

163-14-A thru 165-14-A

APPLICANT – Ponte Equities, for Ponte Equities, Ink, owner.

SUBJECT – Application July 10, 2014 – Appeal seeking waiver of Section G304.1.2 of the NYC Building Code to permit a conversion of a historic structure from commercial to residential in a flood hazard area. C6-2A zoning district.

PREMISES AFFECTED – 502, 504, 506 Canal Street, Greenwich Street and Canal Street, Block 595, Lot 40, 39, 38, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Hinkson, Commissioner Ottley-Brown and Commissioner Chanda.....4

Negative:.....0

Absent: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings, dated June 26, 2014, and updated and revised on December 6, 2016 acting on Department of Buildings Application No. 121065514, reads, in pertinent part:

Proposed conversion of 1st floor below the design flood elevation from non-habitable space (store) into habitable space (dwelling) shall be deemed an increase in the degree of noncompliance with Appendix G contrary to BC G102. Alterations or repairs, other than *substantial improvements*, to pre-FIRM building, including installation of new components, materials, finishes and equipment shall not increase the degree of noncompliance with Appendix G (BC G102);

Proposed conversion of 1st floor below the design flood elevation is contrary to BC [G]304.1.1; and

WHEREAS, this is an administrative appeal filed pursuant to Appendix G, Section BC G107 of the New York City Administrative Code (the “Building Code”), to legalize the conversion of non-habitable space into habitable space in three (3) existing buildings in a flood hazard area contrary to Appendix G of the Building Code; and

WHEREAS, a public hearing was held on this application on October 21, 2014, after due notice by publication in *The City Record*, with continued hearings on November 25, 2014, January 27, 2015, March 10, 2015, April 14, 2015, June 23, 2015, August 25, 2015, October 27, 2015, December 15, 2015, and February 23, 2016, and then to decision on November 1, 2016; and

WHEREAS, the record was re-opened on December 13, 2016, to accept a revised objection from

DOB, closed and voted again on the same date; and

WHEREAS, Chair Perlmutter, Vice-Chair Hinkson, Commissioner Montanez, Commissioner Ottley-Brown, and Commissioner Chanda performed inspections of the site and surrounding neighborhood; and

WHEREAS, the subject site is located at southwest corner of the intersection of Canal Street and Greenwich street, in Manhattan; the site is comprised of contiguous Lots 38, 39, and 40 on Block 595 (the “Site”); Lot 40, a corner lot, has approximately 30 feet of frontage along the west side of Greenwich Street and approximately 24 feet of frontage along the south side of Canal Street; Lot 39 has approximately 18 feet of frontage along the south side of Canal Street; Lot 38 has approximately 19 feet of frontage along the south side of Canal Street; the applicant represents that the combined lot area of the Site is 3,853 sq. ft.; and

WHEREAS, the Site is located within a C6-2A zoning district, within the Special Tribeca Mixed Use District; the applicant states that the Site is located within a Special Flood Hazard Area as defined by the Federal Emergency Management Agency (“FEMA”), as indicated on the Flood Insurance Rate Maps for the City of New York (the “FIRM”), and states further that each of the buildings thereupon are designated by FEMA as within Flood Zone AE; and

WHEREAS, each lot on the site is occupied by a building, and each of the three buildings are individual landmarks designated by the New York City Landmarks Preservation Commission; the building known as and located at 502 Canal Street (Lot 40) was built in 1818-19, as stated in its June 30, 1998 Designation Report, the building retains distinctive characteristics of the Federal style, and “has always had commercial space at the ground story with residential accommodations above”; the building known as and located at 504 Canal Street (Lot 39) was built c. 1841, and, as stated in its June 30, 1998 Designation Report has also “always had commercial space at the ground story with residential accommodations above”; the building known as and located at 506 Canal Street (Lot 38) was built in 1826; the June 30, 1998 Designation Report for the building known as and located at 506 Canal Street notes the building’s ground-floor storefront which, the designation report states, appears to date from the original construction of the building; the three buildings on the Site are referred to collectively herein as the “Buildings”; and

WHEREAS, the applicant states that the Base Flood Elevation (“BFE”) established by FEMA for the Site is 11’-0” North American Vertical Datum 1988 (“NAVD 88”) and that the Design Flood Elevation “DFE” is +2’-0” (i.e., 13’-0” DFE); the applicant states that the DFE is approximately 3’-9” above the ground floor of the building known as and located at 502 Canal Street and approximately 4’-1” above the ground floor

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of the buildings known as and located at 504 and 506 Canal Street; and

WHEREAS, the applicant states that because it has converted the ground floor space of the Buildings into habitable space which, it concedes, is below the DFE, it has increased the degree of non-compliance with Appendix G of the Building such that Appendix G, Section G304 is applicable; and

WHEREAS, the applicant states that the proposed legalization does not comply with all of the flood-proofing requirements of that section, thus, the applicant seeks a variance pursuant to Section BC G107.2.1; and

WHEREAS, the applicant states that the Buildings were in need of repair prior to November 2012, but that their deterioration was accelerated by Superstorm Sandy; the applicant notes that because of the severity of the damage caused by that storm, restoration and renovation of the Buildings was overseen by the New York City Department of Buildings Forensic Engineering Unit (the “DOB Engineering Unit”); and

WHEREAS, the applicant maintains that the owner of the Buildings has been unable to use the ground floor of the subject Buildings for a permitted commercial use; the applicant provided the Board with copies of rent rolls for the Buildings for a period commencing in January, 2000 and continuing through the date of the subject application; the applicant states that the ground floors of the buildings known as and located at 502 and 504 Canal Street were vacant from that date until after the applicant’s unlawful conversion of the ground floor space from non-habitable commercial space to habitable space and the Board discovered that such habitable space has been unlawfully occupied since at least June 2015; the applicant states that the ground floor of the building known as and located at 506 Canal Street was occupied for 50% of the time during that period; and

WHEREAS, the applicant also argues that the ground floors of the Buildings cannot be used for commercial purposes for reasons related to the integrity of the historic structures, including, *inter alia*, that the building known as and located at 504 Canal Street only has a single entrance and applicable code does not allow for a shared commercial and residential entrance, but that adding a second entrance will negatively impact the historic character of that building; the applicant also maintains that that the existing stairway and door to the residential portion of the building known as and located at 506 Canal Street does not meet applicable standards and, but-for the ground-floor conversion of that building, would need alterations which would negatively impact the historic character of the building; and

WHEREAS, the applicant notes that it has combined certain utilities within the Buildings in order

to minimize the damage to the historic facades thereof; and

WHEREAS, the Board notes that Appendix G provides minimum requirements for development located, in whole or in part, in areas of special flood hazard zones within the jurisdiction of the New York City; specifically, G304.1.1 provides, *inter alia*, that all residential buildings or structures shall be elevated such that the lowest floor, including the basement, shall be elevated to at or above the applicable DFE; that enclosed space below the DFE shall be useable solely for parking of vehicles, building access, storage, or crawlspace, and shall be wet floodproofed in accordance with ASCE 24 of the International Building Code (which addresses flood resistant design and construction); that the finished ground level of an under-floor space, such as a crawl space, shall be equal to or higher than the outside finished ground level on at least one side; that only flood-damage-resistant materials and finishes shall be utilized below the DFE; and that utilities and attendant equipment shall be located at or above the DFE or shall be constructed so as to prevent water from entering or accumulating within the components during conditions of flooding in accordance with ASCE24; and

WHEREAS, the applicant states that in order to comply with the foregoing requirements of Appendix G, the ground floor of the Buildings would have to be elevated above the DFE; the applicant states that so elevating the ground floors of the Buildings above the DFE would negatively impact their historic character and is therefore impracticable; and

WHEREAS, the Board notes that section G107 of Appendix G to the Building Code provides for variances from the requirements of Appendix G; specifically, section G107.1 provides that:

The Board of Standards and Appeals shall hear and decide requests for variances from requirements of [Appendix G of the Building Code]. The Board of Standards and Appeals shall base its determination on technical justifications, and has the right to attach such conditions to variances as it deems necessary to further the purposes and objectives of [Appendix G of the Building Code]; and

WHEREAS, the Board notes further that section G107.2.1 authorizes the Board to issue a variance from the requirements of Appendix G “for the repair or rehabilitation of a historic structure,” provided that

1. The application has received approval from the Landmarks Preservation Commission and/or the New York State Historical Preservation Office, as applicable,
2. The proposed repair or rehabilitation will not preclude the structure’s

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continued designation as a historic structure, and

3. The variance is the minimum necessary to preserve the historic character and design of the structure; and

WHEREAS, the applicant states that the conversion of the ground floor of the Building was duly approved by the LPC; specifically, the applicant states that the work performed at the building known as and located at 502 Canal Street was performed pursuant to Certificate of No Effect No. 14-4472 and Certificate of Appropriateness No. 14-8295, that the work performed at the building known as and located at 504 Canal Street was performed pursuant to Certificate of No Effect No. 14-4473 and Certificate of Appropriateness No. 15-1620, and that the work performed at the building known as and located at 506 Canal Street was performed pursuant to Certificate of No Effect Nos. 14-4474, 15-5632, and 16-1088; and

WHEREAS, the applicant states that the subject conversion has not interfered with the Buildings' continued designation as historic structures; specifically, the applicant notes that the work associated with the subject conversion and proposed legalization was done pursuant to authorizations issued by the LPC, and involved the maintenance or restoration of existing masonry walls and openings, restoration of cast stone and cast iron facades at the buildings known as and located at 504 and 506 Canal Street, and employed design elements consistent with the historic character of the Buildings; and

WHEREAS, the applicant also maintains that the variance sought herein, the legalization of the converted space, is the minimum necessary to preserve the historic character and design of the Buildings; specifically, the applicant notes that all new building services and utilities are located above the DFE including water, sprinkler, and electrical services, but that the gas meters remain in the cellar level of the Buildings, as per a letter submitted by Con Edison of New York dated August 24, 2016, a copy of which was reviewed by the Board; moreover, the applicant reiterates that elevating the ground floor of the Buildings would have a significant negative impact on the historic character of the Buildings, thus, the waiver sought herein preserves such character; and

WHEREAS, based on its review of the record, the Board finds that the conversion of the subject ground-floor space from non-habitable space to habitable space will not preclude the Buildings designation as historic structures, and that the variance sought herein is the minimum necessary to preserve the historic character and design of the Buildings; and

WHEREAS, the Board notes in addition to the specific findings the Board must make pursuant to Appendix G Section G107.2.1, section G107.3 of Appendix G to the Building Code requires that the

Board evaluate the effect of the proposed variance on the following factors: (1) the danger that material and debris may be swept onto other lands resulting in damage or injury; (2) the danger to life or property due to flooding or erosion damage; (3) the susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners; (4) the importance of the services provided by the proposed development to the community; (5) the availability of alternative locations for the proposed development that are not subject to flooding or erosion; (6) the relationship of the proposed development to comprehensive plan and flood plain management program for that area; (7) the safety of access to the property in times of flood for ordinary and emergency vehicles; (8) the expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and (9) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges; and

WHEREAS, at hearing, the Board expressed particular concern that because the unlawfully converted space at the ground-floor of the Buildings is significantly below the DFE, residential tenants and their property were at significant risk and that such risk may not have been known to the Buildings' tenants at the time they took possession of their leased premises; and

WHEREAS, thus, consistent with its mandate and mitigate "danger to life and property due to flooding or erosion damage ... the susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners ... [and] the safety of access to the property in times of flood for ordinary and emergency vehicles," the Board required extensive notification, mitigation, and emergency protocols as conditions to the subject grant; and

WHEREAS, in order to protect against danger to life and property due to flooding or erosion damage, the owner of the Buildings has agreed to certain carefully considered Emergency Flood Measures and Procedures (the "EFMP," which must conform to the form and substance of the EFMP incorporated as a condition of this resolution), which include, without limitation, the installation of BSA-approved Flood Gates, Door Shields, and Window Shields, as well as the following:

- In case of emergency conditions as alerted from the office of the Mayor, the landlord of the Buildings (the "Landlord"), will enact the Emergency Action Plan ("EAP"), as described more fully, below.

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- As per the EAP, tenants of the Buildings are not permitted to remain in the Buildings in the event that the Landlord enacts the EAP, and the Landlord is responsible for vacating the Buildings in such event. Pursuant to the EAP, tenants shall evacuate the Buildings to seek higher ground located north of Domenick Street, on Sixth Avenue, in Manhattan.
- The Landlord shall have copies of the EAP for reproduction and distribution to the tenants and building personnel and made available at any time upon request of tenant or building personnel.
- As threat of impending flooding/high tide conditions dictate, the Landlord shall enact the EAP and put all appropriate and essential building personnel on telephone alert. Telephone alert is defined as being able to be contacted by telephone, and capable of responding to his/her work site within 45 minutes. Assigned personnel will be accounted for and will be required to assist with the flood protection activities
- As noted, in a flood event, the Landlord will notify tenants of the emergency flood circumstance and direct tenants to evacuate the Leased Properties. The Landlord will also notify tenants that all first floor entrances to the Buildings will be blocked by the installation of BSA-approved Flood Gates and Window and Door Shields.
- The Landlord will provide an emergency access ladder (for use by emergency personnel and landlord representatives only) as well as an exterior water infiltration pump (the flood gates, the window and door shields, the emergency access ladder and exterior water infiltration pump collectively, the “Flood Protection Measures”).
- The Flood Protection Measures will be retrieved from their off-site storage location at 260 Spring Street, New York, NY and set into position, installed, and the neoprene flood seals engaged. A crew of four (4) workers will deploy all requisite Flood Protection Measures. The estimated time to complete the implementation of the Flood Protection Measures is three to four hours.
- Landlord’s staff will remain at the site to assist the tenants until all the Buildings are evacuated. Prior to the Door Shield and Flood Gates being sealed, a physical

inspection by the owner or owner's representative of each and every apartment, including sleeping areas, shall be made to confirm that all apartments and public areas of the building have been evacuated, including utility and storage areas.

- The Flood Protective Measures will be removed after the flood event is over as determined by the Landlord and Flood Officials. The Landlord will verify that all utilities are in working order, assess damage as required, and coordinate re-occupancy with the tenants.
- Upon any high water events, which include both Flash Flood Watch Warnings and Flash Flood Warnings, the Landlord will provide photographic documentation signed by a licensed professional of the condition of the first floor just after the removal of the flood gates and shields, and prior to reconstruction (if any). Additionally, the Landlord will obtain from each tenant of the Buildings a signed affidavit describing the actions of the Landlord and Landlord’s personnel during flood events. These records shall be used by the BSA to determine the efficacy of the Flood Protective Measures and the continuance of the subject variance.
- At least once annually, the Landlord shall organize and hold a training event designed to keep building personnel and tenants aware of duties and responsibilities in case of a flood event.
- Landlord must perform a yearly inspection and maintenance plan as per the EAP; and

WHEREAS, the Board notes that the EAP, which must conform to the form and substance of the EAP incorporated as a condition of this resolution, shall state explicitly that in the event that the Landlord enacts the EAP it is mandatory that all tenants evacuate the Buildings; and

WHEREAS, in order to ensure that the Buildings’ tenants are aware of the risk posed by flood events to their safety and property, and in order to advise them of certain measures they should take in order to protect themselves against harm or loss of property, the Board requested that the applicant draft a rider to be included in all current and future leases for residential units within the Buildings; the applicant provided the Board with a draft rider to it’s the Landlord’s residential lease, which the Board reviewed; the applicant modified the draft rider as per the Board’s recommendations and has

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agreed that the Landlord shall include a lease rider in all of its residential leases related to the Buildings (the "Lease Rider") and that such Lease Rider shall conform to the form and substance of the Lease Rider incorporated as a condition of this resolution; and

WHEREAS, the Lease Rider must state, *inter alia*, that the Buildings are located within a special flood hazard area as defined by FEMA and must advise lessees that the first floor of the Buildings sustained damage in October of 2012 because of flood waters incurred as a result of Superstorm Sandy; and

WHEREAS, based on the above, the Board has determined that the evidence in the record supports the findings required to be made pursuant to Building Code Section BC G107.2.1 and Section 666(7) of the New York City Charter.

Therefore it is Resolved, that the application to legalize the conversion of non-habitable space into habitable space at the ground floor of the subject Buildings contrary to the flood-proofing requirements of Section BC G102 and G304.1.1 of the Building Code is granted; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 26, 2016" Twenty (20) sheets; and *on further condition*:

THAT this approval is limited to the relief granted by the Board in response to specifically cited objections;

THAT all Flood Protection Measures (defined in the resolution, above) shall (1) be installed and maintained as shown on the BSA-approved plans, and (2) tested as required in the EFMP;

THAT the term of this grant shall be five (5) years from December 14, 2016 (the date on which this resolution was released);

THAT the Board shall hold a compliance hearing on the subject applications on the scheduled Board hearing date closest in time to June 14, 2018, which is eighteen (18) months from the date on which this resolution was released, (the "Initial Compliance Hearing");

THAT thirty (30) days prior to the Initial Compliance Hearing, the applicant shall submit to the Board, under the subject BSA calendar numbers, a report outlining all weather events which triggered the EAP during that period, a statement as to whether and to what extent there has been any damage to the Buildings or personal property therein, and an affidavit and photographic evidence describing and showing Landlord's response to any such damage; the applicant shall also provide the Board with documentation of all notification and testing required under the EFMP;

THAT the owner of the Buildings shall record the Restrictive Declaration submitted in connection with this application in the Office of the City Register in New York County prior to the issuance of this resolution; the Restrictive Declaration must conform to the following

form and substance:

RESTRICTIVE DECLARATION

This RESTRICTIVE DECLARATION, made as of the ____ day of November, 2016 (the "Declaration"), by MKM CANAL LLC, a New York limited liability company having an office at 2390 McDonald Avenue, Brooklyn, New York (the "Declarant").

WITNESSETH:

WHEREAS, Ponte Equities, Inc., a corporation having an office at 60 Vestry Street, New York, NY 10013 is the owner ("Owner") in fee title to those certain parcels of land in the City, County and State of New York, known as and by the street address 502 Canal Street (a/k/a 480 Greenwich Street), 504 Canal Street and 506 Canal Street, respectively, identified as Block 595, Lot(s) 40, 39 and 38 on the Tax Map of the City and County of New York (502 Canal Street (a/k/a 480 Greenwich Street), 504 Canal Street and 506 Canal Street, each, a "Property", and collectively, the "Properties"), which parcels are more particularly described in **Exhibit "A"** annexed hereto and made a part of hereof;

WHEREAS, each of the Properties are located within a Special Flood Hazard Area as defined by the Federal Emergency Management Agency ("FEMA");

WHEREAS, each of the Properties are designated by FEMA to be within Flood Zone AE, as shown on Flood Insurance Rate Map 3604970182G;

WHEREAS, the Base Flood Elevation ("BFE") established by FEMA is approximately 11 feet NAVD 1988;

WHEREAS, the Design Flood Elevation ("DFE") is BFE + 2 ft (i.e., 13'-0" DFE);

WHEREAS, the DFE is approximately 3'-9" above the first floor of 502 Canal Street (a/k/a 480 Greenwich Street) and approximately 4'-1" above the first floor of 504 Canal Street and 506 Canal Street;

WHEREAS, Declarant leased the Properties from Owner pursuant to a long-term lease and Declarant converted the first floor of each structure located on the Properties from non-habitable space (commercial use) to habitable space (residential use);

WHEREAS, Appendix G, Section G304 of the New York City Building Code establishes general limitations on certain use and occupancy of structures located within the Special Flood Hazard Area;

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WHEREAS, Appendix G, Section G102.3 of the New York City Building Code states in part “the conversion of any space below the DFE from non-habitable space into habitable space shall be deemed an increase in the degree of non-compliance”

WHEREAS, the conversion of the first floor of 502 Canal Street (a/k/a 480 Greenwich Street), 504 Canal Street and 506 Canal Street, respectively, from non habitable space (commercial use) to habitable space (residential use) requires the approval of the New York City Board of Standards and Appeals (either the “BSA” or the “Board”);

WHEREAS, the Declarant has submitted the requisite applications to the Board for the approval of the conversion of the first floor of 502 Canal Street (a/k/a 480 Greenwich Street), 504 Canal Street and 506 Canal Street, respectively, from non-habitable space (commercial use) to habitable space (residential use) (BSA Calendar No. 163-14A, 164-14A and 165-14A, each an “Application”, and collectively, the “Applications”).

NOW, THEREFORE, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, including, but not limited to this Declaration, the receipt and sufficiency of which is hereby acknowledged, Declarant agrees as follows:

1. Declarant acknowledges that because the BFE and DFE are higher than the elevation of the first floor of each Property, storm water protection measures shall be implemented by Declarant to protect such Property in the event of a flood emergency, all as set forth herein.
2. Declarant has developed and implemented procedures for responding to flood emergencies, which are described in the Emergency Action Plan (“EAP”), a copy of which is attached hereto as **Exhibit “B”**. The EAP shall be permanently posted in the mailroom each Property.
3. Declarant has implemented procedures applicable to flood and emergency events, which procedures are more particularly set forth in the Emergency Flood Measures & Procedures (“EFMP”), copies of which are attached hereto as **Exhibit “C”**. The Declarant shall implement and maintain the EFMP pursuant to the terms and conditions of this Declaration.
4. Declarant shall apply for the flood insurance pursuant to the applicable provisions of the National Flood Insurance Act of 1968, as amended to date, and Title 44 of the Code of Federal Regulations (“NFIP”). Declarant shall use commercially reasonable efforts to procure NFIP flood insurance at the maximum applicable coverage amounts of Two Hundred and Fifty Thousand Dollars (\$250,000) for each Property. Declarant shall maintain such NFIP flood insurance throughout the duration of residential occupancy of the first floor of the improvements on each Property. In the event that Declarant is unable to obtain such NFIP flood insurance then, in such event, Declarant shall obtain real property insurance from a private insurance provider with coverage amounts equal to at least Two Hundred and Fifty Thousand Dollars (\$250,000) for the improvements located on each such Property.
5. Declarant shall provide notice to tenant of this Declaration within its Property lease rider, a copy of which is annexed hereto and made a part hereof as **Exhibit “D”**.
6. A notation shall be made on the Certificate of Occupancy issued for each Property identifying the recording information for this Declaration and stating that residential use and occupancy of the first floor of the improvements on such Property is contingent upon the Declarant’s compliance with the terms and conditions of this Declaration.
7. All of the grants, interests, covenants, agreements and conditions contained in this Declaration: (a) shall run with the lands, buildings and improvements affected; (b) shall inure to the benefit of and be binding upon the Declarant and its heirs, administrators, executors, distributees, successors and assigns so long as they shall respectively have any interest in the Properties respectively affected hereby; and (c) shall, to the extent rights hereunder are assigned to the holder of any mortgages encumbering any of the Properties affected by this Declaration or any

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- interest therein, be enforceable by such assigns.
8. Declarant shall include a copy of this Declaration, along with any amendments or modifications to this Declaration that may be approved by the Board pursuant to Section 9 hereof, as part of any application pertinent to the alteration, maintenance, repair or occupancy of the first floor of each Property submitted to any governmental agency or department having jurisdiction over the Property, including, without limitation, the New York City Department of Buildings and the New York City Landmarks Preservation Commission.
 9. This Declaration may be modified, amended and/or cancelled upon application to and written consent and approval by the Board or such agency succeeding to its jurisdiction. Any modification, amendment or cancellation of this Declaration shall be executed and filed in the same manner as this Declaration. Notwithstanding anything contained herein to the contrary, the Declarant may convert the first floor of one or more Property or all such Properties from habitable space (residential) to non-habitable space (e.g., commercial) pursuant to the applicable provisions of the Zoning Resolution of the City of New York and, upon such conversion (as evidenced by the issuance by the New York City Department of Buildings of a Certificate of Occupancy for non-habitable space on such first floor(s), as the case may be) this Declaration shall automatically terminate with respect to the Property or Properties so converted and shall thereafter be of no further force and effect.
 10. This Declaration and the provisions hereof shall become effective immediately upon approval by the Commission of the Applications. Within the next five (5) business days of such approval, Declarant shall file and record this Declaration in the New York County Clerk's Office, indexing it against each Property. Declarant shall, promptly following recordation of this Declaration, deliver to the Board a true copy of this Declaration as recorded and certified by the New York County Clerk.
 11. The Declarant recognizes that the City of New York is an interested party in this Declaration and consents to the City enforcing the covenants, conditions, restrictions and agreements contained herein.
 12. If any provision of this Declaration is deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severable and the remainder of this Declaration shall continue to be of full force and effect.
 13. All notices, demands, requests, consents, approvals or other communications (each of which is hereinafter referred to as "Notice") that may be or are permitted, desirable or required to be given, served or sent hereunder shall be in writing and shall simultaneously be sent to: (a) The City of New York, the Chairperson of the Board of Standards and Appeals, 250 Broadway, 29th Floor, New York, New York 10007-1216 or at the then current address, Attn: Chairperson; and (b) the Declarant, by mailing or delivering such Notice to the Declarant indicated above. Each Notice that shall be mailed shall be deemed sufficiently given, served or sent for all purposes hereunder either (i) five days (if mailed in the City of New York) after it is mailed by United States registered or certified mail at a branch post office regularly maintained by the United States Postal Service, or (ii) if delivered by hand, when actually received.
 14. Declarant acknowledges and agrees that failure to comply with the terms of this Declaration may result in revocation of (i) the Certificate of Occupancy for the first floor of the improvements located on each respective Property; and (ii) the Board's approval pursuant to BSA Calendar No.(s) 163-14A, 164-14A and 165-14A, respectively, to permit residential use on the first floor of 502 Canal Street (a/k/a 480 Greenwich Street), 504 Canal Street and 506 Canal Street, respectively.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be signed as of the day and year first above written.

DECLARANT:
MKM CANAL LLC

By: Mr. Michael Marino

THAT the owner of the Building shall include in any lease for any residential premises located within any of the Buildings, a Lease Rider which must conform to the following form and substance:

**LEASE RIDER ("LEASE RIDER")
ANNEXED TO AND MADE A PART OF
LEASE DATED AS OF NOVEMBER
11th, 2016 BY AND BETWEEN MKM
CANAL LLC ("LANDLORD") AND TTR
GLOBAL, LLC ("TENANT") IN
RESPECT OF THE PROPERTY
LOCATED AT 504 -506 CANAL
STREET, NEW YORK, NEW YORK.**

**THIS IS TO INFORM YOU THAT THE
LEASED PROPERTIES ARE LOCATED
WITHIN A SPECIAL FLOOD HAZARD
AREA AS DEFINED BY THE FEDERAL
EMERGENCY MANAGEMENT
AGENCY. YOU ARE HEREBY
ADVISED THAT THE FIRST FLOOR OF
THE PROPERTIES SUSTAINED
DAMAGE IN OCTOBER OF 2012 BY
FLOOD WATERS INCURRED AS A
RESULT OF HURRICANE SANDY.**

1. Tenant has read the terms and conditions of this Lease Rider, which shall be an exhibit to the Lease between Landlord and Tenant. In the event of a conflict between any of the provisions of the Lease and any provisions of this Rider, the provisions of this Rider shall prevail.
2. Each of the properties located at 480 Greenwich/502 Canal Street, 504 Canal Street and 506 Canal Street (each, a "Leased Property" and collectively, the "Leased Properties") are located within a Special Flood Hazard Area as defined by the Federal Emergency Management Agency ("FEMA"). More specifically, each Leased Property is located in Flood Zone AE as shown on Flood Insurance Rate Map ("FIRM") 3604970182G, which is attached hereto.
3. FEMA defines the Special Flood Hazard Area as the area subject to flooding by the 1% annual chance flood. "The 1% annual flood (100 year flood)..., is the flood that has a 1% chance of being equaled or exceeded in any given year. The Base Flood Elevation is the water surface elevation of the 1% annual chance flood. More information can be

obtained on the FEMA website or by general contact at (202) 646-2500.

4. The Base Flood Elevation ("BFE") of the Leased Properties is 11 feet NAVD 1988. The Design Flood Elevation ("DFE") is BFE + 2 ft (i.e., 13'-0" DFE).
5. The DFE is approximately 3'-9" above the first floor of 480 Greenwich Street/502 Canal, and 4'-1" above the first floor of 504 Canal and 506 Canal. Consequently, a variance is required from the New York City Board of Standards and Appeals to permit residential use of the first floor of each of the Leased Properties; as such first floor is below both the BFE and DFE.
6. Tenant acknowledges that because the BFE and DFE are higher than the elevation of the first floor of each of the Leased Properties, that storm water may rise above the first floor and may damage personal possessions. In the event that water reaches such levels, the walls, floors, electrical wires, kitchen cabinetry, and equipment may be damaged and shall be replaced by Landlord to match or exceed current quality.
7. Landlord has developed and implemented procedures for responding to flood emergencies, which are described in the "Emergency Action Plan ("EAP"), a copy of which is attached hereto as **Exhibit "A"**. The EAP will be permanently posted in the mailroom of the Leased Properties.
8. Landlord has also implemented procedures for both Landlord and Tenant during flood and emergency events, which procedures are more particularly set forth in the Emergency Flood Measures & Procedures ("EFMP"), copies of which are attached hereto as **Exhibit "B"**.
9. Landlord has agreed to the terms and conditions set forth in the Restrictive Declaration, a copy of which is attached hereto as **Exhibit "C"**, in connection with the residential use of the first floor of 480 Greenwich Street/502 Canal, 504 Canal and 506 Canal.
10. Landlord is obligated pursuant to the Restrictive Declaration to apply for the flood insurance pursuant to the applicable provisions of the National Flood Insurance Act of 1968, as amended to date, and Title 44 of the

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Code of Federal Regulations (“NFIP”). In the event that Landlord is unable to obtain such NFIP flood insurance, then Landlord shall procure real property insurance from a private insurance provider with coverage amounts that are reasonable and customary for the improvements located on the Leased Property. Tenant is advised to apply to the NFIP for a “contents only” flood insurance policy for tenant’s first floor possessions.

11. If a Leased Property is rendered Untenantable (as hereinafter defined) as a result of a naturally occurring flood event, then Tenant may utilize the Rent that would otherwise be due and payable for the Abatement Period (as hereinafter defined) to pay for any reasonable, actual, out-pocket, third-party costs and expenses incurred by Tenant to procure temporary relocation space that is comparable in all material respects to the Leased Property (the “Permitted Relocation Costs”) in lieu of paying same to Landlord. Landlord shall have no obligation to reimburse tenant for any cost or expense incurred by Tenant that exceeds the Rent. Tenant shall provide Landlord with documentation reasonably satisfactory to Landlord evidencing the Permitted Relocated Costs incurred by Tenant on a rolling, as-incurred basis. Tenant shall, within fifteen (15th) days after the Abatement Period, provide Landlord with a reconciliation statement showing (i) the total amount of the Permitted Relocation Costs incurred by Tenant during the Abatement Period and (ii) the total amount of the Rent that was not paid for the Abatement Period; if the Rent that was not paid for the Abatement Period exceeds the Permitted Relocation Costs, such excess shall be due, in full, on the fifteenth (15th) day after the Abatement Period. Tenant shall provide Landlord with any additional supporting documentation reasonably requested by Landlord from time to time. Landlord and its auditors and accountants shall have the right from time to time, during reasonable business hours at a location in New York City as Tenant may designate, to examine, make abstracts, photocopy and audit the relevant portions of Tenant’s books and records

to verify Tenant’s accounting and documentation of the Permitted Relocation Costs. Tenant shall maintain such books and records for not less than six (6) years after the end of the Abatement Period, which obligation shall survive the expiration or sooner termination of this Lease. TIME IS OF THE ESSENCE with respect to the time frames set forth in this Section 12.

“Untenantable” means that Tenant shall be unable to reasonably use or occupy, and ceases occupancy of, the Leased Property for at least five (5) consecutive Business Days as a result of a naturally occurring flood event.

“Abatement Period” means the period during the Term of this Lease that (i) commences on the date on which Leased Property is rendered Untenantable pursuant to this Section 12 and (ii) ends on the earlier to occur of (x) after the Leased Premises is no longer Untenantable, upon three (3) business days notice to Tenant, (y) the date on which Tenant resumes use or occupancy of the Leased Property or any portion thereof, or (z) the date on which this Lease expires or is sooner terminated.

13. Tenant may apply to the NFIP for a “contents only” flood insurance policy for tenant’s possessions with coverage limits of up to One Hundred Thousand Dollars (\$100,000) (“Tenant Flood Insurance”). In the event that Tenant has procured such Tenant Flood Insurance, Tenant shall provide Landlord with copies of such Tenant Flood Insurance policy and documentation evidencing, to Landlord’s reasonable satisfaction, payment of such insurance premiums in full. Upon Tenant’s delivery of such documentation and any other supporting documentation reasonably requested by Landlord from time to time, Tenant shall be entitled to receive a credit from Landlord equal to one hundred (100%) of said insurance premium actually paid by Tenant for the period(s) of coverage occurring during the term of this Lease. Said credit shall be calculated after deducting any portion of the premium that relates to personal property typically excluded from a standard renter’s policy coverage (e.g., any items insured

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pursuant to a special rider or floater policy or resulting in a higher premium than if those special categories of personal property were not included in the coverage). Tenant shall receive such credit by deducting the amount thereof against the next installment(s) of Rent due hereunder. If such Tenant Flood Insurance premium paid by Tenant is subsequently reduced or refunded (in whole or in part) by the insurer (other than premiums for specialty coverage described above), then (i) Tenant shall promptly notify Landlord thereof, (ii) the credit shall be recalculated with respect to such premium and reduced accordingly, and (iii) Tenant shall promptly pay to Landlord, as additional Rent, an amount equal to the excess credit realized by Tenant, which obligation shall survive the termination of this Lease.

14. Landlord shall establish and fund an escrow account ("Escrow Account") for each Leased Property with funds equal to the sum of Twenty Five Thousand Dollars (\$25,000) ("Escrow Funds") upon the execution of this Lease Rider. In the event that: (w) a Leased Property is rendered Untenantable as a result of a naturally occurring flood event; (x) Tenant has procured Tenant Flood Insurance pursuant to the provisions of paragraph 13 herein; (y) Tenant timely submits all requisite documentation including without limitation, all requisite insurance claim forms to the NFIP for loss incurred by Tenant of Tenant's contents which are actually covered by said Tenant Flood Insurance ("Covered Loss"); and (z) the NFIP fails to timely distribute to Tenant the requisite insurance proceeds pursuant to said Tenant Flood Insurance for such Covered Loss then, in such event, (I) Tenant shall notify Landlord of the same and provide Landlord with copies of all correspondence provided to and received from the NFIP in connection thereto and (II) Tenant may request by written notice ("Notice") to Landlord that Tenant be permitted to draw down and utilize the Escrow Funds in furtherance of a Covered Loss. Landlord shall disburse to Tenant that portion of the Escrow Funds (in an amount not to exceed said Escrow

Funds) in an amount equal to a Covered Loss, as determined in the sole and absolute discretion of Landlord's third party insurance provider within thirty (30) days from the date of Landlord's receipt of said Notice ("Received Funds"). Tenant shall provide Landlord with documentation reasonably satisfactory to Landlord evidencing the Covered Loss incurred by Tenant. Tenant shall, within fifteen (15th) days after its receipt of any insurance proceeds from the NFIP for such Covered Loss ("Insurance Payments"), provide Landlord with a reconciliation statement showing (i) the total amount of Insurance Payments received by Tenant and (ii) the total amount of the Received Funds. In the event that the Received Funds exceeds the Insurance Payments then, in such event, the difference shall be refunded by Tenant to Landlord within fifteenth (15th) day after Tenant's receipt of the Insurance Payments. For the avoidance of doubt, Tenant may not avail itself of the provisions of this Section 14 unless it has procured Tenant Flood Insurance pursuant to the provisions of Section 13 herein.

Notwithstanding anything contained herein to the contrary, Tenant shall provide Landlord with any additional supporting documentation reasonably requested by Landlord from time to time. Landlord and its auditors and accountants shall have the right from time to time, during reasonable business hours at a location in New York City as Tenant may designate, to examine, make abstracts, photocopy and audit the relevant portions of Tenant's books and records to verify Tenant's accounting and documentation of the Covered Loss. Tenant shall maintain such books and records for not less than six (6) years after its receipt of any such Escrow Funds, which obligation shall survive the expiration or sooner termination of this Lease. TIME IS OF THE ESSENCE with respect to the time frames set forth in this Section 14.

15. Tenant acknowledges that it has reviewed and consented to the terms and conditions of this Lease Rider, the EAP and the EFMP.

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TENANT:

By: _____

Printed Name: _____

Date: _____

LANDLORD:

By: _____

Printed Name: _____

Date: _____;

THAT owner of the Buildings shall also maintain and publish, as required, the Emergency Action Plan and Emergency Flood Measures and Procedures as set forth and contained in the Restrictive Declaration; the Emergency Action Plan and Emergency Flood Measures and Procedures shall substantially conform to the form and substance of the following:

- The EFMP must conform to the following form and substance:

Emergency Flood Measures and Procedures for 480 Greenwich/502 Canal Street, 504 Canal Street and 506 Canal Street

The Emergency Flood Measures and Protection (“EFMP”) is an integral part of each building's flood protection design.

Chain of Command & Responsibility

The Landlord is the principal authority for Flood Emergency Operations at 480 Greenwich Street/502 Canal Street, 504 Canal Street and 506 Canal Street (each, a “Leased Property” and collectively, the “Leased Properties”).

In case of emergency conditions as alerted from the office of the Mayor, the Landlord will enact the Emergency Action Plan (“EAP”). The EAP is critical for protection of life and property. All tenants must provide Landlord with up to date emergency contact information. Tenants are not permitted to remain at the property or access the property in the event that the EAP is enacted by Landlord. The Landlord is responsible for vacating the Leased Properties in the event that the EAP is enacted. A roster displaying the names and emergency contact information of the Landlord as well as each of the tenants shall be updated annually, as necessary, or upon a change/addition of occupants and posted permanently in the Mail Lobby and distributed to each Tenant. The Landlord shall have copies of this plan for reproduction and distribution to the tenants and building personnel and made available at any time upon request of tenant or building personnel.

Notification & Warning Procedures

The National Weather Service Office will issue two types of flash flood/high tide advisories: Flash Flood Watches and Flash Flood Warnings.

Flash Flood Watch: Heavy rains or high tides are occurring or expected to occur and may cause flash flooding in certain areas and building

occupants and personnel should be alert to the possibility of a flood emergency that will require immediate action.

Flash Flood Warning: flash flooding is occurring or imminent for certain designated area, and immediate action should be taken by those threatened.

As threat of impending flooding/high tide conditions dictate, the Landlord shall enact the EAP and put all appropriate and essential building personnel on telephone alert. Telephone alert is defined as being able to be contacted by telephone, and capable of responding to his/her work site within 45 minutes. Assigned personnel will be accounted for and will be required to assist with the flood protection activities. In case of a flood emergency, tenant may contact Landlord/personnel at the following phone numbers:

**Landlord, Mike Marino, Sr - (347) 753-1567
Landlord, Mike Marino, Jr - (917) 692-7591
Representative, Maciek Romanek - (917) 755-4676**

Duties & Responsibilities

The Landlord will notify tenants of the emergency flood circumstance and direct tenants to evacuate the Leased Properties. The Landlord shall be responsible for vacating the Leased Properties. The Landlord will also notify tenants that all first floor building entrances will be blocked by the installation of the approved AquaFence (Flood Gates) and Window and Door Shields. The Landlord will provide an emergency access ladder (for use by emergency personnel and landlord representatives only) as well as an exterior water infiltration pump (the flood gates, the window and door shields, the emergency access ladder and exterior water infiltration pump collectively, the “Flood Protection Measures”).

Pursuant to the BSA Approved Deployment Protocol, the Flood Protection Measures will be retrieved from their off-site storage location at **260 Spring Street, New York, NY** and set into position, installed, and the neoprene flood seals engaged. Refer to the attached "AquaFence Installation, Removal and Operating Manual." A crew of four (4) men will deploy all requisite Flood Protection Measures. The estimated time is three to four hours. During that time, and even after the initial installation of the flood gates, portions of the gates can remain flat thereby allowing the tenants access and egress. The installation of the Window and Door Shields, the emergency access ladder and the exterior water infiltration pump, which will occur

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simultaneously with the installation of the flood gates, should be complete in under an hour. The Door Shield shall be the last item to be installed after the Leased Properties are vacated. The maintenance staff will remain at the site to assist the tenants until all the buildings are evacuated. Prior to the Door Shield and Flood Gates being sealed, a physical inspection by the owner or owner's representative of each and every apartment, including sleeping areas, shall be made to confirm that all apartments and public areas of the building have been evacuated, including utility and storage areas.

Evacuation

In the event of a flood emergency, Landlord will enact the EAP, notify tenants of such flood emergency and, thereafter, tenants shall immediately evacuate the Leased Properties to seek higher ground located north of Domenick Street on Sixth Avenue, about four blocks from the site (see attached map). Tenants are not permitted to remain at the property or access the property in the event that the EAP is enacted by Landlord. The Landlord is responsible for vacating the Leased Properties in the event that the EAP is enacted. Tenants are not permitted to return to the Leased Properties during a flood emergency and tenants may return to the Leased Properties only after Landlord permits reoccupation thereof. The Door Flood Shield will be installed after all personnel have left the building and before the Flood Gates are tipped up to final position. Door shield should indicate "tenant evacuated". After the Tenants have vacated the property, the Flood Gates will be sealed and the Landlord will notify the FDNY Manhattan Dispatcher at 212.570.4261, who will then notify the local fire company that evacuation of the property has taken place.

Re-occupation

The Flood Protective Measures will be removed after the flood event is over as determined by the Landlord and Flood Officials. The Landlord will verify that all utilities are in working order, assess damage as required, and coordinate re-occupancy with the tenants.

High Water Events

In addition, during high water events, which include both Flash Flood Watch Warnings and Flash Flood Warnings, the landlord will provide photographic documentation signed by a licensed professional of the condition of the first floor just after the removal of the flood gates and shields, and prior to reconstruction (if any). These records shall be used by the BSA to determine the efficacy of the Flood Protective Measures and the continuance of the Variance.

In addition, the Owner will obtain from each tenant a signed affidavit describing the actions for the Landlord and Landlord's personnel during the flood event and the condition of the Leased Properties after such event.

Yearly Training and Exercise Program

At least once annually, the Landlord shall organize and hold a Training and Exercise Program designed to keep building personnel and tenants aware of duties and responsibilities in case of a flood event. The annual training and exercise drill will take place just prior to hurricane season, typically in June or July. The installation will be monitored and certified by the property engineer and documented with photographs. Records of this shall be maintained by the Landlord and furnished to the BSA at intervals determined by the BSA as a condition of the renewal of the Variance.

Tenants will be informed of the training exercise and should participate in this training exercise to remain aware of details of the Emergency Action Plan including tenant duties and responsibilities.

Yearly Inspection and Maintenance Plan

The yearly Inspection and Maintenance Plan will take place annually at the same time as the Training and Exercise Program. The Landlord will be responsible for the implementation of the Maintenance and Inspection Plan. The following devices, systems or building components shall be inspected annually and repaired as necessary to ensure proper flood proofing and protection:

1. Flood Gates, Window and Door Shields: Each barrier device shall be inspected for cracks and structural integrity and the neoprene seal should be inspected for leaks. All parts associated with each flood barrier device should be accounted for and properly identified.
2. Drains & Gutters: the building drains and gutters should be cleaned regularly so that these devices operate properly and that silt and debris does not build up.
3. Building walls: The walls of the buildings should be inspected regularly for cracks and repairs made as necessary.
4. Flood Barrier Storage Area: the flood barrier device storage area should be clean and organized so that the flood barrier devices are easily retrieved during the implementation of the Flood Emergency Operating Plan.
5. Flood Shield Storage: the Door and Window Flood Shield storage area shall be inspected to make sure it is clean and functional. The Landlord will maintain records of yearly

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Inspection and Maintenance Plan including photographs and a statement by a licensed professional.

The tenant acknowledges that is has reviewed and consented to the terms and conditions of this **Emergency Flood Measures & Procedures** and the attached **Emergency Action Plan**.

By: _____
Tenant

By: _____
Landlord

- The EAP must conform to the following form and substance:

EMERGENCY ACTION PLAN for Flood Emergencies 480 Greenwich Street/502 Canal Street, 504 Canal Street and 506 Canal Street

This EAP is critical for protection of life and property. All tenants must provide Landlord with up to date emergency contact information. Tenants are not permitted to remain at the property or access the property in the event that the EAP is enacted by Landlord. The Landlord will work with City

Officials and Flood Control Authorities to evaluate an emergency flood threat and flood warning to determine when to enact the EAP. In case of a declared flood emergency, the Landlord and/or its representatives [as posted] will enact the EAP and make good faith continuous efforts to contact all Tenants. The Landlord is responsible for vacating the property in the event that the EAP is enacted.

IN THE EVENT THAT THE LANDLORD ENACTS THE EAP IT IS MANDATORY THAT ALL TENANTS EVACUATE ALL BUILDINGS.

The National Weather Service Office issues two types of flash flood/high tide advisories:

Flash Flood Watch: Heavy rains or high tides are occurring or expected to occur and may cause flash flooding in certain areas, and building occupants and personnel should be alert to the possibility of a flood emergency that will require immediate attention.

Flash Flood Warning: flash flooding is occurring or imminent for certain designated areas, and immediate action should be taken by those threatened.

TENANTS ARE TO WALK NORTH ON SIXTH AVENUE PAST DOMENICK

A true copy of resolution adopted by the Board of Standards and Appeals, December 13, 2016.

Printed in Bulletin No. 51, Vol. 101.

- Copies Sent**
- To Applicant
 - Fire Com'r.
 - Borough Com'r.

STREET TO GET TO HIGH GROUND IN A FLOOD EVENT (see attached map).

The Landlord will install Flood Protective Measures at the front of the buildings that are comprised of flood gates, window and door shields, an emergency access ladder and an exterior water infiltration pump. The individual flood gates will remain flat during installation to allow access and egress, and will be sealed after the Tenant and all personnel have left the buildings.

Reentry

After the flood even is over as determined by the Owner and Flood Officials, the Owner will verify that all utilities are in working order, assess damage, and coordinate the re-entry of tenants to the premises;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 13, 2016.

