



**IN THE MATTER OF** an application submitted by 3 East 89th Holding 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:

1. to modify the use provisions of Section 22-10 (USES PERMITTED AS-OF-RIGHT) to allow Use Group 6 Uses (art gallery) on floors one through five; and
2. to modify the rear yard requirements of Section 23-47 (Minimum Required Rear Yards), the height and setback requirements of Sections 23-662 (Maximum height of buildings and setback regulations), and 23-692 (Height limitations for narrow buildings or enlargements), and the minimum distance between building requirements of Section 23-711 (Standard minimum distance between buildings),

in connection with a proposed enlargement and change of use of an existing 5-story residential building at 3 East 89th Street (Block 1501, Lot 5), on a zoning lot (Block 1501, Lots 4, 5 and 7), in R8B and R10 Districts, partially within the Special Park Improvement District, within the Expanded Carnegie Hill Historic District, Borough of Manhattan, Community District 8.

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This application (C 220174 ZSM) for a special permit pursuant to Section 74-711 of the Zoning Resolution (ZR) was filed by 3 East 89<sup>th</sup> Holding LLC on November 1, 2021. This application would facilitate the restoration, conversion, and enlargement of an existing building for a commercial art gallery and residential use at 3 East 89<sup>th</sup> Street (Block 1501, Lot 5) located in the Expanded Carnegie Hill Historic District of Manhattan, Community District 8.

## **BACKGROUND**

The development site (Block 1501, Lots 4, 5 and 7) comprises three tax lots on a single zoning lot, including 1083 Fifth Avenue (Lot 4), 5-7 East 89<sup>th</sup> Street (Lot 7) and 3 East 89<sup>th</sup> Street (Lot 5). There are three existing buildings on the development site. The six-story Beaux Arts mansion located at 1083 Fifth Avenue was constructed in 1902 and the five-story building at 3 East 89<sup>th</sup> Street was constructed in 1915 as an addition to 1083 Fifth Avenue. Both buildings were designed by the architect Ogden Codman. The two buildings were donated to the National Academy of Design in 1940 to be used as their headquarters. The two-story building at 5-7 East 89<sup>th</sup> Street was constructed in 1959 as an addition to the two previously built buildings.

In 2018, the National Academy of Design sold the three individual tax lots that make up the development site to different entities. In 2019, the property owner for 1083 Fifth Avenue obtained building permits for an enlargement and change of use from non-commercial art gallery to a single-family residence while the property owner for 5-7 East 89<sup>th</sup> Street intends to use the property as a museum. The building at 3 East 89<sup>th</sup> Street was purchased by the applicant with the intention of using it as a commercial art gallery and is the subject of this application.

Accordingly, 3 East 89<sup>th</sup> Street abuts 1083 Fifth Avenue to the west and 5-7 East 89<sup>th</sup> Street to the east on the same zoning lot.

The area surrounding the development site is generally characterized by a mix of residential buildings between four and 38 stories, institutional uses such as schools and houses of worship, art and cultural institutions concentrated on Fifth Avenue known as Museum Mile, and proximity to Central Park. Some of the institutional uses in the area include St. David's School, Church of the Heavenly Rest, and Park Avenue Synagogue. Building height in the surrounding area generally varies from 60 feet to over 200 feet.

The development site is located within the Expanded Carnegie Hill Historic District, designated in 1993, to preserve the historic character of the neighborhood (N 940311 HKM). In its designation report, the Landmarks Preservation Commission (LPC) described 3 East 89<sup>th</sup> Street as a neo-Renaissance style townhouse and noted the building's style, scale, materials, and details, citing them as features that contribute to the special architectural character of the historic district. Designated New York City landmarks in the immediate area include the Solomon R. Guggenheim Museum, an individual and interior landmark located immediately across from the development site on East 89<sup>th</sup> Street. To the north of the site across East 90<sup>th</sup> Street is a group of landmark buildings that make up the Andrew and Louise Carnegie House, now occupied by the Cooper Hewitt, Smithsonian Design Museum.

The area is well connected to transit. The East 86<sup>th</sup> Street subway station is the closest station, located four blocks southeast on Lexington Avenue, providing access to the 4, 5 and 6 trains. The northbound and southbound M1, M2, M3 and M4 buses run along Fifth Avenue and Madison Avenue with the closest stops located at the intersection of 89<sup>th</sup> Street.

The L-shaped development site has an approximately 27-foot frontage on Fifth Avenue and an approximately 104-foot frontage on East 89<sup>th</sup> Street on the block bounded by Fifth Avenue to the West, East 90<sup>th</sup> Street to the North, Madison Avenue to the East, and East 89<sup>th</sup> Street to the South. The development site has a total lot area of approximately 13,300 square feet. 1083 Fifth Avenue is an approximately 2,800-square-foot lot improved with a seven-story single-family residential building. 5-7 East 89<sup>th</sup> Street is an approximately 6,500-square-foot lot improved with a two-story non-commercial art gallery building. 3 East 89<sup>th</sup> Street, the subject of this application, is a 4,000-square-foot lot improved with a five-story non-commercial art gallery building containing 13,700 square feet of floor area.

With the adoption of the zoning resolution in 1961, the development site and much of the surrounding area was mapped with an R10 zoning district and in 1970, much of the neighborhood was mapped with an R8B zoning district on the midblocks. This resulted in the existing split-lot zoning of the development site, with the eastern half (8,200 square feet) within the R8B zoning district and the western half (5,100 square feet) within the R10 zoning district. 1083 Fifth Avenue is located entirely within the R10 district and 5-7 East 89<sup>th</sup> Street is located entirely within the R8B district. 3 East 89<sup>th</sup> Street is split between the two districts, with 2,300 square feet on the west side of the lot located in the R10 district and 1,700 square feet on the east side of the lot located in the R8B district.

The R10 zoning district allows high-density residential and community facility development with a maximum floor area ratio (FAR) of 10.0. The R8B zoning district in Manhattan Community District 8 permits a maximum FAR of 4.0 for residential, 5.1 for community facility development and a maximum building height of 75 feet. In 1973, the western half of the site

within the R10 zoning district was included in the Special Park Improvement District (PI), which was mapped along the length of Fifth Avenue adjacent to Central Park (CP22240). The PI was created with the intention of preserving residential character and architectural quality of Fifth and Park avenues by limiting building heights to 19 stories or 210 feet, whichever is less, and mandating street wall continuity.

The applicant proposes to restore, convert, and enlarge the existing 13,700-square-foot building at 3 East 89<sup>th</sup> Street into a six-story building with commercial art gallery and residential use. The FAR of the proposed 95-foot building would be 3.16, comprising 19,100 square feet of floor area. The entire existing building would be converted to commercial art gallery use until the applicant moves forward with the proposed enlargement. Once the building is enlarged, the commercial art gallery would be located on the lower floors with parts of the fourth and fifth floor and the entire sixth floor dedicated to a single residential use. The applicant seeks a waiver of ZR Section 22-10 to permit a Use Group 6 commercial art gallery in a residential district.

The proposed 5,400 square-foot enlargement would be distributed across the building through infill in the northeast corner on floors two through four, infill on the fifth floor to the extent of the expanded fourth floor, and an addition of a new sixth-floor penthouse. The applicant is seeking four bulk waivers to enable the design and location of the proposed additions in the existing building in a way that would contribute to a better site plan.

The applicant seeks two height-related waivers to facilitate the proposed fifth floor addition and sixth-floor penthouse, which would increase the building height by 15 feet from the existing non-complying height of 80 feet to 95 feet. A waiver of ZR Section 23-662 would allow the building to attain a height of 95 feet in the R8B district, where the maximum permitted height is 75 feet. A waiver of ZR Section 23-692 would allow the building in R8B and R10 districts with a street wall less than 45 feet in width to attain a building height of 95 feet, where the maximum permitted height is 60 feet. The penthouse would be set back 56 feet from East 89<sup>th</sup> Street and 10 feet from the eastern tax lot line. To facilitate the sixth-floor penthouse, the applicant is seeking a

waiver of ZR Section 23-47 to allow a rear yard setback of 10 feet, where 30 feet is required, and waiver of ZR Section 23-711 to modify the required minimum distance between buildings on a single zoning lot to allow a distance of 31 feet between the east wall of 1083 Fifth Avenue and the west non-required window of the penthouse, where 35 feet is required. Since these two buildings on the zoning lot are abutting up to the level of the third floor, ZR Section 23-70 only applies to, and the waiver of ZR Section 23-711 is being sought for, portions of the building above that level.

The rear yard waiver of ZR Section 23-47 would also facilitate the proposed enlargements on floors two through five. The existing first floor of 3 East 89<sup>th</sup> Street extends to the rear lot line and is not proposed to be changed. The proposed enlargement on the second floor includes an infill at the rear and east side of the building above the existing first floor roof that extends to the rear lot line, and a new second floor mezzanine. The proposed third floor enlargement consists of infill at the rear and east side of the building above the enlarged second floor. The proposed fourth floor enlargement is composed of infill on the east side of the building above the enlarged third floor, with a triangular-shaped corner that extends to the rear lot line. The proposed enlargement of the fifth floor consists of infill behind the existing mansard roof to the full extent of the enlarged fourth floor, ending in a similar triangular-shaped corner at the rear of the building.

In conjunction with the proposed conversion and enlargement of the building, the applicant would complete an extensive restoration of the building's facade pursuant to approvals granted by the LPC (No. LPC-21-01860, MISC-22-09791).

To facilitate the proposed project, the applicant seeks a special permit pursuant to ZR Section 74-711 to modify use and bulk requirements. In order to grant a special permit, the City Planning Commission must find that the proposed use modification shall have minimal adverse effects on the conforming uses within the building and in the surrounding area, and that the proposed 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.

## **ENVIRONMENTAL REVIEW**

This application (C 220174 ZSM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA) and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et. seq. and the New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 21DCP188M. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed actions, a Negative Declaration was issued on January 3, 2022.

## **UNIFORM LAND USE REVIEW**

This application (C 220174 ZSM) was certified as complete by the Department of City Planning on December 3, 2021 and was duly referred to Manhattan Community Board 8 and the Manhattan Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

### **Community Board Review**

Manhattan Community Board 8 held a public hearing on this application (C 220174 ZSM) on January 12, 2022, and, on February 9, 2022, by a vote of 27 in favor, 11 opposed, and none abstaining, adopted a resolution recommending approval of the application and urged the application to incorporate the following recommendations by the Carnegie Hill Neighbors:

- Reconfigure the sixth-floor addition by moving it 4 feet east and 4 feet 5 inches north to allow for more light and air into the adjacent inner court at 1080 Fifth Avenue without sacrificing floor area.

- Reduce the angle of the rear yard addition on the fourth and fifth floors to improve light and air to 1083 Fifth Avenue.

### **Borough President Review**

This application (C 220174 ZSM) was considered by the Manhattan Borough President, who, on March 16, 2022, issued a recommendation to approve the application.

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

On March 30, 2022 (Calendar No. 5), the CPC scheduled April 13, 2022 for a public hearing on the application (C 220174 ZSM). The hearing was duly held on April 13, 2022 (Calendar No. 27). Six speakers testified in favor of the application and three in opposition.

The applicant team, composed of three speakers, included an applicant representative, the property owner, and an architect, all of whom testified in favor of the application. The applicant's representative provided an overview of the proposed project and requested actions, the property owner discussed the intended future use and art programming of the building, and the architect presented the building restoration and design.

Representatives from Performa, The Jewish Museum, and Solomon R. Guggenheim Foundation testified in support of the project for its contribution to the art and cultural institutions in New York City and Upper East Side.

Three additional members of the public spoke in favor of the project for the gallery's contribution to the arts and culture of New York City.

A representative from a planning firm testified in opposition to the project on behalf of 1080 Fifth Avenue (an adjacent building not on the development site) and presented supplemental light and shadow calculations to state that the impact on light in the courtyard and adjacent apartments in the residential building at 1080 Fifth Avenue would be significant.

A representative for the Board of Directors and Tenant Shareholders of 1080 Fifth Avenue testified in opposition of the project for its proposed rooftop additions on the fifth and sixth floors and stated that the additional height would result in permanent loss of light and air enjoyed by the residents of 1080 Fifth Avenue.

A representative of Carnegie Hill Neighbors testified in opposition to the project, stating that the proposed rooftop addition would result in a significant impact on access to light and air with respect to the windows on the top two floors and a second-floor window in the rotunda of 1083 Fifth Avenue.

Following the hearing, the Commission received written testimony on behalf of 1080 Fifth Avenue to elaborate on verbal testimony made at the hearing, opposing the project for the resulting loss of light in the inner court on the neighboring residential property. The testimony included a shadow study of access to daylight in the court throughout the year.

The Commission also received written correspondence on behalf of the Carnegie Hill Neighbors opposing the project for its potential impact on neighboring properties, in particular a window located in the rotunda of 1083 Fifth Avenue. The written testimony raised concerns over the loss of light due to the proposed development and proposed alternatives for the rear addition.

There were no other speakers, and the hearing was closed.

## **CONSIDERATION**

The City Planning Commission believes that the grant of this special permit (C 220174 ZSM), as modified, is appropriate.

The proposed building will contain a commercial art gallery and ancillary uses on the lower floors and transition to upper floors containing a single residence intended to house the gallery



owner or host visiting artists. The conforming residential use will support the activities of the commercial art gallery. Because the gallery and residential uses will be complementary, there is no anticipated adverse effect from the gallery on the residential use. The surrounding area is characterized by a concentration of art and cultural institutions that make it compatible with the proposed commercial art gallery use. The Commission believes that the proposed project will enhance the historic Upper East Side neighborhood, known for its abundance of world class museums and galleries, and that the use modification to ZR Section 22-10 to permit a Use Group 6 commercial art gallery in a residential district will have minimal adverse effects on the conforming uses within the building and in the surrounding area.

The proposed enlargement of 3 East 89<sup>th</sup> Street will result in an addition of approximately 5,400 square feet through infill on floors two through five and a new sixth-floor penthouse. The Commission recognizes that the request for bulk waivers to facilitate the proposed enlargement is associated with the specific site constraints in accommodating the substantial setbacks to minimize visibility of the proposed sixth floor in the historic district, and that pre-existing conditions on the zoning lot make it difficult to comply with current zoning regulations governing distance between buildings and minimum rear yard.

The proposed penthouse addition will increase the height of the building to approximately the height of the residential building at 1083 Fifth Avenue and will remain substantially lower than the 21-story residential building at 1080 Fifth Avenue. The Commission believes that the waivers of ZR Sections 23-662 and 23-692 to permit a height of 95 feet, where the existing non-complying height is 80 feet, are appropriate given the context of the surrounding area in which building heights are typically between 60 and over 200 feet. In addition, given that the penthouse will be substantially setback, 10 feet from the east parapet and 56 feet from the existing street wall, the increased height will only be visible from limited view corridors from moderate to long distances and will thus have minimal impact on the historic fabric of the neighborhood.

The additional floor area proposed on floors two through four is limited to the northeast corner at the rear of the building. The Commission appreciates that this concentration of new floor area in the rear of the building will minimize its impact on surrounding buildings. In addition, the proposed fifth floor will infill the roof space behind the existing mansard roof which currently protrudes above the fourth floor at the front of the building, limiting visibility from the street. The Commission believes that the waiver of ZR Section 23-711 to permit a distance of 31 feet between the east wall of 1083 Fifth Avenue and the west non-required window of the proposed new sixth-floor penthouse is appropriate, given its context within the existing conditions of the zoning lot. 3 East 89<sup>th</sup> Street was built before the adoption of the 1961 Zoning Resolution as an addition to 1083 Fifth Avenue and has a pre-existing non-compliance with current zoning regulations for minimum distance between buildings on a single zoning lot. The Commission believes that the proposed enlargement, being strategically distributed across the existing building, minimizes impacts on surrounding structures and open space in terms of scale and location of proposed bulk.

The Commission notes that the 33-foot rear yard at 5-7 East 89<sup>th</sup> Street is subject to an existing, recorded light and air easement that requires that area to remain open and unobstructed in perpetuity. This easement enables 3 East 89<sup>th</sup> Street to provide legally required east-facing windows on the tax lot line it shares with 5-7 East 89<sup>th</sup> Street, affording ample light and air to the addition on the east side of floors two through five of 3 East 89<sup>th</sup> Street and surrounding buildings to the east.

The Commission further notes that the Environmental Assessment Statement (EAS) studied the impact of shadows from the proposed enlargement on the three historically significant stained-glass windows of the Church of the Heavenly Rest facing the development site from the north (CEQR No. 21DCP188M). The shadow study found that the existing buildings surrounding the Church, which include the 200-foot-tall building at 1080 Fifth Avenue and the existing building envelope of 3 East 89<sup>th</sup> Street, already cast substantial shadows on the Church windows. The incremental shadows created as a result of the proposed enlargement will not significantly

worsen the current conditions and will, therefore, be minimal in impact. The proposed enlargement will not cast any shadows on Central Park.

The Commission considered the written testimony submitted on behalf of 1080 Fifth Avenue that opposed the project for loss of light as a result of the fifth and sixth floor additions. In response to this testimony, the applicant submitted a shadow analysis of the impact on light in the adjacent inner court at 1080 Fifth Avenue which found that the proposed addition will only create incremental shadows on the court for a couple of hours for a few days out of the year. Unlike the EAS, which, pursuant to the guidelines of the CEQR Technical Manual, includes a technical analysis of shadows on publicly accessible sunlight-sensitive resources such as parks and historically significant features of landmark buildings, the finding in the Zoning Resolution for a special permit pursuant to ZR 74-711 calls for a more qualitative assessment to determine whether the modification would have minimal adverse effects on light and air on open space in the vicinity. The existing buildings surrounding the court, which include the 21-story building at 1080 Fifth Avenue, the existing building envelope of 3 East 89<sup>th</sup> Street, and the 38-story building at 45 East 89<sup>th</sup> Street, already cast substantial shadows on the inner court, which is in shadow for a majority of daylight hours. Given these existing conditions, and that the proposal is not physically encroaching into the court, the Commission finds that the incremental increase in shadow from the proposed enlargement will not have more than minimal adverse effect on light and air in the inner court.

The Commission acknowledges the concerns raised by Community Board 8 regarding the rear addition on the fourth and fifth floors, and recommends a modification to the application to reduce the encroachment into the rear yard on floors four and five. The proposed triangular addition on the fourth and fifth floors that extends to the rear lot line will be squared and reduced to extend five feet from the rear lot line. As modified, the Commission believes the waiver of ZR Section 23-47 to permit the enlargement to extend to the rear lot line on floors two through three and provide a five-foot rear yard at the fourth and fifth floors and a 10-foot rear yard at the level of the new sixth-floor penthouse is appropriate. Overall, the Commission believes that the

proposed bulk modifications to facilitate the enlargement, as modified, will have minimal impact on the structures and open space in the vicinity through strategic infill of the existing building.

The Commission appreciates that the requested action will facilitate the restoration and preservation of 3 East 89<sup>th</sup> Street and enhance the architectural and historical built fabric of the historic district. The Commission is in receipt of a Certificate of Appropriateness (No. LPC-21-01860) dated November 16, 2020 and a design approval (MISC-22-09791) dated April 26, 2022 from the LPC noting that it has reviewed the proposal and offered support of the application, as modified, for the issuance of a Special Permit pursuant to ZR Section 74-711. The Commission notes that pursuant to the restrictive declaration signed by 3 East 89<sup>th</sup> Holdings LLC as declarant, a regular maintenance and inspection program has been established. This exterior work would include repair, restoration and replacement of key historic features that would bring the building to a sound first-class condition and aid in the long-term preservation of the building through continued maintenance.

## **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 74-711 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;
- (2) Such use modifications shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.

## **RESOLUTION**

**RESOLVED**, that having considered the EAS for which a Negative Declaration was issued on January 3, 2022 with respect to this application (CEQR No. 21DCP188M), the City Planning Commission finds that the action described herein will have no significant adverse 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 3 East 89th Holding 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:

1. to modify the use provisions of Section 22-10 (USES PERMITTED AS-OF-RIGHT) to allow Use Group 6 Uses (art gallery) on floors one through five; and
2. to modify the rear yard requirements of Section 23-47 (Minimum Required Rear Yards), the height and setback requirements of Sections 23-662 (Maximum height of buildings and setback regulations), and 23-692 (Height limitations for narrow buildings or enlargements), and the minimum distance between building requirements of Section 23-711 (Standard minimum distance between buildings),

in connection with a proposed enlargement and change of use of an existing 5-story residential building at 3 East 89th Street (Block 1501, Lot 5), on a zoning lot (Block 1501, Lots 4, 5 and 7), in R8B and R10 Districts, partially within the Special Park Improvement District, within the Expanded Carnegie Hill Historic District, Borough of Manhattan, Community District 8, as modified, is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 220174 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following approved plans, prepared by Rafael Vinoly Architects, filed with this application and incorporated in this resolution:

<b><u>Drawing No.</u></b>	<b><u>Title</u></b>	<b><u>Last Revised Date</u></b>
Z-021.00	Zoning Analysis	04/25/2022
Z-201.00	Zoning Lot Site Plan	04/25/2022
Z-202.00	Zoning Lot Waiver Plan	04/25/2022

Z-203.00	Zoning Lot Ground Floor Plan	04/25/2022
Z-211.00	Cellar and 1 <sup>st</sup> Floor Zoning Plan	04/25/2022
Z-212.00	2 <sup>nd</sup> Floor/2 <sup>nd</sup> Floor Mezzanine/3 <sup>rd</sup> Floor Zoning Plan	04/25/2022
Z-213.00	4 <sup>th</sup> & 5 <sup>th</sup> Floor Zoning Plan	04/25/2022
Z-214.00	Penthouse Zoning Plan	04/25/2022
Z-221.00	Waiver Section N-S Lot 5 (R10) & (R8B)	04/25/2022
Z-222.00	Waiver Section N-S Lot 7	04/25/2022
Z-223.00	Waiver Section E-W Lots 4, 5, 7	04/25/2022

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. 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.
5. Development pursuant to this resolution shall be allowed only after the attached restrictive declaration, to be executed by 3 East 89<sup>th</sup> Holding LLC, and 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, County of New York.
6. 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 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 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.

7. 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 220174 ZSM), duly adopted by the City Planning Commission on May 11, 2022 (Calendar No. 6), 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.

**DANIEL R. GARODNICK, *Chair***  
**DAVID J. BURNEY, JOSEPH I. DOUEK,**  
**ALFRED C. CERULLO, III, RICHARD W. EADDY,**  
**ANNA HAYES LEVIN, ORLANDO MARIN,**  
**LARISA ORTIZ, RAJ RAMPERSHAD, *Commissioners***



# COMMUNITY/BOROUGH BOARD RECOMMENDATION

<b>Project Name:</b> 3 East 89th Street	
<b>Applicant:</b> 3 East 89th Holding LLC	<b>Applicant's Primary Contact:</b> Stuart Beckerman
<b>Application #</b> 220174ZSM	<b>Borough:</b>
<b>CEQR Number:</b> 21DCP188M	<b>Validated Community Districts:</b> M08

**Docket Description:**  
 IN THE MATTER OF an application submitted by 3 East 89th Holding 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:

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- to modify the rear yard requirements of Section 23-47 (Minimum Required Rear Yards), the height and setback requirements of Sections 23-662 (Maximum height of buildings and setback regulations), and 23-692 (Height limitations for narrow buildings or enlargements), and the minimum distance between building requirements of Section 23-711 (Standard minimum distance between buildings),

in connection with a proposed enlargement and change of use of an existing 5-story residential building at 3 East 89th Street (Block 1501, Lot 5), on a zoning lot (Block 1501, Lots 4, 5 and 7), in R8B and R10 Districts, partially within the Special Park Improvement District, within the Expanded Carnegie Hill Historic District, Borough of Manhattan, Community District 8.  
 Plans for this proposal are on file with the City Planning Commission and may be seen at 120 Broadway, 31st Floor, New York, NY 10271-0001.

*Please use the above application number on all correspondence concerning this application*

<b>RECOMMENDATION: Conditional Favorable</b>			
<b># In Favor:</b> 27	<b># Against:</b> 11	<b># Abstaining:</b> 0	<b>Total members appointed to the board:</b> 38
<b>Date of Vote:</b> 2/9/2022 12:00 AM		<b>Vote Location:</b> Zoom	

*Please attach any further explanation of the recommendation on additional sheets as necessary*

<b>Date of Public Hearing:</b> 1/12/2022 6:30 PM	
<b>Was a quorum present?</b> No	<i>A public hearing requires a quorum of 20% of the appointed members of the board but in no event fewer than seven such members</i>
<b>Public Hearing Location:</b>	Zoom <a href="https://www.cb8m.com/event/21798/">https://www.cb8m.com/event/21798/</a>

**CONSIDERATION:** WHEREAS, this is a private application by 3 East 89th Street Holding LLC requesting a special permit pursuant to ZR section 74-711 to allow the use of the premises as a Use Group 6 commercial art gallery and construction of rear and side enlargements and a partial one-story penthouse addition within the Expanded Carnegie Hill Historic District of Community District 8, Manhattan.

WHEREAS, at the Land Use Committee of Community Board 8 held on February 10, 2022, Carnegie Hill Neighbors presented two possible changes to reconfigure the penthouse floor and open up a 5-foot space at floors 3 and 4 in the rear of the building (attached), therefore;

BE IT RESOLVED that Community Board 8 Manhattan approves this application and urges the applicant to implement the changes suggested by Carnegie Hill Neighbors, if possible.

Recommendation submitted by	MN CB8	Date: 2/16/2022 10:25 AM
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Russell Squire  
Chair

Will Brightbill  
District Manager



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**The City of New York  
Community Board 8 Manhattan**

February 16, 2022

Daniel R. Garodnick, Chair  
City Planning Commission  
120 Broadway, 31<sup>st</sup> Floor  
New York, NY 10271

**Re: 3 East 89th Street - ULURP Number: 220174ZSM**

Dear Chair Garodnick,

At the Land Use Committee meeting of Community Board 8 Manhattan held on February 10, 2022, the board **APPROVED** the following resolution by a vote of 27 in favor, 11 opposed, 0 abstentions, and 0 not voting for cause:

**WHEREAS**, this is a private application by 3 East 89th Street Holding LLC requesting a special permit pursuant to ZR section 74-711 to allow the use of the premises as a Use Group 6 commercial art gallery and construction of rear and side enlargements and a partial one-story penthouse addition within the Expanded Carnegie Hill Historic District of Community District 8, Manhattan.

**WHEREAS**, at the Land Use Committee of Community Board 8 held on February 10, 2022, Carnegie Hill Neighbors presented two possible changes to reconfigure the penthouse floor and open up a 5-foot space at floors 3 and 4 in the rear of the building (attached), therefore;

**BE IT RESOLVED** that Community Board 8 Manhattan approves this application and urges the applicant to implement the changes suggested by Carnegie Hill Neighbors, if possible.

Please advise our office of any action taken on this matter.

Sincerely,

*Russell Squire*

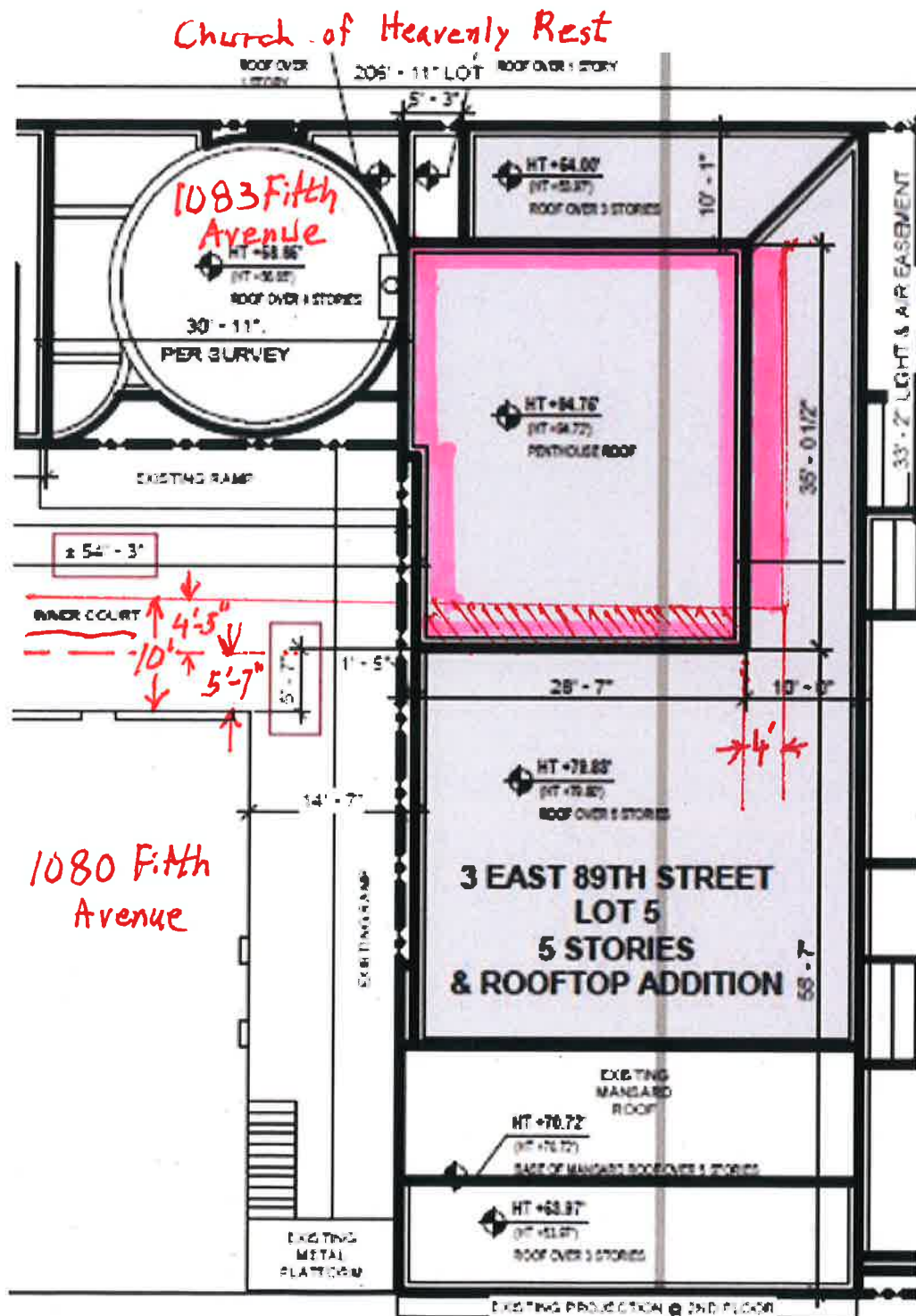
Russell Squire  
Chair

cc: Honorable Eric Adams, Mayor of the City of New York  
Honorable Carolyn Maloney, 12th Congressional District Representative  
Honorable Mark Levine, Manhattan Borough President  
Honorable Liz Krueger, NYS Senator, 28th Senatorial District  
Honorable José M. Serrano, NYS Senator, 29th Senatorial District  
Honorable Dan Quart, NYS Assembly Member, 73rd Assembly District  
Honorable Rebecca Seawright, NYS Assembly Member 76th Assembly District  
Honorable Edward Gibbs, NYS Assembly Member 68th Assembly District  
Honorable Julie Menin, NYC Council Member, 5th Council District  
Honorable Keith Powers, NYC Council Member, 4th Council District

# 3 East 89th – Two changes proposed by Carnegie Hill Neighbors

## Proposed Change #1:

Reconfigure the PH (6<sup>th</sup> Floor, Glass Box) without change of floor area.



### Pushout:

Move PH east by 4 Ft.

### Pullback:

Move PH north (up) by 4 Ft – 5 inches

### Result:

- “Gap” between PH south wall and 1080 Fifth north wall will widen from 5’-7” to 10’. This will allow more light and air into 1080’s inner court benefitting lower apartments.
- The floor area of the PH will remain unchanged.

For CB8: Feb. 9, 2022

East 89<sup>th</sup> Street

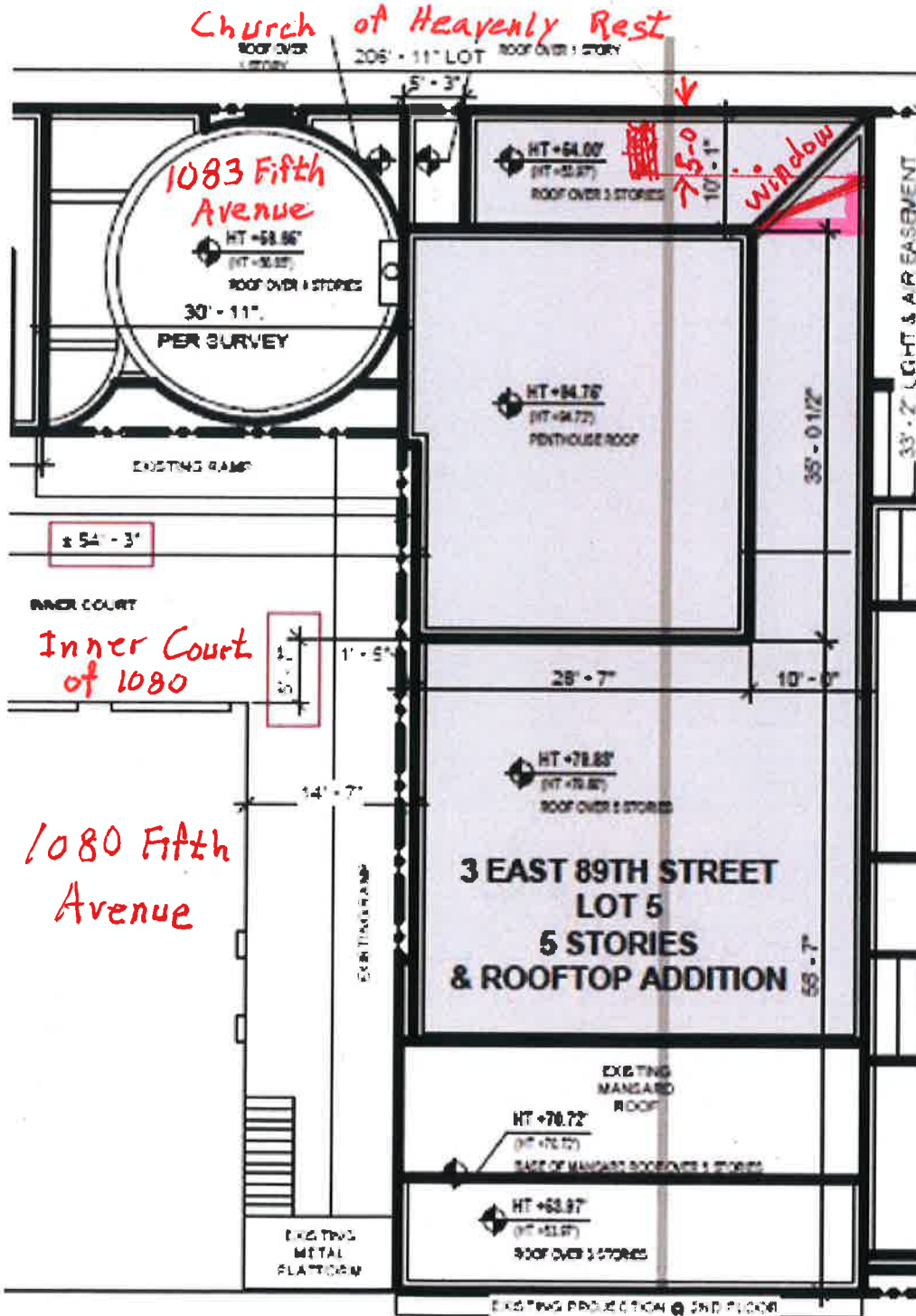
North

# 3 East 89th – Two changes proposed by Carnegie Hill Neighbors

## Proposed Change #2:

Open up a 5-foot Space at floors 3 & 4 in the rear;

Space is now dominated by an angle 2-story window that goes to the property line.



## Reduce angle of tall rear window (floors 3 & 4)

- From current 45 degrees to 27 degrees.
- This will open a space of 5 feet in rear yard.

## Result:

- It will allow more light and air to 1083 Fifth.
- It will create the only open breezeway at this height should the church to the north decide to build up the approx. 20-foot space that now exists.

For CB8: Feb. 9, 2022

East 89th Street



# BOROUGH PRESIDENT RECOMMENDATION

<b>Project Name:</b> 3 East 89th Street	
<b>Applicant:</b> 3 East 89th Holding LLC	<b>Applicant's Administrator:</b> Stuart Beckerman
<b>Application #</b> 220174ZSM	<b>Borough:</b> Manhattan
<b>CEQR Number:</b> 21DCP188M	<b>Validated Community Districts:</b> M08

**Docket Description:**  
 IN THE MATTER OF an application submitted by 3 East 89th Holding 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 provisions of Section 22-10 (USES PERMITTED AS-OF-RIGHT) to allow Use Group 6 Uses (art gallery) on floors one through five; and
- to modify the rear yard requirements of Section 23-47 (Minimum Required Rear Yards), the height and setback requirements of Sections 23-662 (Maximum height of buildings and setback regulations), and 23-692 (Height limitations for narrow buildings or enlargements), and the minimum distance between building requirements of Section 23-711 (Standard minimum distance between buildings),

in connection with a proposed enlargement and change of use of an existing 5-story residential building at 3 East 89th Street (Block 1501, Lot 5), on a zoning lot (Block 1501, Lots 4, 5 and 7), in R8B and R10 Districts, partially within the Special Park Improvement District, within the Expanded Carnegie Hill Historic District, Borough of Manhattan, Community District 8.  
 Plans for this proposal are on file with the City Planning Commission and may be seen at 120 Broadway, 31st Floor, New York, NY 10271-0001.

*Please use the above application number on all correspondence concerning this application*

**RECOMMENDATION:** Favorable

*Please attach any further explanation of the recommendation on additional sheets as necessary*

**CONSIDERATION:**

Recommendation submitted by	MN BP	Date: 3/16/2022 5:01 PM
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OFFICE OF THE PRESIDENT  
BOROUGH OF MANHATTAN  
THE CITY OF NEW YORK

1 Centre Street, 19th floor, New York, NY 10007  
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Mark D. Levine, Borough President

March 16, 2022

## **Recommendation on 3 East 89<sup>th</sup> Street ULURP Application By 3 East 89<sup>th</sup> Holding LLC**

### **PROPOSED ACTIONS**

3 East 89<sup>th</sup> Holding LLC (“the Applicant”) is seeking a special permit and restrictive declaration pursuant to New York City Zoning Resolution (“ZR”) [Section 74-711](#) to facilitate the conversion and enlargement of the existing building on 3 East 89<sup>th</sup> Street (Block 1501, Lot 5) as well as the operation of a commercial art gallery (“the Project”). The special permit would allow for modifications in permitted use and bulk provisions (“the Actions”) for the building located at 3 East 89<sup>th</sup> Street, located in Manhattan Community Board 8 (a portion of the “Development Site”).

The Applicant proposes the following actions (“the Actions”):

1. Modification of permitted use provisions in [ZR Section 22-10](#); and
2. Modification of the bulk provisions in [ZR Section 23-47](#) (minimum required rear yard), [ZR Section 23-62](#) (maximum height), [ZR Section 23-692](#) (height limits for narrow buildings or enlargements), and [ZR Section 23-711](#) (minimum distance between buildings on a single lot).

### **BACKGROUND**

#### **Area Context**

The Development Site is one zoning lot located on the north side of East 89<sup>th</sup> Street, between Fifth Avenue and Madison Avenue that contains Lot 5 as well as the adjacent Lots 4 and 7. The site is located within Manhattan Community District 8 in the Carnegie Hill neighborhood on the Upper East Side.

The area surrounding the Development Site is comprised of R10 zoning districts along the avenues and R8B districts on the mid-blocks. The R10 district along 5<sup>th</sup> Avenue is located within the Special Park Improvement District and along Madison Avenue. The R10 district is located within the Special Madison Avenue Preservation District as well as a C1-5 commercial overlay.

The Special Park Improvement District was created on April 23, 1973 with the intent of protecting the residential character and architectural quality of Fifth Avenue and Park Avenue from East 59<sup>th</sup> Street to East 111<sup>th</sup> Street. Building heights are limited to 210 feet or 19 stories, whichever is less, and FAR bonuses are prohibited.

The Special Madison Avenue Preservation District was created on December 20, 1973 with the intent of preserving the retail and residential character of Madison Avenue and the surrounding area between East 61<sup>st</sup> Street to East 96<sup>th</sup> Street. Ground floors of buildings within this Special District must be occupied by selected uses and bulk and street wall provisions limit the height of new developments.

Within the R10 Special Park Improvement District and R8B mid-blocks, Use Groups 1-4 are permitted as of right. These groups include all residential uses and community facility uses. The maximum FAR in R10 districts is 10.0 but may be increased to 12.0 with inclusionary housing. However, within the Special Park Improvement District, the FAR is capped at 10.0. In R8B districts, the maximum FAR is 4.0. In R8B districts, building base heights are capped at 65 feet and overall building heights are capped at 75 feet.

The C1-5 overlay allows use groups 5 and 6 with a permitted commercial FAR of 2.0. These use groups include hotels and retail and service establishments that serve local shopping needs.

In 1961, the zoning for this area was R10. In 1970, the mid-blocks were rezoned to R8 with the goal of maintaining lower density and residential character. In 1985, these mid-blocks were again rezoned to R8B to restrict building heights and increase lot coverage according to Quality Housing Program zoning regulations.

There are also several individual landmarks in proximity of the Development Site, including the Solomon R. Guggenheim Museum (across the street from the Development Site on 5<sup>th</sup> Avenue); Andrew and Louise Carnegie House (0.2 miles away, or a 3-minute walk); McAlpin-Minot House (0.2 miles away, or a 3-minute walk); Emily Trevor House (0.2 miles away, or a 3-minute walk); 17 East 90th Street (0.2 miles away, or a 3-minute walk); Otto and Addie Kahn House (0.2 miles away, or a 3-minute walk); James A. and Florence Sloane Burden, Jr. House (0.2 miles away, or a 3-minute walk); John Henry and Emily Vanderbilt Sloane Hammond House (0.2 miles away, or a 3-minute walk); and John B. and Caroline Trevor House (0.2 miles away, or a 4-minute walk).

The Development Site is a 9-minute walk away from the 86<sup>th</sup> Street subway station along the 4, 5, and 6 lines. The site is close to bus stops for M1, M2, M3, and M4 bus routes.

The Development Site is within a block of Central Park and the nearest entrance is at Fifth Avenue and East 89<sup>th</sup> Street. Currently, the block that the site is located on is closed to traffic as a part of the Open Streets program, which allows for a range of commercial and public activities on designated roadways. The closure takes place from 10am until 2pm Mondays through Fridays.

Nearby institutional uses include the Church of the Heavenly Rest on Fifth Avenue and East 90<sup>th</sup> Street directly to the north of the Development Site; Cooper Hewitt Smithsonian Design Museum on Fifth Avenue and East 91<sup>st</sup> Street; The Jewish Museum on Fifth Avenue; and East 92<sup>nd</sup> Street; and other museums along Museum Mile.

## **Carnegie Hill and Expanded Carnegie Hill Historic Districts**

The Development Site is located within the Expanded Carnegie Hill Historic District. The Carnegie Hill Historic District was designated by the Landmarks Preservation Commission (“LPC”) on July 25, 1974 and was enlarged to include the Expanded Carnegie Hill Historic District on December 21, 1993. The mostly residential in character Carnegie Hill Historic District is primarily made up of rowhouses and mansions on the side streets and larger scaled multifamily housing on the avenues.

### **Certificate of Appropriateness**

The Applicant first presented plans to restore and enlarge the townhouse on 3 East 89<sup>th</sup> Street to LPC on February 11, 2020. In order to facilitate the use of the site as a flagship location of Salon 94, a commercial art gallery, the Applicant applied to LPC for a Certificate of Appropriateness for rear and side enlargements, rooftop addition, and a new building awning at entrance, and for a Restoration and Maintenance Plan for façade restoration, and the adoption of a cyclical maintenance plan. This proposal included a 5,735 square foot addition to the existing 13,684 square foot 5-story structure. It also included the addition of a sixth floor for an artist residence and studio. That portion would be set back 35 feet from the front lot line and also called for an extension of the building into the rear yard for additional office space and studio space. This application was approved with modifications, not including the proposed sixth floor. LPC commented favorably about the restoration included in the project but concluded that the sixth floor addition, constructed of glass, was inappropriate for the Extended Carnegie Hill Historic District.

An updated version of the application was presented by the Applicant during the June 30, 2020 LPC public meeting. This proposal reduced the size of the original sixth floor artist residence, now set back 56 feet from the front lot line and less visible from the street. The updated design was approved by LPC at this meeting. During this meeting, LPC voted to issue a favorable report in support of the ZR Section 74-711 Special Permit application and issue a Certificate of Appropriateness for the proposed enlargement and other alterations.<sup>1</sup>

Manhattan Community Board 8 held two public hearings on the LPC application for this Project on December 16, 2019 and January 13, 2020, during which the Board voted to recommend disapproval of the application. The Board raised issues with the proposed enlargements on the roof, rear, and east-facing side of the structure. In their resolution, Community Board 8 said that the proposed enlargement exceeded what would be considered a minimal impact in terms of scale and access to light and air. They also noted that the proposed changes would not constitute a public benefit, while previous enlargements made by the National Academy of Design were public benefits. The resolution stated that the 10 foot space in the rear yard needed to be preserved so to not intrude upon adjacent buildings, and that the roof enlargement was not appropriate for the Extended Carnegie Hill Historic District.

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<sup>1</sup> [Landmarks Preservation Commission Findings 3 East 89th Street, June 30, 2020](#)

## 74-711 Zoning Provision

ZR Section 74-711 pertains to zoning lots either containing a landmark designated by LPC or a zoning lot with an existing building located within a historic district designated by LPC. ZR Section 74-711 lists the following conditions under which the City Planning Commission (“CPC”) may approve modifications to use and bulk regulations:<sup>2</sup>

- I. Program for Continued Maintenance: Any application pursuant to this Section shall include a report from the LPC stating that a program has been established for continuing maintenance that will result in the preservation of the subject building or buildings, and that such use or bulk modifications, or restorative work required under the continuing maintenance program, contributes to a preservation purpose;
- II. LPC Certificate of Appropriateness: Any application pursuant to this Section shall include a Certificate of Appropriateness, other permit, or report from the LPC stating that such bulk modifications relate harmoniously to the subject landmark building or buildings in the Historic District, as applicable; and
- III. Number of Permitted Dwelling Units: The maximum number of dwelling units shall be as set forth in ZR § 15-111 (number of permitted dwelling units).

In its statement of findings for this 74-711 application, LPC concluded that the proposed bulk modification would have minimal adverse impacts on surrounding structures and open space in terms of scale, location, and access to light and air and there would be minimal adverse effects on the conforming uses within the building and within the surrounding area.

## PROPOSED DEVELOPMENT

The proposed Action would facilitate several changes to the existing structure at 3 East 89<sup>th</sup> Street. First, all five existing floors of the building would be converted to a Use Group 6 commercial art gallery. Second, the north side and east side of the building would be enlarged, the fifth floor would be enlarged to the extent of the enlarged fourth floor, a second floor mezzanine would be added, and a new penthouse would be added on the sixth floor. The total square footage of the building would increase from 13,684 square feet to 19,071 square feet. After enlargement, floors 1-3 would be used as a Use Group 6 commercial art gallery, and floors 4-6 would be used as a Use Group 2 residence. The second floor mezzanine would be used for mechanical equipment serving the residence. The building height would be increased from 79 feet 10 inches to 94 feet 9 inches. Both the existing and proposed building heights are taller than the current maximum permitted height of 60 feet.

In conjunction with the approved LPC application, the Project includes restorative work to the façade of the building which is intended to return the building closer to its original appearance.

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<sup>2</sup> [New York City Zoning Resolution, Section 74-711](#)



The Applicant has requested a restrictive declaration for this project including a commitment to the following conditions:

1. Development of the project according to plans submitted with special permit application;
2. Completion of façade restoration work;
3. Continuance of preservation, maintenance, and repair to structure; and
4. Compliance with continuing maintenance program.

### **Site Description**

The Development Site is comprised of three lots (Block 1501, Lot 4, 5, and 7). These three lots were formerly owned and operated by the National Academy of Design until 2019. Following its closure, the building located on Lot 5 was sold to the Applicant.

The building located on Lot 5 is currently occupied by the Applicant, Salon 94, and is being operated as a non-commercial art gallery which is allowed as-of-right under Use Group 3. Lot 7 currently is occupied by a two-story structure and Lot 4 is currently occupied by a six-story structure.

3 East 89<sup>th</sup> Street is split between two zoning districts. Just over half of the lot is located within a R8B district, and the other portion is located within a R10 district. Less than half of the lot is also within the Special Park Improvement District. Currently, this zoning does not allow for a Use Group 6 commercial art gallery.

### **COMMUNITY BOARD RESOLUTION**

The community board held a public hearing for this application on January 12, 2022, and an additional meeting with the Applicant on February 9, 2022. At the public hearing, members of the Community Board and the public generally expressed support for the proposed Action. Some concerns were raised about the roof addition and the LPC approval process for the Certificate of Appropriateness that was issued by LPC on June 30, 2020.

At the Land Use Committee meeting on February 10, 2020, Manhattan Community Board 8 voted to recommend approval of the application by a vote of 27 in favor, 11 opposed, and zero abstentions. Community Board 8 did not include any conditions in their resolution but urged the applicant to implement changes suggested by community group Carnegie Hill Neighbors, if possible. Those requested changes are summarized as follows:

1. Reconfigure the sixth floor artist residence by moving it 4 feet east and 4 ft 5 inches north to allow for more light and air into the adjacent inner court at 1080 5<sup>th</sup> Avenue without lessening floor area; and
2. Open a 5-foot space on the third and fourth floors by reducing the angle of a tall rear window to improve light and air to 1083 5<sup>th</sup> Avenue.

## BOROUGH PRESIDENT'S COMMENTS

After the closure of the National Academy of Design, I was happy to see that there was continued interest in using the property at 3 East 89<sup>th</sup> Street for the arts. While the block where the Development Site is located doesn't allow for commercial art galleries as-of-right, there is a strong tradition of the arts on this block with the legacy of the National Academy of Design and Museum Mile along Fifth Avenue. I join community members and advocates for the arts who testified that having a gallery at this location would be a positive asset for the surrounding neighborhood.

It is important that any development within the Expanded Carnegie Hill Historic District remain aesthetically consistent with the surrounding historic neighborhood. 3 East 83<sup>rd</sup> Street, built in 1915, is a representative structure of the neighborhood and the proposed improvements to the façade are consistent with the area's architectural style.

While the height of the proposed Project would exceed the 60-foot height limit for the Special District, the current building, which is already noncompliant at 79 feet 10 inches, predates the R8B designation for mid-blocks for the neighborhood and is partially in an R10 district, which allows much taller buildings.

The restoration and reuse of this building as an art gallery is an endeavor worthy of support. Before the LPC approval of the proposed Actions, the façade of the building had visible wear and needed renovation. In advance of the completion of the ULURP application, the Applicant has already completed significant exterior renovation and restored historic features from the interior. After the completion of the ULURP application, the Applicant plans to complete remaining façade restoration work.

Furthermore, I appreciate the Applicant's willingness to arrive at a design that minimizes impacts on the surrounding area. As currently configured, the sixth floor artist residence is positioned in a way that would have the lowest visual impact from street level. Moving it back and extending it to the east would make the addition more visible from the street and create unusable space due to the placement of the bulkhead and stairs. I look forward to this property continuing to serve as an asset to the arts and the entire community in the Carnegie Hill Neighborhood.

## BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends **approval** of the 3 East 89<sup>th</sup> Street proposal.



Mark Levine  
Manhattan Borough President

**3 EAST 89 HOLDING LLC**

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DECLARATION

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Dated: May 11, 2022

Address: 3 East 89<sup>th</sup> Street  
Location: Block 1501, Lot 5  
New York County, New York

Record & Return to:

Hirschen Singer & Epstein LLP  
902 Broadway, 13<sup>th</sup> Floor  
New York, New York 10010  
Attn: Stuart Beckerman, Esq.

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DECLARATION made as of the 11 day of May, 2022, by 3 EAST 89 HOLDING LLC, a New York limited liability company, having an address of 12 East 94<sup>th</sup> Street, New York, New York 10128 (“Declarant”):

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of certain real property located in the Borough of Manhattan, County and State of New York, which property is designated as Block 1051, Lot 5 on the Tax Map of the City of New York and by the street address 3 East 89<sup>th</sup> Street, and is more particularly described on Exhibit A attached hereto (the "Subject Property") and on which is located a five-story building (the “Designated Structure”); and

WHEREAS, Declarant proposes to renovate and enlarge the Designated Structure;

WHEREAS, the Subject Property together with the Designated Structure constitutes the Subject Premises (the "Subject Premises"); and

WHEREAS, the Subject Property shares a zoning lot with two other properties on Block 1051: Tax Lot 4, with a street address of 1083 Fifth Avenue, and Tax Lot 7, with a street address of 5-7 East 89<sup>th</sup> Street (the “Zoning Lot”); and

WHEREAS, Chicago Title Insurance Company ("Chicago Title"), a title company, has certified as of May 11, 2022 that Declarant is the sole party in interest ("Party in Interest"), as that term is defined in the zoning lot definition in Section 12-10 of the Zoning Resolution of the City of New York (the "Zoning Resolution"), to the Zoning Lot, a copy of which certification is attached hereto as Exhibit B, except for those Parties in Interest that have waived the right to execute this Declaration and agreed to subordinate their interests hereto ; and

WHEREAS, all Parties in Interest to the Zoning Lot have executed this Declaration or waived their rights to execute this Declaration;

WHEREAS, as of the date hereof, Chicago Title 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 Zoning Lot as of the date hereof; 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 which includes the Designated Structure, as the Expanded Carnegie Hill Historic District because of its special character or historical or aesthetic interest or value; and

WHEREAS, pursuant to Application No. C 220174 ZSM, dated October 27, 2021 (the "Application"), Declarant has 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"), to permit the Special Permit Use (as defined herein) and the Special Permit Bulk Modification (as defined herein); and

WHEREAS, at a public hearing held on February 11, 2020, Declarant requested that the LPC issue a report to the CPC in connection with the Application; and

WHEREAS, at the public meeting on June 30, 2020, following said public hearing, the LPC voted to issue the report to the CPC and to grant a Certificate of Appropriateness which allows the enlargement and alteration of the Designated Structure in the Expanded Carnegie Hill Historic District, as requested for the Application, and subsequently issued COFA-21-01860, dated November 21, 2020 and issued amendment MISC-22-09791, dated April 26, 2022, both annexed hereto as Exhibit C, and report MOU 21-03398 (LPC 21-03398), dated November 16, 2020 (the "MOU") annexed hereto as Exhibit D; and

WHEREAS, the approval for the MOU and Certificate of Appropriateness presumes satisfactory restoration of the Designated Structure pursuant to a Certificate of No Effect (the "CNE") which was issued on August 26, 2020 allowing restoration of the Designated Structure in the Expanded Carnegie Hill Historic District in accordance with Section 25-307 of the

Administrative Code of the City of New York. A copy of the Certificate of No Effect is annexed hereto as Exhibit E; and

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

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

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

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

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

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

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

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

"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.

"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.

"City" shall mean the City of New York.

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

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

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

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

"Designated Structure" is defined in the first Whereas clause set forth above.

"Force Majeure" shall mean: strike, lockout or labor dispute(s); inability to obtain materials or reasonable substitutes therefor unless due to any act or failure to act by Declarant; acts of God; unforeseen governmental restrictions, regulations, omissions or controls; enemy or hostile government actions; civil commotion, insurrection, revolution or sabotage; fire or other casualty; inclement weather of such a nature as to make performance or completion of the Landmark Work not feasible unless due to any act or failure to act by Declarant; any damage to



the Subject Premises of such a nature as to make completion of the Landmark Work not feasible; a taking of the Subject Premises, or a portion thereof, by condemnation or eminent domain; failure of a public utility to provide power, heat or light; unusual delay in transportation; material delays by the City, State or United States Government, or any agency or instrumentality thereof, in the performance of any work or processing or approval of any applications required in order to permit Declarant to carry out its obligations pursuant to this Declaration unless due to any act or failure to act by Declarant; denial to Declarant by any owner of an enforceable interest in adjoining real property, including any private fee owner or ground lessee of adjoining real property, or any agency of the City or State having an enforceable interest in adjoining real property, including sidewalk or streets, of a right to access to such adjoining real property, if such access is required to accomplish the obligations of 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; state of emergency, disaster emergency, and/or public health emergency declared by any governmental authority, or other conditions similar in character to the foregoing which are beyond the control of Declarant. No event shall constitute a Force Majeure unless Declarant complies with the procedures set forth in Sections 2.1 and 6.2 hereof.

"Landmark Work" shall refer to the restoration work on the Designated Structure as described in the Certificate of No Effect which is attached hereto as Exhibit E.

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

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

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

"Special Permit" shall mean the special permit described on page 4 hereof.

"Special Permit Use" shall mean a Use Group 6 commercial art gallery and related accessory uses. Notwithstanding the foregoing, no use shall be deemed a Special Permit Use if it is permitted as-of-right within the Subject Premises by the terms of the Zoning Resolution then in effect.

"Special Permit Bulk Modification" shall mean the modifications of the following provisions of the Zoning Resolution for the Subject Premises: (a) the residential rear yard regulation of ZR 23-47; (b) the building height limitation regulation of ZR 23-662; (c) the building height limitation regulation of ZR 23-692; and (d) the minimum distance between buildings regulation of ZR 23-711.

"Subject Premises" shall have the meaning set forth in the Whereas clauses above.

"Zoning Resolution" shall mean the Zoning Resolution of the City of New York, effective December 15, 1961, as amended.

## ARTICLE II

### DEVELOPMENT, PRESERVATION, REPAIR AND

### MAINTENANCE OF THE DESIGNATED STRUCTURE

2.1 Development of the Designated Premises: Declarant covenants and agrees to develop the Subject Property substantially in accordance with the following plans prepared by Rafael Viñoly Architects PC (the "Special Permit Drawings"):

Z-021.00	Zoning Analysis
Z-201.00	Zoning Lot Site Plan
Z-202.00	Zoning Lot Waiver Plan
Z-203.00	Zoning Lot Ground Floor Plan

Z-211.00	Cellar & 1 <sup>st</sup> Floor Zoning Plan
Z-212.00	2 <sup>nd</sup> Fl./2 <sup>nd</sup> Fl. Mezz./3 <sup>rd</sup> Floor Zoning Plan
Z-213.00	4 <sup>th</sup> & 5 <sup>th</sup> Floor Zoning Plan
Z-214.00	Penthouse Zoning Plan
Z-221.00	Waiver Section N-S Lot 5 (R10) & (R8B)
Z-222.00	Waiver Section N-S Lot 7
Z-223.00	Waiver Section E-W Lots 4,5,7

## 2.2 Certificate of Occupancy

(a) The issuance of the Special Permit is conditioned on, inter alia, the performance of the following restoration work on the Designated Structure in conformity with the CNE, the MOU, and the requirements thereof (which restoration work shall be referred to as the "Landmark Work"). The "Landmark Work" shall be a comprehensive exterior restoration program for the Designated Structure, including work on the front façade, west elevation, east elevation, and roof (hereafter, "Front Façade", "West Elevation", "East Elevation", and "Roof") to bring the Designated Structure to a sound, first-class condition:

*Front Facade:* Removing graffiti and cleaning granite water table, limestone base, and tan brick facade; repointing all open masonry joints with mortar to match historic in color, texture, strength, and permeability; patching or replacing damaged limestone and brick masonry units; recreating in-kind missing limestone units; recreating missing cast-iron ornamentation at second-floor railing; repairing existing iron metalwork at second-floor railing; removing brick infill from fourth floor windows and installing new wood windows (2) and door to match historic; repairing or replacing in-kind wood windows at second and third floor (6) and painting them based on a historic finish analysis; removing non-historic entrance infill and recreating missing wood porte-cochere entrance based on historic documentation.

*West Elevation:* Removing existing electrical conduits, fasteners, and HVAC grilles and patching masonry; replacing deteriorated stucco in-kind; cleaning existing limestone and tan brick facade; repointing all open masonry joints with mortar to match historic in color, texture, strength, and permeability; patching or replacing damaged limestone and brick masonry units; repairing or replacing in-kind historic wood windows (16) and painting them based on a historic finish analysis.

*East Elevation:* Retaining the existing tan brick bearing wall and the extant historic wood window (3) that will be located behind a new addition constructed to the east; repairing and repointing the brick where necessary; repairing or replacing in-kind the historic wood windows(3).

*Roof:* Repairing existing copper mansard roof where necessary.

The issuance of the Special Permit is premised on, inter alia, the commitment by Declarant to the performance of the Landmark Work in conformity with the CNE, the MOU, and the requirements thereof. For purposes of subdivision (b) of Section 2.2, the Landmark Work required for a temporary certificate (“TCO”) or a permanent certificate of occupancy (“PCO”) for the Special Permit Use shall be limited to the Front Façade, the West Elevation and the Roof; and the Landmark Work required for a TCO or a PCO for the portion of the Designated Structure utilizing the Special Permit Bulk Modification shall include all four components of the Landmark Work. Declarant intends to seek either: (i) a TCO or a PCO for the Special Permit Use following the renovation, but prior to the enlargement, of the Designated Structure, as a first phase (“Phase 1”); and a TCO or a PCO for the Special Permit Bulk Modification upon completion of the enlargement of the Designated Structure, as a second phase (“Phase 2”) (“CO Option A”); or (ii) a TCO or a PCO for both the Special Permit Use and the Special Permit Bulk Modification following both the renovation and the enlargement of the Designated Structure (“CO Option B”). In the event that Declarant pursues CO Option A and has not commenced construction of the Phase 2 enlargement within six (6) years of obtaining a TCO or a PCO for Phase 1, Declarant shall complete the Landmark Work on the East Elevation within one (1) year of the six (6) year anniversary of the issuance of a TCO (or a PCO, if no TCO was issued) for Phase 1.

(b) Declarant shall give written notice to the Chair of the LPC seven (7) days prior to applying to the Buildings Department for a TCO or PCO for (i) the Special Permit Use; and/or (ii) the portion of the Designated Structure utilizing the Special Permit Bulk Modification. No TCO or PCO which permits a Special Permit Use or which is issued for the portion of the Designated Structure utilizing the Special Permit Bulk Modification shall be granted by the Buildings Department or accepted by Declarant until the Chairperson of the LPC shall have given written notice to the Buildings Department that the Landmark Work has been satisfactorily completed by Declarant or the Chairperson of the LPC has certified in writing, as provided in Section 2.2(d) hereof, either that (a)(i) a Force Majeure has occurred and (ii) the Chairperson of

the LPC has no objection to the issuance of a TCO or PCO for, as appropriate, all or part of the Subject Property; or (b)(i) Declarant has satisfactorily completed ninety percent (90%) of the Landmark Work, and (ii) the Chairperson of the LPC has no objection to the issuance of a TCO for, as appropriate, all or part of the Subject Property. The completion of the required percentage of the Landmark Work shall be certified to the LPC by the Declarant's architect for the project. The Chairperson of the LPC shall issue said notice reasonably promptly after Declarant has made written request to the Chairperson of the LPC and has provided documentation to support such request, and the Chairperson of the LPC shall in all events endeavor to issue such written notice to the Buildings Department, or inform Declarant in writing of the reason for not issuing said notice, within twenty-one (21) calendar days after Declarant has requested such written notice. Upon receipt of the written notice from the Chairperson of the LPC that (i) the Landmark Work has been satisfactorily completed; (ii) the Chairperson of the LPC has certified that a Force Majeure has occurred and that the Chairperson of the LPC has no objection to the issuance of a TCO or PCO; or (iii) the Chairperson of the LPC advises the Buildings Department that ninety percent of the Landmark Work has been satisfactorily completed, the Buildings Department may grant, and Declarant may accept, a TCO or PCO for the Designated Structure.

(c) In the event that Declarant pursues CO Option A, prior to Declarant requesting from the Chairperson a notice for Phase 1, as provided in Section 2.2(b) hereof, Declarant shall: (i) deposit in escrow an amount equal to one hundred ten percent (110%) of the cost of completing the Landmark Work on the East Elevation (the "Escrow Account") with Hirschen Singer & Epstein LLP (the "Escrow Agent") and (ii) enter into an escrow agreement (the "Escrow Agreement") with the Escrow Agent, which shall provide that (A) the Escrow Account shall be utilized to pay (or reimburse Declarant for payments made) for the completion or progress of the work with respect to the uncompleted Landmark Work on the East Elevation, from time to time, as construction progresses based upon the completion or progress of such work as reflected in a statement from Declarant's architect (the "Architect's Statement") furnished to

Escrow Agent and LPC, (B) Escrow Agent shall not disburse the funds from the Escrow Account in accordance with each Architect's Statement until LPC shall have sent a written notice approving the work covered by each such Architect's Statement as being in compliance with the Landmark Work to Escrow Agent. The form of Escrow Agreement shall contain such customary and usual protective provisions as shall be required by the Escrow Agent and shall have been approved by LPC prior to execution.

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

(e) (i) Upon application by Declarant, notwithstanding anything contained in any other provision of this Declaration, the Chairperson of the LPC, in the exercise of his or her reasonable judgment, may certify that the performance or completion of the Landmark Work is delayed due to a Force Majeure as provided in paragraph (ii) below.

(ii) In the event that Declarant reasonably believes that full performance of its obligations to complete the Landmark Work has been delayed as a result of a Force Majeure, Declarant shall so notify the Chairperson of the LPC as soon as Declarant learns of such circumstances. Declarant's written notice shall include a description of the condition or event, its cause (if known to Declarant), its probable duration, and in Declarant's reasonable judgment, the impact it is reasonably anticipated to have on the completion of the Landmark Work. The Chairperson of the LPC shall, within fourteen (14) calendar days of its receipt of Declarant's written notice, (A) certify in writing that a Force Majeure has occurred, including a determination of the expected duration of such delay (the "Delay Notice"), and grant Declarant appropriate relief for such delay, including certifying in writing to the Buildings Department that the Chairperson of the LPC has no objection to the issuance of a TCO or PCO for, as appropriate, all or part of the Subject Property, or (B) notify Declarant that it does not reasonably believe a Force Majeure has occurred. With respect to any claim that a Force Majeure has delayed the

Declarant's performance or completion of the Landmark Work, the LPC may require that Declarant post a bond or other security in a form and amount acceptable to the Chairperson of the LPC in order to ensure that the Landmark Work is completed. Such alternative security could include, without limitation, alternative or additional conditions on the issuance of any PCO or TCO. Any delay caused as the result of a Force Majeure shall be deemed to continue only as long as the Declarant shall be using reasonable efforts to minimize the effects thereof. Upon cessation of the events causing such delay, the Declarant shall promptly recommence the Landmark Work.

(f) Notwithstanding anything else to the contrary contained herein, this Declaration shall not be deemed to prohibit or restrict Declarant from (i) applying for or receiving a TCO or a PCO for any floor area in the Designated Structure which is not to be used for a Special Permit Use; or (ii) obtaining permits or building notices from the Buildings Department to perform work, including tenant work, in the Designated Structure prior to the completion of the Landmark Work; or (iii) entering into agreements affecting all or any portions of the space in the Designated Structure prior to completion of the Landmark Work.

2.3 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 MOU 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.

2.4 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 seven years, on or within thirty (30) days of the anniversary of the issuance by the LPC of the Notice of Compliance pursuant to the MOU, and thereafter, shall be made on or within every seven years from the date of such initial inspection. In the event that Declarant pursues CO Option A, the seven (7) year cycle for the Periodic Inspection shall commence – and be maintained indefinitely -- from the date of issuance by the LPC of the Notice of Compliance for Phase 1, regardless of the date of issuance by the LPC of the Notice of Compliance for Phase 2. In the event that Declarant has accepted a TCO or a PCO that permits a special permit use without having first received the Notice of Compliance, the first periodic inspection shall be made on or within thirty (30) days of the seventh anniversary date of the issuance of such TCO or PCO and every seven years thereafter. The Periodic Inspection shall be done by a preservation architect, engineer or other qualified person knowledgeable about the preservation of historic structures (the "Preservation Architect") selected by Declarant from a list prepared by Declarant and approved by the Chairperson of the LPC as to their credentials, which approval shall not be unreasonably withheld or delayed. Declarant shall update such listing upon the request of the Chairperson of the LPC. In addition, Declarant may periodically supplement the list of Preservation Architects, subject to the approval of the Chairperson of the LPC as to their credentials. The Preservation Architect shall make a thorough inspection of the exterior of the Designated Structure and those portions of the interior, as well as those portions of the mechanical systems that are accessible to and under the control of building management, which, if not properly maintained, could affect the condition of the exterior. The Periodic Inspection shall include (but not be limited to) the following portions of the Designated Structure: masonry facades, ornamental metalwork, windows, copper mansard, roof, and entrance doors.



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

(iii) Submission of Local Law 10 & 11 Façade Inspection Report. If the Designated Structure is subject to the Façade Inspection Report requirements of Title 1 RCNY §103-04., a copy of any such Façade Inspection Report which is submitted to the New York City Department of Buildings, shall also be provided at the same time to the Landmarks Preservation Commission. In the event that the building is found to be unsafe pursuant to such inspection, the declarant shall notify the Landmarks Preservation Commission simultaneously with the owner and the Department of Buildings, pursuant to Title 1 RCNY §103-04.

(iv) Except as set forth below, Declarant shall perform all work which a Periodic Report, Façade 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, Façade Inspection Report or Emergency Incident Report would be inappropriate or inadequate, the determination of the LPC shall control and Declarant need not and shall not have such specific item performed. Declarant shall have the right to contest in a hearing before the LPC any work called for in a Periodic Report or Emergency Incident Report. Declarant's obligation to perform such contested work or to perform it by a method acceptable to the LPC shall be stayed pending a decision in

any such proceeding at the LPC. Declarant shall proceed with all work which is uncontested during the stay pursuant to a permit.

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

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

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

Departments of Buildings, Health, Fire or Police, or as an action taken in response to a life-threatening situation, the Declarant shall not remove any other debris or otherwise clear the Subject Premises without the approval of the LPC or its Chairperson.

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

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

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

(v) With regard to the work to be performed pursuant to subparagraph (iii)(B), within ninety days of receiving the report of the Preservation Architect, Declarant shall apply for all necessary permits and certificates from the LPC to repair and restore or to demolish. No work on the exterior of the Designated Structure, and no work on the interior of the Designated Structure

which would affect the exterior or which would require the issuance of a permit from the Department of Buildings shall be performed except pursuant to a permit from the LPC. If the LPC determines that a recommendation to demolish or to perform a specific item of work or method of work set forth in the report would be inappropriate, using the criteria set forth in the Landmarks Preservation Law, the determination of the LPC shall control and the Declarant shall not have such specific work performed or be entitled to have the Designated Structure demolished unless Declarant is obligated to perform such work or demolish the structure in accordance with an "Unsafe Building Notice" issued by the Department of Buildings. All repair, restoration, rehabilitation, repointing, and other work provided for in a certificate or permit shall be completed within nine months of the date of issue of such certificate or permit by the LPC. If such work cannot be completed within nine months for reasons beyond Declarant's control, as determined by the Chairperson of the LPC, Declarant shall apply in writing to the LPC for an extension of time within which to complete such work. Such extensions shall be for a stated additional period of time which is related to the period of the delay and shall not be unreasonably withheld.

(c) Access to Designated Structure. Declarant agrees to provide access to the Designated Structure to the LPC and its designated representatives at reasonable times and upon reasonable written notice, except in cases of emergency, in which event the LPC or its representatives shall have access, if feasible, immediately and without notice, in order to ensure that the preservation, repair and maintenance of the Designated Structure is carried out in accordance with this Declaration.

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

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

### ARTICLE III

#### CONDOMINIUM BOARD

3.1 General. These provisions shall apply in the event that a Condominium is established in accordance with the New York State Real Property Law. In the event that the Designated Structure is converted to a condominium in accordance with Article 9B of the New York State Real Property Law (“RPL”) the condominium board (“Board”) shall have the responsibility to carry out all of Declarant’s obligations, and the authority to exercise all of Declarant’s rights under this Declaration and upon such conversion, Declarant shall be released from its liability hereunder.

3.2 Board. The Board shall require that each owner of a condominium unit (the "Unit Owner") appoint the Board as his or her 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 Subject Premises and every lease of all or substantially all of the Subject Premises shall contain a recital that the grantee is bound by the terms of the Condominium Declaration and By-laws which shall incorporate an obligation by the Board to comply with the provisions of Article 3 of this Declaration.

#### ARTICLE IV

#### EFFECT AND ENFORCEMENT

##### 4.1 Effective Date

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

(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. In the event that Declarant has obtained a certificate of occupancy allowing any Special Permit Use in the Designated Structure or for the portion of the Designated Structure utilizing the Special Permit Bulk Modification, Declarant shall promptly, after receipt of such letter, obtain a revised certificate of occupancy from the Buildings Department reflecting the cessation of any such Special Permit Use in the Designated Structure, and the discontinuance of and plan for removal of the portion of the Designated Structure that received the benefit of the Special Permit Bulk Modification.

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 Subject Property and the other properties on the Zoning Lot, immediately upon the Effective Date. Declarant shall promptly deliver to the CPC and the LPC duplicate executed originals, promptly following the Effective Date and, following recordation, a true copy of this Declaration as recorded, as certified by the Register. If Declarant fails to so record this Declaration, the City may record this Declaration, at the sole cost and expense of Declarant, who shall promptly pay to the City such costs together with fees for purchase of a reasonable number of certified copies of the recorded Declaration.

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

heirs, successors or assigns, to comply with any provision, whether major or minor, of this Declaration.

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

(b) If Declarant fails to observe any of the terms or conditions of this Declaration, and the Declarant fails to cure such violation within the applicable grace period provided in subparagraph 4.4(a) of this Declaration, then prior to the institution by any agency or department of the City of any action, proceeding, or proceedings against Declarant in connection with such failure, a Mortgagee who has given written notice of its name and address to the CPC and the LPC shall be given thirty (30) days written notice of such alleged violation, during which period such Mortgagee shall have the opportunity to effect a cure of such alleged violation. If such Mortgagee commences to effect a cure during such thirty (30) day period and proceeds diligently



towards the effectuation of such cure, the aforesaid thirty (30) day period shall be extended for so long as such Mortgagee continues to proceed diligently with the effectuation of such cure.

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

4.5 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 Subject Premises as well as benefit the City of New York and all property owners within a one-half mile radius of the Subject Premises. Those restrictions, covenants, easements, obligations and agreements shall be covenants running with the land, and shall bind Declarant and its successors, legal representatives, and assigns.

4.6 No Other Enforceable Restrictions. Declarant represents and warrants that there are no enforceable restrictions of record on the use of the Subject Property or the Designated Structure, nor any present or presently existing future estate or interests in the Subject Property or the Designated Structure, nor any lien, obligation, enforceable covenant, limitation or encumbrance of any kind which precludes, directly or indirectly, imposition on the Subject Premises of the restrictions, covenants, easements and obligations of this Declaration.

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

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

and the remainder of this Declaration shall continue to be of full force and effect, provided that in no event shall this Declaration be deemed effective in the event that the Special Permit is deemed or decreed unlawful.

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

4.10 Limitation of Liability. (a) Declarant shall be liable in the performance of any term, provision or covenant in this Declaration, subject to the following sentences and subject to Section 4.12 below. Notwithstanding anything to the contrary contained in this Declaration, the City and any other party or person relying on the Declaration will look solely to the fee estate and interest of Declarant in the Subject Property, on an in rem basis only, for the collection of any money judgment recovered against Declarant, and no other property of Declarant shall be subject to levy, execution or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration, and Declarant shall have no personal liability under this Declaration. The liability of any Unit Owner under this Declaration shall be limited to the amount of such Unit Owner's prorated share, based on such Unit Owner's interest in the common elements of the Condominium, of the costs of compliance with this Declaration. For the purposes of this Section 4.10, "Declarant" shall mean "Declarant" as defined

in Article I hereof, as well as any principals, disclosed or undisclosed, partners, affiliates, officers, employees, shareholders or directors of Declarant.

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

4.11 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 Subject Property, to execute this Declaration or to subordinate such interest to the Declaration and waive its right to execution. Any mortgage or other lien encumbering the Subject Property after the recording date of this Declaration shall be subject and subordinate hereto.

4.12 Right to Convey. Nothing contained herein shall be construed as requiring the consent of the CPC, the LPC, the City, any agency thereof or any other person or entity to any sale, transfer, conveyance, mortgage, lease or assignment of any interest in the Subject Property or the Designated Structure.

## ARTICLE V

### AMENDMENTS, MODIFICATION AND CANCELLATIONS

5.1 Amendment or Cancellation. Except as provided in paragraph 4.1 above, this Declaration may be amended or canceled only upon application by LPC on behalf of Declarant and only with the express written approval of the CPC, but only in the event that the City Council reviewed the Special Permit pursuant to Section 197-d, and no other approval or consent shall be required from any public body, private person or legal entity of any kind; provided, however, that no such approval shall be required in the case of any cancellation pursuant to paragraph 5.4.

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

5.4 Modification of Landmark Work. In the event that the Landmark Work is modified, pursuant to a future approval by the LPC, with no required change to the Special Permit Drawings as described in Section 2.1 hereof, a notice indicating such modification, subject to approval by counsel for the LPC and the CPC respectively, may, in lieu of a modification of the Declaration, be recorded in the City Register's Office. Such recordation shall be in accordance with section 5.3 of the Declaration, and proof of recordation shall be provided to CPC and LPC.

5.5 Surrender or Nullification. Notwithstanding the provisions of Section 4.1(a) and 4.1 (b), in the event that Declarant does not use the Subject Premises pursuant to the Special Permit, or in the event that the Special Permit lapses under Section 11-42 of the Zoning Resolution,

Declarant may surrender the Special Permit to the CPC and proceed with any use permitted by the Zoning Resolution and in accordance with the Landmarks Preservation Law as if such Special Permit had not been granted. In either of such events, this Declaration shall be rendered null and void upon recordation of an instrument filed by Declarant discharging it of record, with copies to LPC and CPC, the recordation of which instrument shall constitute a waiver of the right to use the Subject Property pursuant to the Special Permit.

## **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 if intended for Declarant, 3 East 89 Holding LLC, having an address as 12 East 94<sup>th</sup> Street, New York, New York 10128, with a copy to Hirschen Singer & Epstein LLP, 902 Broadway, 13<sup>th</sup> Floor, New York, New York 10010, Attn: Stuart Beckerman, Esq., if intended for the CPC, to the CPC at 120 Broadway, 31<sup>st</sup> Floor, New York, New York 10271 (or then-official address), Att: Chairperson, if intended for the LPC, to the LPC at 1 Centre Street, 9<sup>th</sup> Floor North, New York, New York 10007 (or then-official address), Att: Chairperson and (d) if intended for the City Council, to the City Council at the Office of the Speaker, City Council, City Hall, New York, New York 10007. Declarant, or its representatives, by notice given as provided in this paragraph 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.


6.4 Enforcement. Declarant acknowledges that the City of New York is an interested part to this Declaration and consents to enforcement solely by the City of New York, and by no other party, administratively, or at law or equity, of the restrictions, covenants, obligations, easements and agreements contained herein.

[Signature Page Follows]

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

3 EAST 89 HOLDING LLC

By:

  
Jeanne Greenberg Rohatyn, Managing Member



**TAISHA-ROSE PICKETT**  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01PI6340671  
Qualified in New York County  
Commission Expires April 25, 20 24

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

On the 10<sup>th</sup> day of May in the year 2022 before me, the undersigned, personally appeared Jeanne Greenberg Rohatyn, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signatures on the instrument, the individuals, or the person or entity upon behalf of which the individual acted, executed the instrument.

Deleted: 20



Notary Public

**TAISHA-ROSE PICKETT**  
**NOTARY PUBLIC, STATE OF NEW YORK**  
**Registration No. 01PI6340671**  
**Qualified in New York County**  
**Commission Expires April 25, 2024**



SCHEDULE OF EXHIBITS

- Exhibit A - Metes and Bounds of Subject Property
- Exhibit B - Zoning Lot Certification
- Exhibit C - Certificate of Appropriateness
- Exhibit D - MOU
- Exhibit E - Certificate of No Effect

EXHIBIT A

METES AND BOUNDS OF SUBJECT PROPERTY

The subject tract of land of which Declarant is the owner in fee simple is certain real property located in the Borough of Manhattan, County and State of New York, which property is designated as Block 1051, Lot 5 on the Tax Map of the City of New York and by the street address 3 East 89<sup>th</sup> Street, and is more particularly described below:

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

BEGINNING at a point on the northerly side of East 89<sup>th</sup> Street, distant 102 feet 2-2/3 inches easterly from the intersection of the northerly side of East 89<sup>th</sup> Street with the easterly side of Fifth Avenue;

RUNNING THENCE northerly parallel with Fifth Avenue, 100 feet 8-1/2 inches to the center line of the block between East 89<sup>th</sup> Street and East 90<sup>th</sup> Street;

THENCE easterly parallel with East 89<sup>th</sup> Street, 40 feet;

THENCE southerly and parallel with Fifth Avenue, 100 feet 8-1/2 inches to the northerly line of East 89<sup>th</sup> Street;

THENCE westerly along the northerly line of said street, 40 feet to the point or place of beginning.

EXHIBIT B

ZONING LOT CERTIFICATION

**EXHIBIT II**

**CERTIFICATION OF PARTIES IN INTEREST PURSUANT  
TO SUBDIVISION (D) OF THE DEFINITION OF ZONING LOT  
SET FORTH IN SECTION 12-10 OF THE ZONING  
RESOLUTION OF THE CITY OF NEW YORK,  
EFFECTIVE DECEMBER 15, 1961 AS AMENDED**

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**CHICAGO TITLE INSURANCE COMPANY**, a title insurance company licensed to do business in the State of New York and having its principal offices at 711 3<sup>rd</sup> Avenue, New York, New York 10017, hereby certifies to the **CITY OF NEW YORK** as required in connection with a Restrictive Declaration for a Special Permit filed by the Fee Owner of 3 Est 89<sup>th</sup> Street (Lot 5), pursuant to Section 74-711 of the New York City Zoning Resolution, that as to the land hereafter described, being a tract of land, either unsubdivided or consisting of two or more lots of record, contiguous for a minimum of ten linear feet, located within a single block, that all the parties in interest constituting a “party in interest” as defined in Subdivision (c) or (d) of the definition of zoning lot Section 12-10 of the Zoning Resolution of the City of New York, effective December 15, 1961, as amended, are the following:

	<b>NAME AND ADDRESS</b>	<b>NATURE OF INTEREST</b>
1.	Ogden Codman LLC 810 Seventh Avenue, 39 <sup>th</sup> Floor New York, NY 10019	Successor in interest to Parcel A Declarant, party to the Declaration of Zoning Lot Development and Easement Restrictions recorded 3/13/2018 in CRFN 2018000085779, by Deed recorded 6/8/2018 in CRFN 2018000191533. (Block 1501 Lot 4)
2.	3 East 89 Holding LLC 12 East 94 <sup>th</sup> Street New York, NY 10128	Successor in interest to Parcel B Declarant, party to the Declaration of Zoning Lot Development and Easement Restrictions recorded 3/13/2018 in CRFN 2018000085779, by Deed recorded 6/12/2019 in CRFN 2019000184032. (Block 1501 Lot 5)
3.	Sun’s Acres LLC c/o Ki Hyo Park 486 Henry Street Brooklyn, NY 11231	Successor in interest to Parcel C Declarant, party to the Declaration of Zoning Lot Development and Easement Restrictions recorded 3/13/2018 in CRFN

Certificate No. CT22-00109-NY

2018000085779, by Deed recorded  
12/11/2018 in CRFN 2018000408194.  
(Block 1501 Lot 7)

**DESCRIPTION**

**METES AND BOUNDS**

The subject tract of land with respect to which the foregoing parties are the parties in interest as aforesaid, are Tax Lot Numbers 4, 5 and 7 in Block 1501 as shown on the Tax Map of the City of New York, New York County, and is more particularly bounded and described as follows:

BLOCK 1501 LOT 4:

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

BEGINNING at a point on the easterly side of Fifth Avenue, distant 73 feet 1-1/8 inches northerly from the corner formed by the intersection of the northerly side of East 89<sup>th</sup> Street with the said easterly side of Fifth Avenue;

RUNNING THENCE northerly along the easterly side of Fifth Avenue, 27 feet 7-3/8 inches to the center line of the block;

THENCE easterly along the center line of said block, 102 feet 2-2/3 inches;

THENCE southerly and parallel with the easterly side of Fifth Avenue, 27 feet 7-3/8 inches;

THENCE westerly and parallel with the northerly side of East 89<sup>th</sup> Street, 102 feet 2-2/3 inches to the point or place of BEGINNING.

BLOCK 1501 LOT 5:

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

BEGINNING at a point on the northerly side of East 89<sup>th</sup> Street, distant 102 feet 2-2/3 inches easterly from the intersection of the northerly side of East 89<sup>th</sup> Street with the easterly side of Fifth Avenue;

RUNNING THENCE northerly parallel with Fifth Avenue, 100 feet 8-1/2 inches to the center line of the block between East 89<sup>th</sup> Street and East 90<sup>th</sup> Street;

THENCE easterly parallel with East 89<sup>th</sup> Street, 40 feet;

THENCE southerly and parallel with Fifth Avenue, 100 feet 8-1/2 inches to the northerly line of East 89<sup>th</sup> Street;

THENCE westerly along the northerly line of said street, 40 feet to the point or place of beginning.

BLOCK 1501 LOT 7:

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

BEGINNING at a point on the northerly side of East 89<sup>th</sup> Street, distant 142 feet 2-2/3 inches easterly from the northeasterly corner of Fifth Avenue and East 89<sup>th</sup> Street;

RUNNING THENCE northerly parallel with Fifth Avenue, 100 feet 8-1/2 inches to the center line of the block between East 89<sup>th</sup> Street and East 90<sup>th</sup> Street;

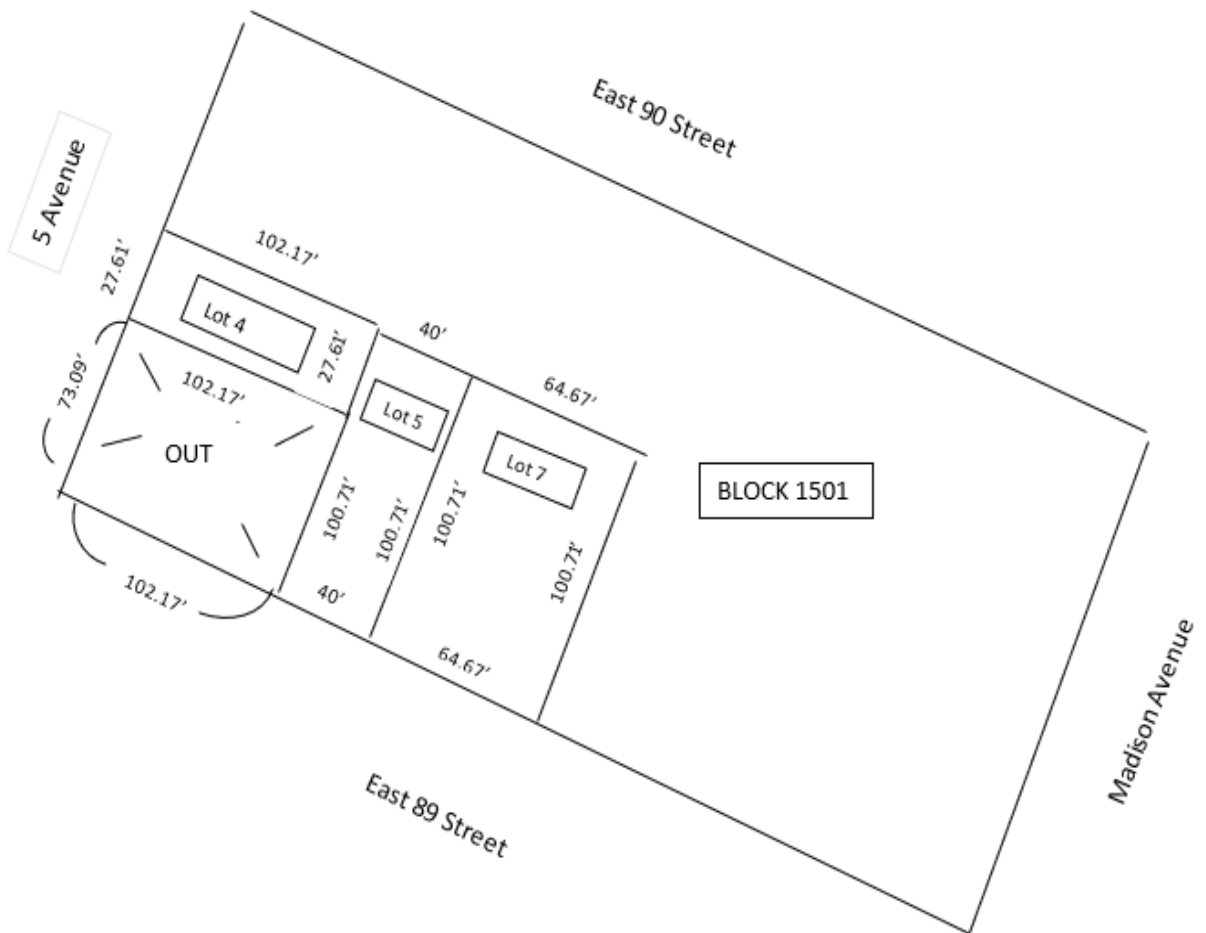
THENCE easterly parallel with East 89<sup>th</sup> Street, 64 feet 8-1/3 inches;

THENCE southerly and parallel with the easterly side of Fifth Avenue, 100 feet 8-1/2 inches to the northerly side of East 89<sup>th</sup> Street;

THENCE westerly along the northerly side of East 89<sup>th</sup> Street, 64 feet 8-1/3 inches to the point or place of beginning.

That the said premises are known as and by street addresses: 1083 Fifth Avenue, 3 East 89<sup>th</sup> Street and 5-7 East 89<sup>th</sup> Street, New York, NY

As shown on the following DIAGRAM:





**NOTE:**

A Zoning Lot may or may not coincide with a lot as shown on the Official Tax Map of the City of New York, or on any recorded subdivision plot or deed. A Zoning Lot may be subdivided into two or more zoning lots provided all the resulting zoning lots and all the buildings thereof shall comply with the applicable provisions of the zoning lot resolution.

The City of New York requires the submission of a New York City Report when a Zoning Lot Declaration is filed for recording pursuant to Zoning Lot Resolution 12-10 of the City of New York.

**THE CERTIFICATION IS MADE FOR AND ACCEPTED BY THE APPLICANT UPON THE EXPRESS UNDERSTANDING THAT LIABILITY HEREUNDER IS LIMITED TO ONE THOUSAND (1,000.00) DOLLARS.**

CHICAGO TITLE INSURANCE COMPANY

By: \_\_\_\_\_

Tatiana Shestova, Esq.  
Underwriter

Dated: as of April 27, 2022

**UNIFORM FORM CERTIFICATE OF ACKNOWLEDGMENT**  
(Within New York State)

State of New York )  
County of        ) ss.:

On the        day of        in the year 2022 before me, the undersigned, personally appeared Tatiana Shestova, 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.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment

EXHIBIT C

CERTIFICATE OF APPROPRIATENESS

DESIGN APPROVAL ONLY:

No work may proceed until the final filing drawings are reviewed and marked as approved by the Landmarks Preservation Commission staff.



THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION  
1 CENTRE STREET 9TH FLOOR NORTH NEW YORK NY 10007  
TEL: 212 669-7700 FAX: 212 669-7780



# PERMIT

## CERTIFICATE OF APPROPRIATENESS

<b>ISSUE DATE:</b> 11/16/20	<b>EXPIRATION DATE:</b> 6/30/2026	<b>DOCKET #:</b> LPC-21-01860	<b>COFA</b> COFA-21-01860
<b>ADDRESS:</b> 3 EAST 89TH STREET		<b>BOROUGH:</b> MANHATTAN	<b>BLOCK/LOT:</b> 1501 / 5
Expanded Carnegie Hill Historic District			

Display This Permit While Work Is In Progress

ISSUED TO:

**Jeanne Greenberg Rohatyn**  
Member, 3 East 89th Street Holding, LLC  
12 East 94th Street  
New York, NY 10128

Pursuant to Section 25-307 of the Administrative Code of the City of New York, the Landmarks Preservation Commission, at the Public Meeting of June 30, 2020, following the Public Hearing and Public Meeting of February 11, 2020, voted to approve and amend a proposal to grant a Certificate of Appropriateness for the proposed work at the subject premises, as put forth in your application completed on June 4, 2020, and as you were notified in Status Update Letter 20-05684 (LPC 20-05684), issued on February 25, 2020, and Status Update Letter 20-11118 (LPC 20-11118), issued on July 10, 2020.

The proposal, as approved at the Public meeting of February 11, 2020, consisted of demolishing existing rooftop mechanical enclosures, and constructing a masonry fifth floor infill addition behind the existing 1926 mansard roof studio addition, featuring recessed glass infill at the east façade between the existing

**DESIGN APPROVAL ONLY:**

**No work may proceed until the final filing drawings are reviewed and marked as approved by the Landmarks Preservation Commission staff.**

mansard and the 1942 masonry fire stair addition; constructing a masonry addition that wraps around the east and north (rear) facades by infilling between the 1942 fire stair addition and 1955 one-story rear and side yard additions, which extends to the new fifth floor and features square, single pane windows and blind windows, and a two-story angled glass wall extending from the fourth floor to the roof at the north façade; concealing, repairing and retaining special windows at the east and north facades on the building's new interior; and at the primary (south) façade, including at ground floor, replacing non-historic paired entrance doors with transoms with new paneled wood entrance doors based on the historic design at the main public entrance, and wood and glass doors with a transom at the secondary entrance; installing bronze-finished pin-mounted signage, shielded downlight, and marquee over the main public entrance; installing multi-light casement windows at the third floor to match the existing, removing an existing brick wall behind the fourth floor balustrade, and re-opening sealed masonry openings and installation of multi-light double-hung windows and a glazed door at the fourth floor.

The proposal, as initially presented, included a masonry and glass sixth floor addition with additional rooftop mechanical enclosures, a setback at the fourth floor of the east façade, and a two-story glass enclosure at the north façade. The proposal, as initially presented, was shown in a digital presentation, titled "3 East 89th Street," dated February 11, 2020, prepared by Rafael Vinoly Architects, Higgins Quasebarth & Partners, LLC, Walter B. Melvin Architects, LLC, and Slater & Beckerman P.C., including 63 slides consisting of photographs, drawings, photomontages, and a street-view animation.

In reviewing this proposal, Commission noted that the buildings' style, scale, materials, and details are among the features that contribute to the special architectural and historic character of the Expanded Carnegie Hill Historic District. The Commission further noted that the building is part of the former National Academy of Design Campus comprised of 1083 Fifth Avenue, 3 East 89th Street and 5-7 East 89th Street, and that the demise of the institution has resulted in the sale of each of these buildings as individual entities. Furthermore, the Commission noted that the building has evolved over time with several expansion campaigns responding to the needs of the former arts institution.

With regard to this proposal, the Commission found at the Public Meeting of February 11, 2020, that the building has historically functioned in conjunction with 1083 Fifth Avenue and 5 East 89th Street, and was not intended for independent operation, therefore the proposed changes, including constructing side, rear, and rooftop additions, will allow for the installation of core functionality to the building, including mechanicals, rest rooms, and ADA accessibility; that the expansions at the rear and at the roof are in keeping with the building's history of historical enlargements in support of an arts institution; that concealment of portions of the east and rear (north) facades of the building and special windows will not eliminate significant historic fabric and will allow for the new facades to expand the footprint in a manner that supports the adaptive reuse of the building, and that the special windows will be retained as an interior feature; that the masonry addition with punched openings at the rear of the building, and the glass studio addition above it, will maintain a reading of some of the historic massing, and will use form and materials that are compatible with the architecture of the building; that the proposed rooftop addition at the fifth floor, which consists of infilling between the mansard and the bulkhead, will not be visible over the front façade from directly across the street and will only be visible from limited view corridors primarily over secondary facades from moderate distances; that the recessed glass infill at the east elevation will allow for the profile of the 1926 mansard roof studio addition to remain legible; that the removal of brick infill from behind the

**DESIGN APPROVAL ONLY:**

**No work may proceed until the final filing drawings are reviewed and marked as approved by the Landmarks Preservation Commission staff.**

fourth floor balustrade will be consistent with open balustrades typical of building of this age and type; that the ground floor infill has been previously altered in an unsympathetic fashion, and therefore the work will not cause the elimination of any significant historic fabric; that the installation of new paneled wood entrance doors based on the historic design, will return the building closer to its historic appearance; that the proposed secondary entrance, featuring wood and glass doors with a transom, will be simple in design and consistent with secondary entrances found in buildings of this age and style throughout the district; that the proposed pin-mounted signage and shielded downlight, both with a statuary bronze finish, are small in scale and located at the primary public entrance; that the proposed bronze awning, featuring a simple profile and design, will identify the main public entrance and will not detract from the significant architecture features of the building or streetscape; that the use of multi-light casement windows at the third floor, although differing from the historic double hung multi-light windows evident in historic tax photos, will match the existing windows and are typical of buildings of this age and style; and that the proposed reopening of sealed masonry openings and installation of multi-light double-hung windows and a glazed door at the fourth floor are based on original drawings of the building. Based on these findings, the Commission determined the work to be appropriate to the building and the historic district and voted to approve it with the stipulation that the top floor of the rooftop addition be eliminated.

At the Public Meeting of June 30, 2020, the Commission reviewed a proposal for an amendment to construct a partial sixth floor rooftop addition set back 10' from the east parapet and 56' from the south (primary) façade, featuring diamond patterned glass cladding with aluminum mullions and fully containing the elevator and rooftop HVAC equipment; and installing canted glass railings at the perimeter of the roof; and modifying the approved side and rear yard additional to include a two-story angled glass wall extending from the fourth floor to the roof at the north façade.

The proposal, as approved on February 11, 2020, was shown in a digital presentation, titled "3 East 89th Street," dated June 30, 2020, prepared by Rafael Vinoly Architects, Higgins Quasebarth & Partners, LLC, Walter B. Melvin Architects, LLC, and Slater & Beckerman P.C., including 46 slides consisting of photographs, drawings, photomontages, and a street-view animation.

With regard to the proposal for an amendment, the Commission found at the Public Meeting of June 30, 2020, that expansions at the roof are in keeping with the building's history of historical enlargements in support of an arts institution; that the proposed 6th floor rooftop addition is setback 10' from the east parapet and 56' from the south (primary) façade, and will maintain a sense of the building's historic massing; that the diamond patterned glass cladding of the addition will recall, in a contemporary manner, the diapered brick pattern at the adjacent building 5 East 89th Street, which this building was historically associated with; that the proposed cubic volume of the 6th floor addition, while taller than the occupiable space contained within, fully contains the elevator and HVAC equipment, thus presenting itself as a pure architectural form while reducing the number of visible rooftop accretions at the roof; that the proposed rooftop addition and associated glass railings will not be visible over the front façade from directly across the street and will only be visible from limited view corridors primarily over secondary facades from moderate to long distances; that the two-story glazed rear addition approved at the north elevation has been eliminated from the design and replaced with an angled glazed wall, which will maintain a sense of the historic massing at the rear of the building; that the proposed angled glazed wall at the north elevation will only be visible from a break in the street wall on Fifth Avenue, in the context of other rear facades of buildings; and that the proposed work

**DESIGN APPROVAL ONLY:**

**No work may proceed until the final filing drawings are reviewed and marked as approved by the Landmarks Preservation Commission staff.**

will not diminish the special architectural or historic character of the building or streetscape. Based on these findings, the Commission determined the work to be appropriate to the building and the historic district and voted to approve the application.

PLEASE NOTE that the applicant is applying to the City Planning Commission relating to an application for a Modification of Use and Bulk pursuant to Section 74-711 of the Zoning Resolution. This Design-Only approval is being issued to facilitate that review. If City Planning Commission requires changes to the design as approved by the Commission, the applicant must submit such changes to the Commission for review and approval. No work may begin until (a) the final Department of Buildings filing drawings, reflecting the Commission-approved design, have been received and approved by the Commission and (b) the Commission's final Certificate of Appropriateness, with findings, has been issued.

PLEASE NOTE: This permit is being issued in conjunction with Modification of Use 21-03398 (LPC 21-03398).

This permit is issued on the basis of the building and site conditions described in the application and disclosed during the review process. By accepting this permit, the applicant agrees to notify the Commission if the actual building or site conditions vary or if original or historic building fabric is discovered. The Commission reserves the right to amend or revoke this permit, upon written notice to the applicant, in the event that the actual building or site conditions are materially different from those described in the application or disclosed during the review process.

The approved documents, and Department of Buildings filing drawings where applicable, are marked as approved by the Commission, with the date of the approval indicated. The work is limited to what is contained in the approved documents and referenced in the approval. Other work or amendments to this filing must be reviewed and approved separately. The applicant is hereby put on notice that performing or maintaining any work not explicitly authorized by this permit may make the applicant liable for criminal and/or civil penalties, including imprisonment and fine. This letter constitutes the permit; a copy must be prominently displayed at the site while work is in progress. Please direct inquiries to Elizabeth Diker.



Sarah Carroll  
Chair

**PLEASE NOTE: APPROVED DOCUMENTS, DEPARTMENT OF BUILDINGS FILING DRAWINGS WHERE APPLICABLE, AND A COPY OF THIS PERMIT HAVE BEEN PROVIDED TO:**

Sarah Sher

cc: Caroline Kane Levy, Deputy Director; Sarah Sher,

**DESIGN APPROVAL ONLY:**

**No work may proceed until the final filing drawings are reviewed and marked as approved by the Landmarks Preservation Commission staff.**



THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION  
1 CENTRE STREET 9TH FLOOR NORTH NEW YORK NY 10007  
TEL: 212 669-7700 FAX: 212 669-7780



April 26, 2022

ISSUED TO:

**Jeanne Greenberg Rohatyn  
3 East 89th Street Holding LLC  
12 East 94th Street  
New York, NY 10128**

Re: **MISCELLANEOUS/AMENDMENTS**  
LPC-22-09791  
MISC-22-09791  
3 EAST 89TH STREET  
Expanded Carnegie Hill Historic District  
MANHATTAN  
Block/Lot: 1501 / 5

Pursuant to Section 25-307 of the Administrative Code of the City of New York, the Landmarks Preservation Commission issued Certificate of Appropriateness 21-01860 (LPC 21-01860) on November 16, 2020, approving a proposal for demolishing existing rooftop mechanical enclosures; constructing a side and rear yard addition, as well as a rooftop addition; concealing, repairing, and retaining special windows; replacing doors; installing signage, light fixtures, a marquee, windows, a door, and railings; and re-opening sealed masonry openings at the subject premises.

Subsequently, on April 21, 2022, the Commission received a proposal for an amendment to the work approved under that permit. The proposed amendment consists of modifying the scope of work to include modifying the footprint of the proposed side and rear yard addition by changing the proposed two-story angled glass wall to a two-story rectangular glass enclosure, and changing the east wall of this enclosure from masonry to glass, as described and shown in an email; a written narrative, dated April 21, 2022, and prepared by Sarah Sher; a supplemental booklet, dated March 10, 2022; and a revised presentation, dated (revised)

**Page 1**

Issued: 04/26/22

DOCKET #: LPC-22-09791



## ELECTRONIC APPROVAL - 04/26/2022 - WC

April 18, 2022, and prepared by Rafael Vinoly Architects, all submitted as components of the application,

Accordingly, the Commission reviewed the request and finds that the change will slightly decrease the amount of visibility of this portion of the addition when seen from a break in the street wall on Fifth Avenue, and that the revised scope of work is in keeping with the intent of the original approval. Based on these findings, Certificate of Appropriateness 21-01860 is hereby amended.

Please see Title 63 of the Rules of the City of New York for complete text of any cited Rule section(s): <http://www1.nyc.gov/site/lpc/applications/rules-guides.page>

PLEASE NOTE that the applicant is applying to the City Planning Commission relating to an application for a Modification of Use and Bulk pursuant to Section 74-711 of the Zoning Resolution. This Design-Only approval is being issued to facilitate that review. If City Planning Commission requires changes to the design as approved by the Commission, the applicant must submit such changes to the Commission for review and approval. No work may begin until (a) the final Department of Buildings filing drawings, reflecting the Commission-approved design, have been received and approved by the Commission and (b) the Commission's final Certificate of Appropriateness, with findings, has been issued.

This amendment is issued on the basis of the building and/or the site conditions described in the application and disclosed during the review process. By accepting this permit, the applicant agrees to notify the Commission if actual building or site conditions vary or if original or historic building fabric or site features are discovered. The Commission reserves the right to amend or revoke this permit, upon written notice to the applicant, in the event that the actual building or site conditions are materially different from those described in the application or during the review process.

The documents, and the Department of Buildings filing drawings where applicable, are marked as approved by the Commission, with the date of the approval indicated. The approved work is limited to what is contained in the approved documents. The applicant is hereby put on notice that performing or maintaining any work not explicitly authorized by this permit may make the applicant liable for criminal and/or civil penalties, including imprisonment and fines. This letter constitutes the permit amendment; a copy must be prominently displayed at the site while work is in progress. Any additional work or further amendments must be reviewed and approved separately. Please direct inquiries regarding this property to Winnie Chau, Landmarks Preservationist.



Winnie Chau

PLEASE NOTE: APPROVED DOCUMENTS, DEPARTMENT OF BUILDINGS FILING DRAWINGS WHERE APPLICABLE, AND A COPY OF THIS PERMIT HAVE BEEN PROVIDED TO:

cc: Caroline Kane Levy, Deputy Director; Sarah Sher, Higgins Quasebarth & Partners; Caroline Kane Levy, Deputy Director; Sarah Sher, Higgins Quasebarth & Partners

EXHIBIT D

MOU



THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION  
1 CENTRE STREET 9TH FLOOR NORTH NEW YORK NY 10007  
TEL: 212 669-7700 FAX: 212 669-7780



November 16, 2020

ISSUED TO:

**Marisa Lago, Chairperson**  
**New York City Planning Commission**  
**120 Broadway, 31st Floor**  
**New York, NY 10271**

Re: LPC-21-03398  
MOU-21-03398  
3 EAST 89TH STREET  
Expanded Carnegie Hill Historic District  
MANHATTAN  
Block/Lot: 1501 / 5

At the Public Meeting of June 30, 2020, following the Public Hearing and Public Meeting of February 11, 2020, the Landmarks Preservation Commission ("LPC") voted to issue a Favorable Report to the City Planning Commission ("CPC") in support of an application for the issuance of a Special Permit, pursuant to Section 74-711 of the Zoning Resolution, to permit the Modification of Use and Bulk regarding the building at 3 East 89th Street, Manhattan Block 1501, Lot 5, as put forward in your application completed on June 4, 2020.

In reaching a decision to issue a favorable report to CPC, the Landmarks Preservation Commission found that the applicant has agreed to undertake work to restore the Designated Building (3 East 89th Street) and bring it up to a sound, first class condition; that the applicant has agreed to establish and maintain a program for continuing maintenance to ensure that the Designated Building is maintained in a sound, first-class condition; and that a restrictive Declaration ("Declaration") will be filed against the property which will bind the applicants and all heirs, successors and assigns to maintain the continuing maintenance program in perpetuity. The Commission also finds that the zoning bulk modifications are harmonious with the building and streetscape.

In reviewing this proposal, the Commission noted that the Expanded Carnegie Hill Historic District Designation Report described 3 East 89th Street as a neo-Renaissance style townhouse, designed by Ogden Codman and built in 1913-1915; and that the building's style, scale, materials, and details are among the features that contribute to the special architectural and historic character of the historic district. The

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Issued: 11/16/20

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Commission further noted that this work was proposed in conjunction with an application for a Certificate of Appropriateness for constructing rooftop and rear yard additions, installing a marquee, and replacing windows and doors; and an application for a Certificate of No Effect for restorative work throughout the facades.

Specifically, the Commission approved certain restorative work, described in Certificate of No Effect 20-05682 (LPC 20-05682). This work includes restorative work throughout the primary south (East 89th Street) elevation, including removing graffiti and cleaning the granite base, limestone and brick masonry utilizing a low-pressure water wash and mild cleaning agent; repointing select deteriorated limestone joints, and all brick mortar joints; patching limestone spalls utilizing a patching mortar; replacing deteriorated sealant at window surrounds; and repairing select wood windows and surrounds to remain utilizing epoxy and consolidant; at the first floor, including removing the existing iron window guard, in conjunction with repairing anchorage holes in the limestone utilizing a repair mortar; at the second floor, including recreating missing iron detailing at the railings; at the third floor, including replacing one (1) missing limestone bracket; at the fourth floor terrace, including removing/painting with a rust-inhibitive coating the existing abandoned steel outriggers and hardware, in conjunction with cleaning and patching the limestone and re-installing sound face brick; infilling one (1) through-wall penetration utilizing new face brick to match the existing adjacent facade, and removing CMU infill at window and door surrounds to restore the historic masonry openings; at the east elevation, including removing existing ventilation penetrations, one (1) window, and one (1) door, and installing CMU infill and new face brick to match the existing adjacent facade; and at the gable-end of the mansard, including replacing the existing round steel louver in-kind; at the west elevation, including repointing limestone and brick masonry as required; patching limestone spalls and anchorage holes utilizing a repair mortar; replacing select deteriorated face bricks in-kind, in conjunction with cleaning sound face brick utilizing a low-pressure water wash and mild cleaning agent; replacing deteriorated sealant at window surrounds; and repairing select wood windows and surrounds to remain utilizing epoxy and consolidant; removing and replacing the existing stucco parge coat at the southwest corner of the building; infilling through-wall and through-window penetrations at the 4th floor utilizing face brick to match the existing adjacent facade; and replacing the existing metal railing in-kind at the 4th floor terrace; and at the roof, including at Roof A (main roof), installing a new flat roof assembly; at Roof B (5th Floor penthouse roof), removing the existing elevator bulkhead and skylight, infilling the holes using cement, and installing a new flat roof assembly; at Roof C (existing stair bulkhead), installing a new flat roofing membrane; at Roof D (4th floor terrace), installing a liquid roofing membrane with pedestal pavers; at Roof E (mansard roof), repairing the existing copper standing seam metal; and at Roof F (rear of mansard), installing a new flat roofing membrane, with all roof work to include new flashing, copper scuppers, leaders, and downspouts; and the replacement of select windows and doors throughout; including at the 89th Street facade, removing the existing non-historic paired entrance door with transom and CMU infill, and installing new paired stained wood doors, featuring paneling, details, and profiles to match the historic door; at the second floor, including replacing three (3) sets of multi-light in-swing wood casement windows with arched transoms in-kind; at the third floor, including removing three (3) sets of multi-light in-swing wood casement windows with straight-headed transoms in-kind; and at the fourth floor terrace, including removing non-historic windows and doors, and installing two (2) six-over-six double-hung wood windows and one (1) wood and glass door with sidelights and transom; at the west elevation, including at the cellar, removing one (1) three-over-three double-hung wood window and two (2) louvers and installing three (3) new flush-mounted architectural louvers within the existing masonry openings; at the first floor, replacing three (3) six-over-six double-hung wood windows in-kind; at the second floor, including replacing three (3) sets of blind multi-light in-swing wood casement windows with arched transoms in-kind, featuring spandrel glass and simulated divided light grids only at these windows; at the third floor, including replacing five (5) six-over-nine double-hung wood windows in-kind; and at the gable-end of the mansard, including replacing the existing round steel louver in-kind; with all windows and louvers to have a tan finish (Sherwin Williams SW 2822 "Downing Sand").

In reaching a decision to grant the Certificate of No Effect, the Commission reviewed the proposed work and found that it is in accordance with the provisions set forth in Title 63 of the Rules of the City of New York, Section 2-11 for Repair, Restoration, Replacement, and Re-creation of Building Facades and Related Exterior Elements, including Section 2-11(c)(1) for cleaning or removal of paint and coatings; Section 2-11(c)(3) for pointing mortar joints; Section 2-11(c)(5) for repair of fired clay and ceramic unit masonry; Section 2-11(c)(6) for repair of stucco; Section 2-11(c)(8) for repair of cast and wrought iron and other cast or extruded ornamental metals; Section 2-11(d)(1)(i) for in-kind material replacement; Section 2-11(d)(1)(iv)(A) for replacement of cast iron; Section 2-11(d)(1)(iv)(D) for replacement of cast and natural stone; Section 2-11(d)(1)(iv)(I) for replacement of roofing material; Section 2-11(f) for re-creation and restoration of missing façade features; Section 2-14 for Window and Doors, including Section 2-14(f)(2)(ii)(B) for new windows and doors at primary facades at small residential and commercial buildings; Section 2-14(g)(2)(i-ii) for new windows and doors at new or modified openings at secondary visible facades and Section 2-21 for Installation of Heating, Ventilation, Air Conditioning and other Mechanical Equipment, including Section 2-21(c)(2)(ii) for HVAC equipment within window openings on secondary facades.

Please see Title 63 of the Rules of the City of New York for complete text of any Rule section(s) cited in this permit: <http://www1.nyc.gov/site/lpc/applications/rules-guides.page>

In reaching a decision to issue a favorable report to the CPC, the LPC found that the restorative work will bring the building to a sound first-class condition and aid in the long term preservation of the building; that the implementation of a cyclical maintenance plan will ensure the continued maintenance of the building in a sound first-class condition; that the owners of the designated building have committed themselves to establishing a cyclical maintenance plan that will be legally enforceable by the Landmarks Preservation Commission under the provisions of a restrictive declaration, which will bind all heirs, successors and assigns, and which will be recorded at the New York County Registrar's Office.

The Declaration requires the Declarant to hire a qualified preservation professional, whose credentials are to be approved by LPC, to undertake comprehensive inspections every seven years of the Designated Building's exterior and such portions of the interior which, if not properly maintained, would cause the Designated Building to deteriorate. The Declarant is required to perform all work identified in the resulting professional reports as being necessary to maintain the Designated Building in sound, first-class condition within stated time perimeters.

PLEASE NOTE: This permit is being issued in conjunction with Certificate of Appropriateness 21-01860 (LPC 21-01860) for constructing rooftop and rear yard additions, installing a marquee, and replacing windows and doors.

The staff of the Commission is available to assist you with these matters. Please direct inquiries to Elizabeth Diker.



Sarah Carroll  
Chair

PLEASE NOTE: APPROVED DOCUMENTS, DEPARTMENT OF BUILDINGS FILING DRAWINGS WHERE APPLICABLE, AND A COPY OF THIS PERMIT HAVE BEEN PROVIDED TO:

cc: Caroline Kane Levy, Deputy Director; Sarah Sher,

EXHIBIT E

CERTIFICATE OF NO EFFECT

# LANDMARKS PRESERVATION COMMISSION ELECTRONIC APPROVAL 08/26/2020 ED



THE NEW YORK CITY LANDMARKS PRESERVATION COMMISSION

1 CENTRE STREET 9TH FLOOR NORTH NEW YORK NY 10007

TEL: 212 669-7700 FAX: 212 669-7780



## PERMIT CERTIFICATE OF NO EFFECT

<b>ISSUE DATE:</b> 08/26/20	<b>EXPIRATION DATE:</b> 8/26/2024	<b>DOCKET #:</b> LPC-20-05682	<b>CNE</b> CNE-20-05682
<b>ADDRESS:</b> 3 EAST 89TH STREET		<b>BOROUGH:</b> MANHATTAN	<b>BLOCK/LOT:</b> 1501 / 5
Expanded Carnegie Hill Historic District			

Display This Permit While Work Is In Progress

ISSUED TO:

**Jeanne Greenberg Rohatyn**  
**3 East 89th Holding LLC**  
**12 East 94th Street**  
**New York, NY 10128**

Pursuant to Section 25-306 of the Administrative Code of the City of New York, the Landmarks Preservation Commission hereby approves certain alterations to the subject premises as proposed in your application completed on July 30, 2020.

The approved work consists of restorative work throughout the primary south (East 89th Street) elevation, including removing graffiti and cleaning the granite base, limestone and brick masonry utilizing a low-pressure water wash and mild cleaning agent; repointing select deteriorated limestone joints, and all brick mortar joints; patching limestone spalls utilizing a patching mortar; replacing deteriorated sealant at window surrounds; and repairing select wood windows and surrounds to remain utilizing epoxy and consolidant; at the first floor, including removing the existing iron window guard, in conjunction with repairing anchorage holes in the limestone utilizing a repair mortar; at the second floor, including recreating missing iron detailing at the railings; at the third floor, including replacing one (1) missing limestone bracket; at the fourth floor terrace, including removing/painting with a rust-inhibitive coating the existing abandoned steel outriggers and hardware, in conjunction with cleaning and patching the limestone and re-installing sound face brick; infilling one (1) through-wall penetration utilizing new face brick to match the existing adjacent facade, and removing CMU infill at window and door surrounds to restore the historic masonry openings; at the east elevation, including removing existing ventilation penetrations, one (1) window, and one (1) door, and installing CMU infill and new face brick to match the existing adjacent facade; and at the gable-end of

# LANDMARKS PRESERVATION COMMISSION

## ELECTRONIC APPROVAL 08/26/2020 ED

the mansard, including replacing the existing round steel louver in-kind, at the west elevation, including repointing limestone and brick masonry as required; patching limestone spalls and anchorage holes utilizing a repair mortar; replacing select deteriorated face bricks in-kind, in conjunction with cleaning sound face brick utilizing a low-pressure water wash and mild cleaning agent; replacing deteriorated sealant at window surrounds; and repairing select wood windows and surrounds to remain utilizing epoxy and consolidant; removing and replacing the existing stucco parge coat at the southwest corner of the building; infilling through-wall and through-window penetrations at the 4th floor utilizing face brick to match the existing adjacent facade; and replacing the existing metal railing in-kind at the 4th floor terrace; and at the roof, including at Roof A (main roof), installing a new flat roof assembly; at Roof B (5th Floor penthouse roof), removing the existing elevator bulkhead and skylight, infilling the holes using cement, and installing a new flat roof assembly; at Roof C (existing stair bulkhead), installing a new flat roofing membrane; at Roof D (4th floor terrace), installing a liquid roofing membrane with pedestal pavers; at Roof E (mansard roof), repairing the existing copper standing seam metal; and at Roof F (rear of mansard), installing a new flat roofing membrane, with all roof work to include new flashing, copper scuppers, leaders, and downspouts; and the replacement of select windows and doors throughout; including at the 89th Street facade, removing the existing non-historic paired entrance door with transom and CMU infill, and installing new paired stained wood doors, featuring paneling, details, and profiles to match the historic door; at the second floor, including replacing three (3) sets of multi-light in-swing wood casement windows with arched transoms in-kind; at the third floor, including removing three (3) sets of multi-light in-swing wood casement windows with straight-headed transoms in-kind; and at the fourth floor terrace, including removing non-historic windows and doors, and installing two (2) six-over-six double-hung wood windows and one (1) wood and glass door with sidelights and transom; at the west elevation, including at the cellar, removing one (1) three-over-three double-hung wood window and two (2) louvers and installing three (3) new flush-mounted architectural louvers within the existing masonry openings; at the first floor, replacing three (3) six-over-six double-hung wood windows in-kind; at the second floor, including replacing three (3) sets of blind multi-light in-swing wood casement windows with arched transoms in-kind, featuring spandrel glass and simulated divided light grids only at these windows; at the third floor, including replacing five (5) six-over-nine double-hung wood windows in-kind; and at the gable-end of the mansard, including replacing the existing round steel louver in-kind; with all windows and louvers to have a tan finish (Sherwin Williams SW 2822 "Downing Sand"); as shown and described in an Existing Conditions Survey (Draft), dated December, 2019, and prepared by Higgins Quasebarth & Partners; Window Replacement Package, dated April 2, 2020, and prepared by Johan S. Nelson of Historical Windows of New York; and on drawings labeled A-001.01, A-351.00, A-355.00, A-356.00, A-362.00, A-363.00, A-371.00, A-372.00, A-415.00, A-421.00, A-422.00, and A-423.00 dated (revised) April 21, 2020, and on drawings A-352.00, dated (revised) May 18, 2020, all prepared by Jay Douglas Bargmann, R.A., and submitted as components of the application.

In reviewing this proposal, the Commission notes that the Expanded Carnegie Hill Historic District Designation Report describes 3 East 89th Street, part of the National Academy of Design complex, as a neo-Renaissance style townhouse designed by Ogden Codman and built in 1913-15; and that the building's style, scale, materials, and details are among the features that contribute to the special architectural and historic character of the historic district. The Commission further notes that this restorative work is related to other work approved by Commission at the public hearing and public meeting of February 11, 2020 and June 30, 2020, and as stated in Status Update Letter 20-05683 (LPC 20-05683), issued on February 25, 2020; and Status Update Letter 20-11118 (LPC 20-11118), issued on June 10, 2020.

With regard to this proposal, the Commission finds that the work is in accordance with the provisions set forth in Title 63 of the Rules of the City of New York, Section 2-11 for Repair, Restoration, Replacement, and Re-creation of Building Facades and Related Exterior Elements, including Section 2-11(c)(1) for cleaning or removal of paint and coatings; Section 2-11(c)(3) for pointing mortar joints; Section 2-11(c)(5) for repair of fired clay and ceramic unit masonry; Section 2-11(c)(6) for repair of stucco; Section 2-11(c)(8)



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for repair of cast and wrought iron and other cast or extruded ornamental metals; Section 2-11(d)(1)(i) for in-kind material replacement; Section 2-11(d)(1)(iv)(A) for replacement of cast iron; Section 2-11(d)(1)(iv)(D) for replacement of cast and natural stone; Section 2-11(d)(1)(iv)(I) for replacement of roofing material; Section 2-11(f) for re-creation and restoration of missing façade features; Section 2-14 for Window and Doors, including Section 2-14(f)(2)(ii)(B) for new windows and doors at primary facades at small residential and commercial buildings; Section 2-14(g)(2)(i-ii) for new windows and doors at new or modified openings at secondary visible facades and Section 2-21 for Installation of Heating, Ventilation, Air Conditioning and other Mechanical Equipment, including Section 2-21(c)(2)(ii) for HVAC equipment within window openings on secondary facades. Based on these findings, the Commission determined that the work is appropriate to the building and to the Expanded Carnegie Hill Historic District. The work, therefore, is approved.

**SAMPLES REQUIRED:** Pursuant to Title 63 of the Rules of the City of New York, Section 2-11(b)(5) and 2-11(b)(7) for Repair, Restoration, Replacement and Re-creation of Building Façades and Related Exterior Elements, this permit is being issued contingent upon the Commission's review and approval of installed sample mockups of masonry cleaning, repointing mortar, replacement brick units, limestone patching, and replacement window sealant at locations requiring repair, prior to the commencement of work. Review instructions in the subsection cited above before preparing samples. Submit clear, color digital photographs of all samples to ediker@lpc.nyc.gov for review, or contact staff to schedule a site visit.

Please see Title 63 of the Rules of the City of New York for complete text of any Rule section(s) cited in this permit: <http://www1.nyc.gov/site/lpc/applications/rules-guides.page>

The Commission has reviewed the application and these drawings and finds that the work will have no effect on significant protected features of the building.

This permit is issued on the basis of the building and site conditions described in the application and disclosed during the review process. By accepting this permit, the applicant agrees to notify the Commission if the actual building or site conditions vary or if original or historic building fabric is discovered. The Commission reserves the right to amend or revoke this permit, upon written notice to the applicant, in the event that the actual building or site conditions are materially different from those described in the application or disclosed during the review process.

The approved documents, and Department of Buildings filing drawings where applicable, are marked as approved by the Commission, with the date of the approval indicated. The work is limited to what is contained in the approved documents and referenced in the approval. Other work or amendments to this filing must be reviewed and approved separately. The applicant is hereby put on notice that performing or maintaining any work not explicitly authorized by this permit may make the applicant liable for criminal and/or civil penalties, including imprisonment and fine. This letter constitutes the permit; a copy must be prominently displayed at the site while work is in progress. Please direct inquiries to Elizabeth Diker.



Sarah Carroll  
Chair

**PLEASE NOTE: APPROVED DOCUMENTS, DEPARTMENT OF BUILDINGS FILING DRAWINGS WHERE APPLICABLE, AND A COPY OF THIS PERMIT HAVE BEEN PROVIDED TO:**

Sarah Sher, Higgins Quasebarth & Partners, LLC

# LANDMARKS PRESERVATION COMMISSION

cc: Caroline Kane Leary, Deputy Director; Sarah Sher, Higgins Quasebaath & Partners, LLC

**ELECTRONIC APPROVAL 08/26/2020 ED**