Removal of paint and graffiti on the upper stories; and
- 4) Replacement of windows and the roof.

According to the Applicant, the overall development will contain approximately 30.360 square feet of floor area (4.98 Floor Area Ratio [FAR])¹.

COMMUNITY BOARD RECOMMENDATION

On July 18, 2019 at the full board meeting, Community Board 2 (CB2) voted to disapprove this application with modifications. Thirty-four board members voted in favor of disapproval and 1 board member opposed. The modifications requested included:

1. Denial of the modification (§ 42-14D (2)(b)) to allow Use Group 6 retail below the second floor unless the applicant agrees to insert provisions in the retail leases that:

- Restrict deliveries to daytime hours and prohibits the retail tenants from blocking the sidewalk with garbage and deliveries; and
- Prohibit illuminated or animated signage in the retail spaces.

2. Denial of the bulk waiver (§ 43-43) unless the applicant works with the Metropolitan Transit Authority (MTA) to see that an entrance is incorporated into the building to reduce the increased congestion that will be caused by the heightened numbers of pedestrians directly generated by the retail and office uses of the proposed building. CB2 prefers that this entrance complies with requirements on the Americans with Disabilities Act (ADA).

BOROUGH PRESIDENT'S COMMENTS

This particular corner of Broadway and Canal Street is underbuilt and while it has served as retail space for many small businesses over the years, creating a new building that maintains this use as well as providing additional use in the form of office space which will attract more businesses and employees to the area.

This is already a congested area for both cars and pedestrians and this new development will exacerbate the street conditions during its construction and once the building is complete. Other business-heavy districts within the city seek to address this through overlays that require construction to incorporate additional subway entrances within their lots to help relieve congestion. These improvements often result in ADA-compliant entrances, which allow disabled New Yorkers more access to the subway.

There was a lost opportunity by not requiring this new development to incorporate subway entrances that are ADA-compliant. Zoning bonuses are generally provided in exchange for such improvements. The Project Site is within a historic district which conflicts with such bonuses.

¹ The maximum FAR in this zoning district is 5.0.

The Department of City Planning (DCP) and the MTA should explore ways in which more entrances can be incorporated in new buildings in more high-traffic areas, exclusive of zoning bonuses.

Only 25 percent of our subway stations have elevators.² The closest ADA-compliant entrance from the Project Site that provides access to N/R/Q/W train is at 14th Street, over a mile away. The 6 train at Canal Street does have an ADA-compliant entrance but only allows for ADA access to that train line, preventing transfers by disabled riders to the J/Z/N/R/Q/W trains that are also at this station. In this instance, because there can be no floor area bonus, we ask that the applicant work with the MTA to determine the feasibility of incorporating the existing entrance into the new building, or some alternate solution that would relieve street congestion.

Additionally, this office is concerned about the existing tenants at the site. The Project Site presently is occupied by some retail tenants. Because the remaining stores are small businesses, we are concerned about the owners' ability to relocate within the area for comparable rent. While this is outside of the scope of the application, we ask that the Applicant assist the tenants in relocating to another space within the area and consider offering the tenants the right to return to the new building once it is complete, at the same rent.

We are pleased that this building will be contextual with the surrounding area and the historic district in which it is located, and that the historic building on the site will be restored and preserved.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends approval of ULURP Application No. C 190317 ZSM with the following conditions:

- 1. The Applicant works with the MTA to determine the feasibility of incorporating the existing subway entrance adjacent to the project site into the building; and**
- 2. The Applicant provides relocation assistance during construction and right-of - return to existing retail tenants at the Project Site.**



Gale A. Brewer
Manhattan Borough President

² <https://www.nytimes.com/interactive/2019/02/11/nyregion/nyc-subway-access.html>

419 Broadway

DECLARATION

Dated: _____, 20____

Location: Block 231, Lot 1
New York County, New York

Record & Return to:

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

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SCHEDULE OF EXHIBITS

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DECLARATION made as of the ___ day of _____, 20__ by 419 MM LLC, a Delaware limited liability corporation having an address c/o United American Land, LLC, 73 Prince Street, 6th floor, New York, New York, 10012 (“Declarant”).

W I T N E S S E T H:

WHEREAS, Declarant is the owner in fee simple of certain real property located in the Borough of Manhattan, City, County and State of New York, which property is designated as Block 231, Lot 1 on the Tax Map of the City of New York and by the street addresses 419-23 Broadway and 301 Canal Street, and is more particularly described on Exhibit A attached hereto (collectively, the “Premises”); and

WHEREAS, pursuant to the provisions of Section 3020 of the New York City Charter and Title 25, Chapter 3 of the Administrative Code of the City of New York (the “Landmark Preservation Law”), the Landmarks Preservation Commission (the “LPC”) has designated an area that includes the Premises as the SoHo Cast-Iron Historic District (the “Historic District”) because of its special character or historical or aesthetic interest or value; and

WHEREAS, a portion of the Premises, formerly designated as Block 231, Lot 11 and by the street address 423 Broadway (the “423 Broadway Premises”), is improved with a three-story building which is a contributing building within the Historic District (the “Designated Structure”);

WHEREAS, the remaining portion of the Premises, formerly designated as Block 231, Lots 1 and 12 and by the street addresses 419-21 Broadway and 301 Canal Street (the “Proposed Development Premises”), is proposed to be redeveloped with a new 8-story commercial building (the “Proposed Development”):

WHEREAS, the Premises constitutes a single “zoning lot”, as defined in Section 12-10 of the Zoning Resolution; and

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WHEREAS, Royal Abstract of New York LLC (“Title Company”) has certified as of _____, 20__, that Declarant and _____ are the sole parties-in-interest (“Parties in Interest”), as that term is defined in the zoning lot definition in Section 12-10 of the Zoning Resolution of the City of New York, to the Premises, a copy of which certification is attached hereto as Exhibit B; and

WHEREAS, _____ has executed an instrument waiving its right to execute, and subordinating the lien of its interest in the Premises to, this Declaration, a copy of which instrument is attached as Exhibit C hereto; and

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

WHEREAS, as of the date hereof, Title Company has determined there has been no change in the certification attached as Exhibit B, and Declarant represents and warrants that the Parties in Interest listed in Exhibit B are the only known Parties in Interest in the Premises as of the date hereof; and

WHEREAS, Zoning Resolution Section 74-711 provides that the City Planning Commission (the “CPC”) may permit modification of use and bulk regulations, except for floor area ratio regulations, applicable to zoning lots containing a landmark building ; and

WHEREAS, pursuant to Application No. 190250 ZSM (the “ Special Permit Application”), Declarant applied to the City Planning Commission of the City of New York (the “CPC”) for a special permit pursuant to Section 74-711 of the Zoning Resolution (the “Special Permit”), in connection with the Designated Structure and the Proposed Development, to modify (i) Zoning Resolution Section 42-114(D)(2)(b) (Uses Permitted as a Matter of Right) to permit Use Group 6 commercial uses below the level of the second floor in the Designated Structure and the Proposed

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Development and (ii) Section 43-43(Maximum Height of Front Wall and Required Setbacks) to permit a modification to the height and setback regulations for the Proposed Development; and

WHEREAS, consistent with the requirements of Section 74-711 of the Zoning Resolution, Declarant has proposed to perform certain restoration work on the Designated Structure and has agreed to establish a program for continuing maintenance that will result in preservation of the Designated Structure; and

WHEREAS, Section 74-711(a)(1) 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, the LPC, at the public meeting held on December 12, 20 17, voted to issue the report to the CPC as requested in connection with the Application and subsequently issued report MOU 19-21537, dated February 20, 2018 (the "LPC Report"); and

WHEREAS, the LPC issued the Certificate of Appropriateness 19-20730, dated February 20, 2018, (the “COA”) for the demolition of the existing buildings on the Proposed Development Premises and the construction of the Proposed Development (such demolition and new construction, the “New Development Work”) and, as set forth in the LPC Report, will issue one or more Certificates of No Effect or Certificates of Appropriateness (collectively, the “Designated Structure Landmark Permits”) for the restoration work and alterations on the Designated Structure proposed by Declarant (such restoration work and alterations, as described in the Designated Structure Landmark Permits, the "Landmark Work"). Copies of the LPC Report and the COA are annexed hereto as Exhibit D; 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

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WHEREAS, Declarant desires to restrict the manner in which the 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 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 Premises, which shall inure to the benefit of the City of New York, and which shall run with the Premises and bind Declarant and its heirs, successors and assigns so long as they have a right, title or interest in the Premises or any part thereof.

ARTICLE I

DEFINITIONS

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

1.1 “Buildings Department” shall mean the New York City Department of Buildings, or any successor to the jurisdiction thereof.

1.2 “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.

1.3 “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.

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1.4 “City” shall mean the City of New York.

1.5 “City Council” shall mean the New York City Council or any successor to the jurisdiction thereof.

1.6 “CPC” shall mean the New York City Planning Commission, or any successor to the jurisdiction thereof.

1.7 “DCP” shall mean the New York City Department of City Planning 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 Premises unless and until it succeeds to the interest or obligation of Declarant by purchase, assignment, foreclosure or otherwise, or (ii) a tenant of the Premises, unless such tenant holds a lease to all or substantially all of the Premises.

1.9 “Designated Structure” is defined in the first Whereas Clause set forth above.

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

1.11 “Force Majeure” shall mean: strike, lockout or labor dispute(s); inability to obtain materials or reasonable substitutes therefore; 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 Premises of such a nature as to make completion of the Landmark Work not feasible; a taking of the Premises, or a portion thereof, by condemnation or eminent domain; failure of a public utility to provide power, heat or light; unusual delay in

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transportation; material delays by the City, State or United States Government, or any agency or instrumentality thereof, in the performance of any work or processing or approval of any applications required in order to permit Declarant to carry out its obligations pursuant to this Declaration unless due to any act or failure to act by Declarant; denial to Declarant by any owner of an enforceable interest in adjoining real property, including any private fee owner or ground lessee of adjoining real property, or any agency of the City or State having an enforceable interest in adjoining real property, including sidewalk or streets, of a right to access to such adjoining real property, if such access is required to accomplish the obligations of the Declarant pursuant to this Declaration; the pendency of a litigation not initiated by Declarant or similar proceeding which suspends or materially and adversely affects the ability of the Declarant to accomplish the obligations of the Declarant pursuant to this Declaration; or other conditions similar in character to the foregoing which are beyond the control of Declarant. No event shall constitute a Force Majeure unless Declarant complies with the procedures set forth in Sections 2.2 and 6.2 hereof.

1.12 “Landmark Work” is defined in Section 2.1 hereof.

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) any institutional mortgagee of all or substantially all of the Premises listed in Exhibit B or (b) the first mortgagee of a condominium unit within the Designated Structure.

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

1.16 “PCO” is defined in Section 2.2 hereof.

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1.17 “Special Permit” is defined in the Whereas clauses set forth above.

1.18 “Special Permit Application” shall mean the application to the City Planning Commission for the Special Permit.

1.19 “Special Permit Space” shall mean the cellar and first floors in the Proposed Development and in the Designated Structure and the seventh and eighth floors in the Proposed Development. Notwithstanding the foregoing, no space shall be deemed Special Permit Space if it is permitted as of right within the Premises by the terms of the Zoning Resolution then in effect.

1.20 “TCO” is defined in Section 2.3 hereof.

1.21 “Zoning Resolution” shall mean the Zoning Resolution of the City of New York.

ARTICLE II

DEVELOPMENT, PRESERVATION, REPAIR AND

MAINTENANCE OF THE DESIGNATED STRUCTURE

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

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-001	Zoning Analysis	[June 11, 2019]
Z-002	Zoning Lot Site Plan	[June 11, 2019]
Z-010	Waiver Plan – Site	[June 11, 2019]
Z-011	Waiver Plan – Cellar	[June 11, 2019]
Z-012	Waiver Plan – Ground Floor	[June 11, 2019]
Z-020	Waiver Section – East-West	[June 11, 2019]
Z-021	Waiver Section – North-South	[June 11, 2019]

2.2 Landmark Work. (a) The “Landmark Work” shall be a comprehensive exterior restoration program for the Designated Structure to bring the Designated Structure to a sound first-class condition, including the following:

Storefront

- Replicate cast iron columns at ground floor and restore historic wood projecting storefront, cornice, and metal sign band.

Paint analysis

- Undertake tests (where possible) to determine the historic colors of the fire escape, cornice, and windows.

Masonry - primary facade

- Undertake tests to determine the most efficacious method to remove paint and graffiti from the brick and brownstone.
- Remove paint and graffiti from brick and brownstone based on testing.
- Rake and repoint open and mismatched brick mortar joints with new pointing mortar, based on analysis by an architectural conservator. Color, texture, and tooling to match historic condition.
- Remove non-historic anchors from brick facade.
- Patch or replace damaged bricks. New brick to match historic brick in size, color, texture, and bond. Patch repairs to match historic brick color and texture.
- Remove parging and repair brownstone lintels at top floor or replace lintels with cast stone lintels to match historic brownstone in color, texture, historic profile and tooling.
- Repair brownstone lintels at second floor with a restoration patch mix matching the historic brownstone in color, texture, historic profile and tooling.

Windows - primary facade

- Replace non-historic wood windows and aluminum panning with new two-over-two wood windows to match historic windows. Paint wood windows to match historic color as determined by the finish investigation.

Cornice

- Repair sheet metal cornice where necessary.
- Scrape and repaint sheet metal cornice to match historic color as determined by the finish investigation.

Fire escape

- Remove ladders and repair fire escape baskets as necessary. Scrape and repaint fire escape to match historic color as determined by the finish investigation.

Masonry - rear elevation

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- Undertake tests to determine the most efficacious method to remove paint and mastic coatings from the brick.
- Remove paint and mastic coatings from brick based on testing.
- Rake and repoint all joints with new pointing mortar, based on analysis by an architectural conservator. Color, texture, and tooling to match historic condition.
- Patch or replace damaged bricks. New brick to match historic brick in size, color, texture, and bond. Patch repairs to match historic brick color and texture.
- Replace deteriorated sills with new bluestone sills.
- Rebuild southern part of wall with new brick to match historic brick in size, color, texture, and coursing. Construct new window opening to match likely historic condition with segmental arch lintel and bluestone sill.

Windows - rear elevation

- Replace non-historic windows with new two-over-two wood windows.
- Restore missing window at southern end of elevation with new two-over-two wood window.

Roof

- Repair roofing and waterproofing systems as directed by project engineer.
- Replace non-historic dormers with new dormer at center of pitched roof.
- Clad pitched part of roof in slate.

Chimney

- Undertake tests to determine the most efficacious method to remove paint and graffiti from the brick.
- Remove paint and graffiti from brick based on testing.
- Rake and repoint open and mismatched brick mortar joints with new pointing mortar, based on analysis by an architectural conservator. Color, texture, and tooling to match historic condition.
- Patch or replace damaged bricks. New brick to match historic brick in size, color, texture, and bond. Patch repairs to match historic brick color and texture.

(b) The issuance of the Special Permit is premised on, inter alia, the agreement by Declarant to the performance of the Landmark Work in conformity with the Designated Structure Landmark Permits, the LPC Report and the requirements thereof.

2.3 Certificate of Occupancy. (a) Written notice that the Declarant is seeking a temporary certificate of occupancy ("TCO") or a permanent certificate of occupancy ("PCO") for the Special

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Permit Space shall be provided to the LPC seven (7) days prior to the Declarant applying for a TCO or PCO, as applicable. Subject to Section 2.2(b) hereof, no TCO or PCO for the Special Permit Space 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.

(b) 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 fourteen (14) calendar days after Declarant has requested such written notice. Upon receipt of the written notice from the Chairperson of the LPC that the conditions set forth in (a) and (b) above have been satisfied, the Buildings Department may grant, and Declarant may accept, a TCO or PCO, as applicable, for all or part of the Special Permit Space. Notwithstanding anything to the contrary contained herein, the Chairperson of the LPC shall declare that the Landmark Work has been satisfactorily completed notwithstanding that minor and insubstantial details of construction or mechanical adjustment remain to be performed.

(c) Declarant shall permit inspection of the Designated Structure by the Chairperson of the LPC and representatives designated by the Chairperson of the LPC upon reasonable notice and at reasonable times in connection with the notice described in Section 2.2 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

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

(ii) In the event that Declarant reasonably believes that Declarant's 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. The written notice of Declarant shall include a description of the condition or event, its cause (if known to Declarant), its probable duration, and in the reasonable judgment of Declarant, the impact it is reasonably anticipated to have on the completion of the Landmark Work. The Chairperson of the LPC shall, within fourteen (14) calendar days of its receipt of the written notice of Declarant, (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, as applicable, for all or part of the Special Permit Space, or (B) notify Declarant that it does not reasonably believe a Force Majeure has occurred. 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 (i) Declarant or the owner of any other portion of the Premises from applying for or receiving a "core and shell" TCO or a TCO or PCO for any floor area in the Designated Structure or Proposed Development or on the Premises which is not Special Permit Space or from entering into agreements affecting all or any portions of the

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Designated Structure or Proposed Development, including the Special Permit Space, or the Premises prior to completion of the Landmark Work, or (ii) Declarant or the owner of any other portion of the Premises from seeking, applying for or obtaining permits or building notices or other authorizations or approvals from the Buildings Department or any other governmental agency to perform work, including tenant work, in the Designated Structure or on the Premises, or permit other use of or the transfer of additional development rights, prior to the completion of the Landmark Work, or from entering into agreements affecting all or any portions of the Designated Structure or the Premises prior to completion of the Landmark Work.

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

2.5 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. The first Periodic Inspection shall be made on or within two months of the

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fifth anniversary of the issuance by the LPC of the Notice of Compliance pursuant to the LPC Report, and, thereafter, Periodic Inspections shall be made every five years on or within two months of the anniversary of the date of such initial or subsequent inspection. In the event that Declarant has accepted a TCO or PCO for all or part of the Special Permit Space without Declarant having first received the Notice of Compliance, the first periodic inspection shall be made on or within two months of the fifth anniversary date of the issuance of such TCO or PCO. The Periodic Inspection shall be done by a preservation architect, engineer or other qualified person knowledgeable about the preservation of historic structures (the "Preservation Architect") selected by Declarant from a list prepared by Declarant and approved by the Chairperson of the LPC as to their credentials. Declarant shall update such listing upon the request of the Chairperson of the LPC if the Chairperson of the LPC reasonably determines that any party on the approved list no longer possesses the credentials to serve as preservation architect. In addition, Declarant may periodically supplement the list of Preservation Architects, subject to the reasonable approval of the Chairperson of the LPC as to their credentials. The Preservation Architect shall make a thorough inspection of the exterior of the Designated Structure. The Periodic Inspection shall include (but not be limited to) the following portions of the exterior: storefront, masonry facades, windows, cornice, roof and chimney.

(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: storefront, masonry walls, windows, cornice, fire escape baskets, roof and chimney.

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(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 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 that 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 subsection, Declarant shall apply for all necessary permits or certificates from the LPC within 45 days of delivery of the completed report to the Chairperson of LPC, unless the work to be performed is of a nature or complexity that more time is reasonably required to

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accurately prepare such applications, in which case such applications shall be made in a prompt and timely manner as may be reasonable under the particular circumstances. Declarant shall use its best efforts to assure that all repairs, rehabilitation, 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 or due to the nature of the repair work, as determined by the Chairperson of the LPC, in the exercise of his or her reasonable judgment, 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 or nature of the required work 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 Premises from unauthorized access. 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

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remove any debris consisting of exterior features or otherwise clear the 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 Premises following the Emergency Incident, in order that the LPC may have a representative present during such inspections if Declarant is made aware of or receives notice of the timing of such inspections..

(iii) Within sixty (60) 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 subsection (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 subsection (iii)(B), within ninety days of receiving the report of the Preservation Architect, Declarant shall apply for all

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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 “Immediate Emergency Declaration” issued by the Department of Buildings. All repair, restoration, rehabilitation, 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 or due to the nature of the work to be performed, as determined by the Chairperson of the LPC in the exercise of his or her reasonable judgment, Declarant shall apply in writing to the LPC for an extension of time within which to complete such work. Such extensions shall be for a stated additional period of time that is related to the period of the delay and shall not be unreasonably withheld.

(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.

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(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. Subject to the provisions of Section 4.4 hereof, 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 Premises 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. The City's actual costs hereunder shall include, but not be limited to, payments by the City of New York to any lawyers, consultants, contractors, painters, engineers, architects and skilled artisans required to be hired to perform or supervise such work. To the extent such actual costs are expended by the City of New York, the LPC shall have a lien on the 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 commercial uses in the Designated Structure; provided that the LPC has received notice by said parties in accordance with Section 6.2.

ARTICLE III

CONDOMINIUM BOARD

3.1 General. 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

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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, Gilsey House, Inc. in the City and County of New York shall be released from its liability hereunder. The following provisions of this Article 3 shall be operative only in the event that the Board is formed as described in this Section 3.1.

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

3.3 Condominium Declaration. Every deed conveying title to, or a partial interest in, the Premises and every lease of all or substantially all of the 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.

ARTICLE IV

EFFECT AND ENFORCEMENT

4.1 Effective Date.

(a) This Declaration shall have no force and effect unless and until the date of final approval of the Special Permit by the CPC and pursuant to Sections 197-c and 197-d of the New York City Charter (the “Effective Date”). 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.

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

4.2 Filing and Recordation. Declarant shall file and record at its sole cost and expense this Declaration in the Register's Office, indexing it against the Premises, 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. No person other than Declarant, the LPC or the City shall have any right to enforce the provisions of this Declaration. 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

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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 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 Premises, or any part thereof, including ground lessees; provided the LPC has received notice by said parties in accordance with Section 6.2.

Notwithstanding the foregoing, in the event that the Designated Structure is or is converted to a condominium or cooperative, the right to notice and cure provided in this subsection shall apply only to the condominium or cooperative board and to any owner of space occupied by commercial 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 subsection 4.4 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

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

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

4.5 Acknowledgment of Covenants. Declarant acknowledges that the restrictions, covenants, easements, obligations and agreements in this Declaration, which are an integral part of the Special Permit, will protect the value and desirability of the Premises as well as benefit the City of New York and all property owners within a one-half mile radius of the 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 Premises or the Designated Structure, nor any present or presently existing future estate or interests in the Premises or the Designated Structure, nor any lien, obligation, enforceable covenant, limitation or encumbrance of any kind, the requirements of which have not been waived or subordinated, which precludes, directly or indirectly,

imposition on the 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 Buildings 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.

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Notwithstanding anything to the contrary contained in this Declaration, the City will look solely to the fee estate and interest of Declarant in the Premises, 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.

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

4.11 Subordination. 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 Premises, to execute this Declaration or to subordinate such interest to the Declaration

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and waive its right to execution. Any mortgage or other lien encumbering the Premises 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 Premises or the Designated Structure.

ARTICLE V

AMENDMENTS, MODIFICATIONS AND CANCELLATIONS

5.1 Amendment or Cancellation. Except as provided in Section 4.1 above, this Declaration may be amended or canceled only upon application 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 Section 5.4.

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

5.3 Recording and Filing. Any modification, amendment or cancellation of this Declaration, except pursuant to Section 5.4, shall be executed and recorded in the same manner as this Declaration. Following any modification, amendment or cancellation, Declarant shall immediately record it and provide one executed and certified true copy thereof to each of the CPC and the LPC

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and upon failure to so record, permit its recording by the CPC or the LPC at the cost and expense of Declarant.

5.4 Surrender or Nullification. Notwithstanding the provisions of Section 4.1(a) and 4.1(b), in the event that Declarant does not use the Premises pursuant to the Special Permit, Declarant may surrender the Special Permit to the CPC and proceed with any use or development of the Premises permitted by the Zoning Resolution as if such Special Permit had not been granted. In the event that the Special Permit has been surrendered as set forth in the preceding sentence or has lapsed in accordance with the terms of the Zoning Resolution, 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 Premises pursuant to the Special Permit.

ARTICLE VI

MISCELLANEOUS

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

6.2 Notices. All notices, demands, requests, consents, waivers, approvals and other communications which may be or are permitted, desirable or required to be given, served or deemed to have been given or sent hereunder shall be in writing and shall be sent: (a) if intended for Declarant, to United American Land LLC , 73 Spring Street, 6th floor, New York, New York 10001, Attn: Albert Laboz, with a copy to Kramer Levin Naftalis & Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036, Attn: Valerie Campbell, Esq.; (c) if intended for the CPC, to the CPC at 120 Broadway, 31st floor, New York, New York 10271 (or then-official address), Attn: Chairperson; (d) if intended for the LPC, to the

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LPC at One Centre Street, Municipal Building, New York, New York 10007 (or then-official address), Attn: Chairperson; and (e) 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 Section 6.2, may change any address for the purposes of this Declaration. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, or delivered by hand, and shall be deemed sufficiently given, served or sent for all purposes hereunder five (5) business days after it shall be mailed, or, if delivered by hand, when actually received.

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

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

419 MM LLC

By: _____
Name: Albert Laboz
Title: Authorized Signatory

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

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

Notary Public

SCHEDULE OF EXHIBITS

<u>Exhibit A</u>	Metes and Bounds of Premises
<u>Exhibit B</u>	Certificate as to Parties Interest
<u>Exhibit C</u>	Waivers
<u>Exhibit D</u>	LPC Report & Certificate of No Effect
<u>Exhibit E</u>	Special Permit Plans

EXHIBIT A

Metes and Bounds of Premises

The subject tract of land is known as Tax Lot Number(s) 1 in Block(s) 231 as shown on the Tax Map of the City of New York, New York County and more particularly described as follows:

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

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EXHIBIT B

Certificate as to Parties in Interest

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EXHIBIT C

Waivers

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EXHIBIT D

LPC Report, Certificate of Appropriateness & Certificate of No Effect

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EXHIBIT E
SPECIAL PERMIT PLANS