SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE CITY OF NEW YORK,

Plaintiff,

-against-

SMART APARTMENTS LLC, ROBERT K.Y. CHAN, TOSHI INC., et al.

Defendants.

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AFFIDAVIT IN SUPPORT

Index No.

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

JAMES P. COLGATE, being duly sworn, deposes and says:

1. I am a registered architect, licensed to practice in the State of New York, and an attorney admitted to practice in the State of New York. I am employed as Assistant Commissioner of Technical Affairs and Code Development for the New York City Department of Buildings ("DOB"), located at 280 Broadway, New York, New York. My responsibilities include, but are not limited to, the review and interpretation of provisions of, *inter alia*, Title 28 of the Administrative Code of the City of New York ("AC"), including the 2008 New York City Building Code ("2008 Building Code"), as well as the 1968 New York City Building Code (the "1968 Building Code"), the New York City Zoning Resolution (the "Zoning Resolution") and the New York State Multiple Dwelling Law ("MDL," or "Multiple Dwelling Law"); the provision of technical guidance as to such statutes; the drafting of legislation; and lecturing and training to DOB staff, as well as architects and engineers. I have been employed by DOB

since 2003, and I previously was employed by DOB from 1998 to 2000. From 1992 to 1998, I was employed by the Department of Housing Preservation and Development ("HPD"), where I reviewed plans for the rehabilitation of existing multiple dwellings, including tenements, for compliance with agency guidelines and the 1968 Building Code, the Housing Maintenance Code, and the Multiple Dwelling Law. Additionally, while at HPD, I managed construction contracts concerning the rehabilitation of multiple dwellings.

2. I make this affidavit in support of plaintiffs' application for a temporary restraining order, and preliminary injunction in the above-captioned action. The affidavit (1) reviews fire safety provisions of the New York City Building Code and MDL of concern to transient occupancy buildings, and their rationale; (2) outlines the standard methods for determining the occupancy classification of a building; and (3) sets forth my review of relevant documents related to the classification of buildings of concern in this action and the resulting determination of their legal occupancy.

3. DOB has jurisdiction over buildings and structures, including their use, construction and alteration, throughout the five boroughs of the City. It is responsible for protecting the health, safety, and welfare of the public from harm due to dangerous buildings. DOB is authorized to enforce, *inter alia*, the Zoning Resolution ("ZR"), AC Title 28, including the 2008 New York City Building Code,[1] the 1968 New York City

[1] AC Title 28 includes the 2008 New York City Plumbing, Building, Mechanical, Fuel Gas and Energy Efficiency Codes (see AC §28-101.1).

Building Code,[2] the MDL, and other laws, rules and regulations governing the construction and use of buildings and structures in the City.

I. The More Stringent Building Code Requirements for Transient Occupancies

4. The minimum construction and fire safety requirements for transient occupancies (classified as R-1 occupancy group by the 2008 Building Code, or Class B by the MDL) have been, both historically and currently, in the City of New York and elsewhere, more stringent than those required for long-term residential occupancies (classified as R-2 occupancy group by the 2008 Building Code, or Class A by the MDL). The reasons for the more stringent requirements include the fact that transient occupants do not have the familiarity with their surroundings that long-term occupants have, nor are they aware of the layouts and configuration of exits and/or fire escapes. They are not familiar with local fire-safety and evacuation procedures such as elevator evacuation, fire alarm notifications, exit signs, and do not know what telephone number to call in case of a fire emergency. Transient occupants have not received the fire safety notices required in residential buildings that describe their building's combustible or noncombustible construction, whether or not they should remain in place or evacuate during a smoke condition, etc.[3]

5. Several notable fires, including hotel fires such as the MGM Grand Hotel fire in Las Vegas in 1980, which left 85 dead and hundreds injured, resulted in remedial local legislation, including New York City's Local Law 16 of 1984. That legislation required retroactive upgrades to many classes of buildings including hotels. For instance,

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[2] Pursuant to AC §27-101, the New York City Building Code is set forth under Chapter 1 of Title 27 of the Administrative Code (AC §§27-101 through 27-1006).

[3] See §408.9 of the New York City Fire Code; 3 RCNY §408-02.

beginning in 1984, all existing hotels were required to retroactively install exit signs at the entrance to every exit stair as well as emergency lighting in case of power failure.[4] Existing apartment houses classified as R-2 were never required to install exit signs or emergency lights. Other retroactive upgrades, required for existing R-1 transient occupancies but never required for existing R-2 permanent residential occupancies, include the 1984 requirement for sprinklers or other fire protection measures to protect elevator lobbies on each story.[5] Therefore, these older apartment houses, without these important upgrades, are not deemed safe for transient occupants.

6. With regard to new construction, fire safety requirements for R-1 transient occupancy far exceed the requirements for R-2 permanent residential occupancy. For example, the presence of a single R-1 transient room in a building requires the provision of an automatic fire alarm system comprised of (i) wall-mounted pull-stations near stairways that occupants can pull that will result in an audible alarm in the public parts of the building and will transmit a signal that will call the fire department; (ii) smoke detectors in the transient sleeping rooms that, upon detection of smoke, will result in an audible alarm in the room as well as transmission to hotel staff at a constantly attended location from where the fire department can be summoned; (iii) smoke detectors in public parts of the building such as elevator lobbies, in certain air ducts, and in all mechanical rooms that, upon detection of smoke, will result in audible alarms in the public parts of the building and transmission of a signal that will call the fire department.[6]

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[4] See §§45, 46 of Local Law 16/1984, codified at AC §§27-382(b), 27-384(b).

[5] See §33 of Local Law 16/1984, codified at AC §27-353.1.

[6] See 2008 Building Code §907.2.8.

7. On the other hand, in a building containing exclusively R-2 apartment houses, there are no required pull-stations, no smoke detection is required in public parts of the building, and no audible alarms are required to annunciate in the public parts of the building. Rather, required smoke detection is limited to only (i) local smoke alarms in the apartments that annunciate only within the apartment and that do not send an alert or transmission anywhere else; and (ii) mechanical ducts and rooms, with a silent transmission of a signal that will call the fire department.[7]

8. Other differences include that the two required exit stairs in R-2 apartment buildings may be located closely together and even intertwine,[8] whereas the two required exit stairs in R-1 transient hotels must be placed further apart and are not permitted to be located adjacent to each other.[9] Additionally, the maximum dead-end distance for public corridors serving R-1 units are limited to 20 feet, whereas in R-2 buildings the distance can be extended to 80-feet.[10] The exit stairs in R-1 buildings are generally required to be 44" inches wide, whereas in an R-2 building the stairs need be only 36 inches for apartment buildings up to 125 feet in height (approx. 12 stories).[11] The examples identified are by no means an exhaustive list, but intended only to demonstrate that the safety standards for R-1 occupancy are more stringent than for R-2 occupancy.

9. The AC, MDL and Building Code would impose significant mandatory safety upgrades on buildings in which any existing R-2 apartment is to be occupied for

[7] See 2008 Building Code §907.2.9.

[8] See 2008 Building Code §1014.2.1, Exception 3.

[9] See 2008 Building Code §1014.2.1.

[10] See 2008 Building Code §1016.3, Item 4.

[11] See 2008 Building Code §1009.1, Exception 1.2.

stays of less than 30 days (i.e., as an R-1 occupancy). Any such conversion from of an R-2 apartment to an R-1 occupancy subjects the apartment to the R-1 safety requirements. In some instances, the conversion will trigger the applicability of R-1 safety requirements found in the 2008 Building Code. In other instances, the standards in the 1968 Building Code may be able to be applied. However, when a conversion from an R-2 unit to an R-1 unit occurs without a permit filed with the DOB, the AC imposes the 2008 Building Code as the applicable standard.[12] In accordance with the 2008 Building Code, any R-2 apartment converted to R-1 occupancy must be provided with a sprinkler system[13] and a fire alarm system that includes a smoke detector in apartment that is either monitored by hotel staff or that reports directly to the fire department.[14] Additionally, such an apartment must be provided with exit facilities complying with the provisions of Chapter 10 of the 2008 Building Code, which mandates emergency lighting in case of power failure,[15] illuminated exit and directional signs pointing to the location of exits,[16] re-

[12] In accordance with AC §§28-104.2 and 28-101.4, the 2008 Building Code is the applicable code for all alterations except as provided for in §§28-101.4.1 through 28-101.4.4. The one subsection that would permit the use of the 1968 code, §28-101.4.3, does not apply to a conversion from R-2 to R-1 that had been performed without benefit of a permit from DOB. Specifically, the use of the 1968 Code is applicable only when elected by the owner, and then only after "approval" by DOB of construction documents demonstrating compliance with the applicable laws and rules. See AC §28-101.4.3 ("At the option of the owner, and subject to appropriate approval, a permit may be issued after the effective date of this code authorizing work on existing buildings constructed in accordance with the 1968 building code or with the building laws in effect prior to the effective date of the 1968 building code, to be performed in accordance with the requirements and standards set forth in the 1968 building code"(emphasis added)); see AC §28-101.5 ("Approval or approved. In reference to construction documents, the determination by the department after full examination that submitted construction documents comply with this code and other applicable laws and rules.").

[13] See 2008 Building Code §903.2.7.

[14] See 2008 Building Code §907.2.8.

[15] See 2008 Building Code §1006.3

hanging of the exit doors at the primary entrance so that they swing in the direction of exit egress travel,[17] reconstructed stairs with a gentler rise than in most R-2 apartment buildings,[18] and with the stairs separated from the public corridors by fire-rated enclosures;[19] and in most cases, access to two enclosed exit stairs without reliance on fire-escapes.[20] Even in cases where the owner pro-actively applies to and obtains from DOB a permit to convert an R-2 apartment to R-1 occupancy, and elects and receives approval to utilize the 1968 Building Code, the AC would still mandate most of the same fire safety provisions, including a sprinkler system and a fire alarm system.[21]

10. The life-saving value of the fire safety has been well proven over time. A Summary by the National Fire Protection Association of hotel fires resulting in ten or more fatalities in the United States from 1934 through 2006 shows that, with the

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[16] See 2008 Building Code §1011.

[17] Per 2008 Building Code §1008.1.2.2, R-2 occupancies are allowed to have the building entrance doors to swing against the direction of egress travel. For R-1 occupancies, the doors must swing in the direction of egress travel.

[18] For R-1 occupancies, the 2008 Building Code establishes a maxim riser height of 7 inches and minimum tread lengths of 11 inches for R-1 occupancies. See 2008 Building Code §1009.3. Most existing R-2 buildings have steeper stairs, with a maximum riser height of 7¾ inches and a minimum tread depth of 9½ inches. See, e.g., 2008 Building Code §1009.2, Exception 5.2.

[19] See 2008 Building Code §1019.1.

[20] See 2008 Building Code §1018. Because fire escapes are steep and difficult to navigate for the elderly, infirm, very young, or those with mobility impairments, fire escapes do not qualify as an exit under the 2008 Building Code. See 2008 Building Code §1002.1 (definition of "exit"). Instead, 2008 Code §1018 will in most cases require two fully enclosed exit stairs within the building.

[21] For instance, where the owner elects to utilize the 1968 Building Code for a change of occupancy of an apartment from R-2 to R-1, then AC §28-101.4.2, Item 2, requires sprinkler and fire protection systems in accordance with the 2008 Building Code for the apartment anyway. And although the election of the 1968 Building Code would permit the stairs and egress configurations to meet the 1968 or prior codes, the egress standards for such prior codes are similarly more stringent than for permanent occupancy.

exception of the Dupont Plaza fire in San Juan, Puerto Rico in 1986 – a fire which occurred in a jurisdiction that at the time did not have the fire safety standards which had earlier been enacted in New York and other states – there have been no major hotel fire tragedies since the institution of the more stringent fire safety standards for transient occupancies.[22]

11. The importance of these fire safety requirements was also highlighted in a hotel fire which occurred in 2007 in the United Kingdom and left three persons dead. As reported by the BBC, the owners of the hotel, who admitted to criminal charges that they had failed to provide proper fire detection and alarm systems and failed to make a proper risk assessment, were assessed £80,000 in fines and £62,000 in costs. The brother of two of the victims opined that "The best thing that could come out of this is that the tourism agencies and hotels sit up and take note. There are still premises and hotels around the country that are not complying with fire regulations."[23]

II. Determining the Legal Occupancy of a Building

A. Certificates of Occupancy

12. Pursuant to New York City Charter ("Charter") §645(b)(3)(e), the certificate of occupancy is binding and conclusive as to the legal use and occupancy of a building. Section 645 states, in pertinent part, that "every certificate of occupancy shall, unless and until set aside, vacated or modified by the board of standards and appeals or a

[22] The summary is attached as Exhibit "8". For information on the Dupont Plaza fire see, e.g., http://www.lrc.fema.gov/disasters_firesum_dupont.html.

[23] See, http://www.bbc.co.uk/news/uk-england-cornwall-12830022, and http://www.bbc.co.uk/news/uk-england-cornwall-13290088. These reports are attached as Exhibit "9".

court of competent jurisdiction, be and remain binding and conclusive upon all agencies and officers of the city."

B. Where Buildings Legally Do Not Have Certificates of Occupancy

13. Certificates of occupancy were not required for all buildings prior to 1938. Laws enacted subsequent to 1938 did not require such buildings to obtain certificates of occupancy unless the use or occupancy in the building was changed, or unless they were otherwise altered.[24] Therefore many pre-1938 buildings existing today do not have a certificate of occupancy, but are nonetheless permitted to be occupied lawfully in accordance with the prior approvals and department records.

14. Beginning in 1901, the Tenement House Department had been tasked with inspecting every existing multiple dwelling to record conditions and ensure compliance with the tenement house laws then in effect. It created for each multiple dwelling "Inspection Cards," which commonly became known as "I-cards." Pursuant to amendment of the New York City Charter in 1938, the functions of two agencies, the Tenement House Department, which had been responsible only for tenements, and the Department of Buildings, which had been responsible for all buildings including tenements, were merged into a single agency, the Department of Housing and Buildings. Within this newly created agency, the Division of Buildings was responsible for issuing certificates of occupancy. From 1901 until the middle of the 20th century, it was the practice of inspectors in the Tenement House Department and its successor agencies to update the building information on the old I-cards and to create new I-cards based on subsequent inspection and based on information provided by the Department of

[24] See, e.g., AC §28-118.3.4; AC §28-102.4. The change from an R-2 dwelling unit for use as an R-1 dwelling unit is a change of occupancy group that requires a certificate of occupancy.

Buildings, and, after 1938, the Division of Buildings. The I-card templates utilized by the inspectors required the employees to categorize dwelling units as either "Class A" or "Class B."

15. In the case of a pre-1938 building where no certificate of occupancy has been issued to date, the I-cards are official records of the city that help establish the lawful occupancy of the dwellings.

C. Class A and Class B Multiple Dwellings

16. Section 4(8)(a) of the Multiple Dwelling Law defines a Class "A" Multiple Dwelling as "a multiple dwelling that is occupied for permanent residence purposes." The class excludes class B multiple dwellings, and provides that a "class A multiple dwelling shall only be used for permanent residence purposes." The Section defines "permanent residence purposes" to "consist of occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more."[25]

17. Section 4(9) of the Multiple Dwelling Law defines a Class "B" Multiple Dwelling as one that is "occupied, as a rule, transiently, as the more or less abode of individuals or families who are lodged with or without meals." The definition further provides that the following categories of dwellings fall within the category of Class "B" Multiple Dwellings: "hotels, lodging houses, rooming houses, boarding houses, boarding schools, furnished room houses, lodgings, club houses, college and school dormitories and dwellings designed as private dwellings but occupied by one or two families with five or more transient boarders, roomers or lodgers in one household."

[25] Section 4(8)(a) of the multiple dwelling law was amended per Chapter 225, Laws of 2010 and Chapter 556, Laws of 2010, to make clear that Class A requires tenancies of 30 days or more and that the occupancy for less than 30 days in a Class A multiple dwelling is unlawful.

18. These provisions, which are mirrored in the occupancy provisions of the New York City Housing Maintenance Code (AC §27-2004), and the 2008 Building Code §§310.1.1 and 310.1.2, preclude any transient occupancies of less than 30-days in Class A multiple dwellings.

D. A Change in Use or Occupancy Requires a New Certificate of Occupancy

19. The occupancy of an existing Class A (R-2) apartment for stays less than 30 days would be a violation of the MDL, AC and Building Code.[26] Before an existing Class A (R-2) apartment can lawfully be occupied for stays of less than 30 days, the owner must first apply to DOB[27] and obtain a new or amended certificate of occupancy for the entire building.[28] Such certificate of occupancy can be issued by DOB only if the building "conforms substantially to the approved construction documents and the provisions of the building code and other applicable laws and rules."[29] These applicable laws include not only the Zoning Resolution, but also fire-safety upgrades required for the conversion of the apartment to transient occupancy.

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[26] See AC 28-118.3.1 ("No building, open lot or portion thereof hereafter altered so as to change from one occupancy group to another, or from one zoning use group to another, either in whole or in part, shall be occupied or used unless and until the commissioner has issued a certificate of occupancy certifying that the alteration work for which the permit was issued has been completed substantially in accordance with the approved construction documents and the provisions of this code and other applicable laws and rules for the new occupancy or use."); MDL §4(8)(a) (requiring stays in Class A units to be for at least 30 days); 2008 Building Code §310.2.1 (defining R-2 occupancy).

[27] Such a change, with or without physical construction work, constitutes a change of occupancy classification (from R-2 to R-1), and deemed an alteration pursuant to the AC. See AC §28-101.5 (definition of "alteration"). It is unlawful to alter a building "unless and until a written permit therefore shall have been issued by the commissioner." AC §28-105.1.

[28] See AC §28-118.3.1.

[29] AC §28-118.2.

III. Review of the Occupancy Classification of Specific Buildings Germane to This Action.

20. I have examined the records on file with DOB and HPD with respect to the buildings which are described below. All but three are Class A multiple dwellings, The three exceptions, 205 West 14th Street and 1068 2nd Avenue in Manhattan, and 465 Grand Street in Brooklyn, have building classifications which preclude transient residential occupancies of less than 30 days.

8 Centre Market Place, Manhattan

21. I have reviewed the DOB and HPD records for the building at 8 Centre Market Place, New York, New York. Pursuant to the most recent certificate of occupancy, CO 29942, issued August 24, 1943, the building at 45 Carmine Street is a 4-story plus cellar old law tenement ("OL") consisting of 8 apartments. An OL is a tenement that was erected prior to April 12, 1901, and is a Class A multiple dwelling per MDL §4(8)(a).

22. According to CO 29942, every apartment at 45 Carmine Street is a Class A apartment. The use of any apartment in this building for transient occupancies of less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

19 Bleecker Street, Manhattan

23. I have reviewed the records of DOB and HPD for the building at 19 Bleecker Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO 120074, issued August 14, 2000, the building at 19 Bleecker Street is a 7-story joint living-work quarters for artists in residence ("JAR") consisting of 11 apartments. A JAR is a Class A multiple dwelling converted pursuant to MDL §277 and that is restricted pursuant to the ZR in that at least one artist who is certified by the

Department of Cultural Affairs must reside in each apartment. The records of DOB indicate that the building was erected around 1920.

24. According to CO 120074, every apartment at 19 Bleecker Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancies of less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC. Further, the occupancy of any apartment in this building without an artist certified by the Department of Cultural Affairs is a violation of the ZR and the AC.

19 West 46th Street, Manhattan

25. I have reviewed the records of DOB and HPD for the building at 19 West 46th Street, New York, New York. Those records indicate that there is no certificate of occupancy for the building. According to the I-Cards, the building at 19 West 46th Street is a 4-story heretofore converted Class A multiple dwelling ("HCA") consisting of 3 apartments. An HCA is a Class A multiple dwelling originally erected as a one- or two-family dwelling, and converted prior to April 18, 1929 to a multiple dwelling in accordance with such laws, and classified as a converted dwelling as per MDL §4.10.

26. According to DOB and HPD records, every apartment at 19 West 46th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

22 East 36th Street, Manhattan

27. I have reviewed the records of DOB and HPD for the building at 22 East 36th Street, New York, New York. Pursuant to the most recent certificate of occupancy,

CO 106035, issued November 1, 1994, and records of HPD, the building at 22 East 36th Street is an 11-story new law tenement ("NL") consisting of 37 apartments. An NL is a tenement that was erected on or after April 12, 1901 and before April 18, 1929, and is a Class A multiple dwelling per MDL§4(8)(a).

28. According to DOB and HPD records, every apartment at 22 East 36th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

30 Carmine Street, Manhattan

29. I have reviewed the records of DOB and HPD for the building at 30 Carmine Street, New York, New York. Those records indicate that there is no certificate of occupancy for the building. According to the I-Cards, the building at 30 Carmine Street is a 5-story old law tenement ("OL") consisting of 9 apartments. An OL is a tenement that was erected prior to April 12, 1901, and is a Class A multiple dwelling per MDL §4(8)(a).

30. According to DOB and HPD records, every apartment at 30 Carmine Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

41 West 46th Street, Manhattan

31. I have reviewed the records of DOB and HPD for the building at 41 West 46th Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO 63884 issued December 20, 1966, the building at 41 West 46th Street is a 5-story

hereafter converted Class A multiple dwelling ("HACA") consisting of 8 apartments. An HACA is a Class A multiple dwelling originally erected as a one- or two-family dwelling, and converted on or after April 19, 1929 to a multiple dwelling in accordance with MDL §4.10. According to CO 63884, every apartment at 41 West 46th Street is classified as a Class A apartment. As currently classified, the use of an apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violations of the MDL and AC.

32. HPD records also indicate that the building is not validly registered with HPD, although required to be so by Section 27-2097 of the New York City Housing Maintenance Code.

44-46 West 37th Street, Manhattan

33. I have reviewed the records of DOB and HPD for the building at 44-46 West 37th Street, New York, New York. Those records indicate that there is no certificate of occupancy for the building. According to the I-Cards the building at 44 West 37th Street is a 4-story heretofore converted Class A multiple dwelling ("HCA") consisting of 8 apartments. An HCA is a Class A multiple dwelling originally erected as a one- or two-family dwelling, and converted prior to April 18, 1929 to a multiple dwelling, and classified as a converted dwelling as per MDL §4(10).

34. According to HPD records, every apartment at 44-46 West 37th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

45 Carmine Street, Manhattan

35. I have reviewed the DOB and HPD records for the building at 45 Carmine Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO 49419, issued July 24, 1967, the building at 45 Carmine Street is a 5-story old law tenement ("OL") consisting of 34 apartments. An OL is a tenement that was erected prior to April 12, 1901, and is a Class A multiple dwelling per MDL §4(8)(a).

36. According to CO 49419, every apartment at 45 Carmine Street is a Class A apartment. The use of any apartment in this building for transient occupancies of less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

65 Bank Street, Manhattan

37. I have reviewed the records of DOB and HPD for the building at 65 Bank Street, New York, New York. Those records indicate that there is no certificate of occupancy for the building. According to the I-cards, the building at 65 Bank Street is a new law tenement ("NL") consisting of 35 apartments. An NL is a tenement that was erected on or after April 12, 1901 and before April 18, 1929, and is a Class A multiple dwelling per MDL§4(8)(a).

38. According to DOB and HPD records, every apartment at 65 Bank Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

79 Clinton Street, Manhattan

39. I have reviewed the records of DOB and HPD for the building at 79 Clinton Street (also known as 163 Rivington Street), New York, New York. Those

records indicate that there is no certificate of occupancy for the building. According to such records, the building at 79 Clinton Street is a 6-story old law tenement ("OL") consisting of 20 apartments. An OL is a tenement that was erected prior to April 12, 1901, and is a Class A multiple dwelling per MDL §4(8)(a).

40. According to DOB and HPD records, every apartment at 79 Clinton Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

82 Kenmare Street, Manhattan

41. I have reviewed the DOB and HPD records for the building at 82 Kenmare Street (a/k/a known as 86-98 Kenmare Street), New York, New York. Pursuant to the most recent certificate of occupancy CO 110411821T006, issued November 28, 2011, and HPD records, the building is a 6-story new law tenement ("NL") consisting of 30 apartments. An NL is a tenement that was erected on or after April 12, 1901 and before April 18, 1929, and is a Class A multiple dwelling per MDL §4(8)(a).

42. According to DOB and HPD records, every apartment at 30 Carmine Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

89 MacDougal Street, Manhattan

43. I have reviewed the records of DOB and HPD for the building at 89 MacDougal Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO 14578, issued November 2, 1928 and HPD records, the building at 89

MacDougal Street is a 6-story new law tenement ("NL") consisting of 15 apartments. An NL is a tenement that was erected on or after April 12, 1901, and before April 18, 1929, and is a Class A multiple dwelling per MDL §4(8)(a).

44. According to DOB and HPD records, every apartment at 89 MacDougal Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

100 Charlton Street, Manhattan

45. I have reviewed the records of DOB and HPD for the building at 100 Charlton Street, New York, New York. Those records indicate that there is no certificate of occupancy for the building. According to the I-Cards, the building at 100 Charlton Street is a 4-story old law tenement ("OL"). An OL is a tenement that was erected prior to April 12, 1901, and is a Class A multiple dwelling per MDL §4(8)(a).

46. According to DOB and HPD records, every apartment at 100 Charlton Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

102 Charlton Street, Manhattan

47. I have reviewed the records of DOB and HPD for the building at 102 Charlton Street, New York, New York. Those records indicate that there is no certificate of occupancy for the building. According to the I-Cards, the building at 102 Charlton Street is a 4-story old law tenement ("OL") consisting of 16 apartments. An OL is a

tenement that was erected prior to April 12, 1901, and is a Class A multiple dwelling per MDL §4(8)(a).

48. According to DOB and HPD records, every apartment at 102 Charlton Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

107 East 60th Street, Manhattan

49. I have reviewed the records of DOB and HPD for the building at 107 East 60th Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO 56114, issued July 25, 1962, The building at 107 East 60th Street it a 4-story plus basement heretofore converted Class A multiple dwellings ("HCA") consisting of 4 apartments. An HCA is a Class A multiple dwelling originally erected as a one- or two-family dwelling, and converted prior to April 18, 1929 to a multiple dwelling in accordance with such laws, and classified as a converted dwelling as per MDL §4.10.

50. According to DOB and HPD records, every apartment at 107 East 60th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

115 West 23rd Street, Manhattan

51. I have reviewed the records of DOB and HPD for the building at 115 West 23rd Street (a/k/a 117 West 23rd Street), New York, New York. Pursuant to the most recent certificate of occupancy, CO 104562, issued February 9, 1994 and HPD records, the building at 115 West 23rd Street is a 6-story commercial altered Class A multiple

dwelling ("CAA") consisting of 18 apartments. A CAA is a building originally erected in accordance with the laws in effect prior to December 6, 1968, and converted to a Class A multiple dwelling pursuant to MDL §277. This building was converted pursuant to the Loft Law (MDL Article 7-c).

52. According to DOB and HPD records, every apartment at 115 West 23rd Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

117 East 77th Street, Manhattan

53. I have reviewed the records of DOB and HPD for the building at 117 East 77th Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO 14893, issued September 11, 1928, and the records of HPD, the building at 117 East 77th Street is 10-story new law tenement ("NL") consisting of 39 apartments. An NL is a tenement that was erected on or after April 12, 1901 and before April 18, 1929, and is a Class A multiple dwelling per MDL§4(8)(a).

54. According to DOB and HPD records, every apartment at 117 East 77 Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

135 Metropolitan Avenue, Brooklyn

55. I have reviewed the records of DOB and HPD for the building at 135 Metropolitan Avenue, Brooklyn, New York. Pursuant to the most recent certificate of occupancy, CO 310108629F, issued July 23, 2010, the building at 135 Metropolitan

Avenue is a 4-story hereafter erected Class A multiple dwelling ("HAEA") consisting of 10 Class A apartments. An HAEA is a Class A multiple dwelling erected after on or after April 18, 1929. Documents filed with the Office of the City Register indicate that the building is a residential condominium.

56. According to DOB and HPD records, every apartment at 135 Metropolitan Avenue is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

144 Bleecker Street, Manhattan

57. I have reviewed the records of DOB and HPD for the building at 144 Bleecker Street, New York, New York. There are two different pending alteration applications for changes in occupancy at this building: Job Number 103355441 filed on January 21, 2003 for the conversion of former office space on the second through fourth stories into 10 Class A apartments, and Job Number 104129355 filed on May 31, 2005 for alterations limited to the basement and first story commercial spaces. The result of the second application, filed before the first application was signed off, is that two temporary certificates of occupancy have been issued that are on their faces inconsistent with each other. CO 104129355T010, which was a temporary certificate of occupancy that expired February 2, 2012, reflects the new commercial uses at the basement and first story, but does not reflect the alterations that have already occurred on the upper stories, namely the conversion of stories 2 through 4 into 10 Class A apartments. CO 103355441T024, which was a temporary certificate that was issued July 9, 2012, does not mention the

basement and 1st stories, but does properly reflect that the former offices on the 2nd through 4th stories have in fact been lawfully converted to 10 Class A apartments.

58. Pursuant to COs 104129355T010 and 103355441T024, the building at 144 Bleecker Street comprises a 4-story plus basement commercial altered Class A multiple dwelling ("CAA") consisting of 10 apartments. A CAA is building originally erected in accordance with the laws in effect prior to December 6, 1968, and converted to a Class A multiple dwelling pursuant to MDL §277.

59. According to COs 104129355T010 and 103355441T024, every apartment at 144 Bleecker Street is a Class A apartment. As such, the use of any apartment in this building for transient occupancies of less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

153 East 26th Street, Manhattan

60. I have reviewed the records of DOB and HPD for the building at 153 East 26th Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO 79288, issued April 24, 1979, and HPD records, the building at 153 East 26th Street is an 8-story commercial altered Class A multiple dwelling ("CAA") consisting of 14 apartments. A CAA is building originally erected in accordance with the laws in effect prior to December 6, 1968, and converted to a Class A multiple dwelling pursuant to MDL §277.

61. According to CO 79288, every apartment at 153 East 26th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancies of less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

157 Suffolk Street, Manhattan

62. I have reviewed the records of DOB and HPD for the building at 157 Suffolk Street, New York, New York. Those records indicate that there is no certificate of occupancy for the building. According to the I-Cards, the building at 157 Suffolk Street is a 6-story new law tenement ("NL") consisting of 33 apartments. An NL is a tenement that was erected on or after April 12, 1901 and before April 18, 1929, and is a Class A multiple dwelling per MDL§4(8)(a).

63. According to DOB and HPD records, every apartment at 157 Suffolk Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

171 Mulberry Street, Manhattan

64. I have reviewed the records of DOB and HPD for the building at 171 Mulberry Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO 20781, issued November 9, 1935, and HPD records, the building at 22 East 36th Street is an 6-story old law tenement (OL) consisting of 11 apartments. An OL is a tenement that was erected prior to April 12, 1901, and is a Class A multiple dwelling per MDL §4(8)(a).

65. According to DOB and HPD records, every apartment at 171 Mulberry Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

66. HPD records also indicate that the building is not validly registered with HPD, although required to be so by Section 27-2097 of the New York City Housing Maintenance Code.

174 Broadway, Brooklyn

67. I have reviewed the records of DOB and HPD for the building at 174 Broadway, Brooklyn, New York. Pursuant to the most recent certificate of occupancy, CO 301171826F, issued March 20, 2006, and records of HPD, the building at 174 Broadway Street is a 4-story commercial altered Class A multiple dwelling ("CAA") consisting of 5 apartments. A CAA is building originally erected in accordance with the laws in effect prior to December 6, 1968, and converted to a Class A multiple dwelling pursuant to MDL §277.

68. According to CO 301171826F, every apartment at 174 Broadway is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancies of less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

174 Hester Street, Manhattan

69. I have reviewed the records of DOB and HPD for the building at 174 Hester Street, New York, New York. Those records indicate that there is no certificate of occupancy for the building. According to the I-Cards, the building at 174 Hester Street is a 6-story new law tenement ("NL") consisting of 22 apartments. An NL is a tenement that was erected on or after April 12, 1901 and before April 18, 1929, and is a Class A multiple dwelling per MDL§4(8)(a).

70. According to DOB and HPD records, every apartment at 174 Hester Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

71. HPD records also indicate that the building is not validly registered with HPD, although required to be so by Section 27-2097 of the New York City Housing Maintenance Code.

186 South 8th Street, Brooklyn

72. I have reviewed the records of DOB and HPD for the building at 186 South 8th Street, Brooklyn, New York. Pursuant to the most recent certificate of occupancy, CO 301233751F, issued March 12, 2003, and records of HPD and DOB, the building at 186 South 8th Street is a 5-story Class A multiple dwelling.

73. DOB records for 186 South 8th Street further reflect that Job Application No. 320022499 was approved on November 30, 2011 to convert a portion of the building, including a structure in the rear of the lot, to community facility use. The resultant building, upon completion of this 2011 application, will be a Class A multiple dwelling comprising 3 Class A apartments. Because Job number 320022499 has not been signed off with a new certification of occupancy, CO 301233751F, issued March 12, 2003, remains in effect.

74. According to DOB and HPD records, every apartment at 186 South 8th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

75. HPD records also indicate that the building is not validly registered with HPD, although required to be so by Section 27-2097 of the New York City Housing Maintenance Code.

188 South 8th Street, Brooklyn

76. I have reviewed the records of DOB and HPD for the building at 188 South 8th Street, Brooklyn, New York. Pursuant to the most recent certificate of occupancy, CO 320182681F, issued May 25, 2011, the building at 188 South 8th Street is a 4-story plus basement hereafter erected Class A ("HAEA") consisting of 5 apartments. An HAEA is a Class A multiple dwelling erected after on or after April 18, 1929.

77. According to CO 320182681F, every apartment at 188 South 8th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancies of less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

78. HPD records also indicate that the building is not validly registered with HPD, although required to be so by Section 27-2097 of the New York City Housing Maintenance Code.

203 East 14th Street, Manhattan

79. I have reviewed the records of DOB and HPD for the building at 203 East 14th Street, New York, New York. Those records indicate that there is no certificate of occupancy for the building. According to the I-Cards, the building at 203 East 14th Street is a 5-story old law tenement ("OL") consisting of 9 apartments. An OL is a tenement that was erected prior to April 12, 1901, and is a Class A multiple dwelling per MDL §4(8)(a).

80. According to DOB and HPD records, every apartment at 203 East 14th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

205 West 14th Street, Manhattan

81. I have reviewed the records of DOB and HPD for the building at 205 West 14th Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO 10599, issued on January 28, 1926, the building is a 5 story and basement commercial building, with a mix of retail stores, salesrooms and offices.

82. DOB records for 205 West 14th Street further reflect that Job Application No. 104892733 was filed on September 7, 2007, for a change in the use and occupancy of the second floor of structure, the requested change being from offices and salesroom to a physical culture or health establishment. No other change in occupancy and use was proposed in the job application.

83. Pursuant to CO 10599 and DOB and HPD records, the building at 205 West 14th Street is a commercial building. As currently classified, the use of any portion of this building for transient occupancy less than 30 days is a violation of the AC. Further, the use the building for three or more transient accommodations is contrary to MDL §301 and a violation of the MDL and AC.

224 East 48th Street, Manhattan

84. I have reviewed the records of DOB and HPD for the building at 224 East 48th Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO 12388, issued April 25, 1927, and HPD records, the building at 22 East 36th Street is

an 6-story new law tenement ("NL") consisting of 25 apartments. An NL is a tenement that was erected on or after April 12, 1901 and before April 18, 1929, and is a Class A multiple dwelling per MDL§4(8)(a).

85. According to DOB and HPD records, every apartment at 224 E 48th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

230 East 27th Street, Manhattan

86. I have reviewed the records of DOB and HPD for the building at 230 East 27th Street, New York, New York. Those records indicate that there is no certificate of occupancy for the building. According to the I-Cards, the building at 230 East 27th Street is a 6-story new law tenement ("NL") consisting of 25 apartments. An NL is a tenement that was erected on or after April 12, 1901 and before April 18, 1929, and is a Class A multiple dwelling per MDL§4(8)(a).

87. According to DOB and HPD records, every apartment at 230 East 27th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

240 East 27th Street, Manhattan

88. I have reviewed the records of DOB and HPD for the building at 240 East 27th Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO 78733, issued September 13, 1978, the building at 240 East 27th Street is a 26-story plus penthouse hereafter erected Class A multiple dwelling ("HAEA") consisting of 324

apartments. An HAEA is a Class A multiple dwelling erected after on or after April 18, 1929. The records of DOB and HPD indicate that the building was erected in 1987.

89. According to DOB and HPD records, every apartment at 240 East 27th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

261 West 21st Street (a/k/a 216 Eighth Avenue), Manhattan

90. I have reviewed the records of DOB and HPD for the building at 261 West 21st Street, New York, New York. Those records indicate that there is no certificate of occupancy for the building. According to HPD records, the building at 261 West 21st Street is a 6-story new law tenement ("NL") consisting of 32 apartments. An NL is a tenement that was erected on or after April 12, 1901 and before April 18, 1929, and is a Class A multiple dwelling per MDL§4(8)(a).

91. According to DOB and HPD records, every apartment at 261 West 21st Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

313 West 47th Street, Manhattan

92. I have reviewed the records of DOB and HPD for the building at 313 West 47th Street, New York, New York. Those records indicate that there is no certificate of occupancy for the building. According to the I-Cards, the building at 313 West 47th Street is a 5-story old law tenement ("OL") consisting of 10 apartments. An OL is a

tenement that was erected prior to April 12, 1901, and is a Class A multiple dwelling per MDL §4(8)(a).

93. According to DOB and HPD records, every apartment at 313 West 47th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

94. HPD records also indicate that the building is not validly registered with HPD, although required to be so by Section 27-2097 of the New York City Housing Maintenance Code.

317 Second Avenue, Manhattan

95. I have reviewed the records of DOB and HPD for the building at 317 Second Avenue, New York, New York. Those records indicate that there is no certificate of occupancy for the building. According to the I-Cards, the building at 317 Second Avenue is a 6-story new law tenement ("NL") consisting of 19 apartments. An NL is a tenement that was erected on or after April 12, 1901 and before April 18, 1929, and is a Class A multiple dwelling per MDL§4(8)(a).

96. According to DOB and HPD records, every apartment at 317 Second Avenue is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

325 East 10th Street, Manhattan

97. I have reviewed the records of DOB and HPD for the front and rear buildings at 325 East 10th Street, New York, New York. Those records indicate that

there is no certificate of occupancy for the front building. According to the I-Cards, the front building at 325 East 10th Street is a 5-story old law tenement ("OL") consisting of 10 apartments. An OL is a tenement that was erected prior to April 12, 1901, and is a Class A multiple dwelling per MDL §4(8)(a).

98. Pursuant to the most recent certificate of occupancy for the rear building, CO 52428, issued June 20, 1960, the rear building at 325 East 10th Street is a 4-story old law tenement ("OL") consisting of 8 apartments. An OL is a tenement that was erected prior to April 12, 1901, and is a Class A multiple dwelling per MDL §4(8)(a).

99. According to DOB and HPD records, every apartment at the front and rear buildings at 325 East 10th Street is classified as a Class A apartment. As currently classified, the use of any apartment in either building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

338 East 55th Street, Manhattan

100. I have reviewed the records of DOB and HPD for the building at 338 East 55th Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO28110, issued September 19, 1941, the building at 338 East 55th Street is an 5-story old law tenement ("OL") consisting of 37 apartments. An OL is a Class A multiple dwelling per MDL §4(8)(a). The records of DOB and HPD indicate that the building was erected in 1927.

101. According to DOB and HPD records, every apartment at 338 East 55th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

350 West 37th Street, Manhattan

102. I have reviewed the records of DOB and HPD for the building at 350 West 37th Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO 104626031T010, issued July 10, 2012, the building at 350 West 37th Street is an 27-story hereafter erected Class A multiple dwelling ("HAEA") consisting of 207 Class A apartments. An HAEA is a Class A multiple dwelling erected after on or after April 18, 1929.

103. According to DOB and HPD records, every apartment at 350 West 37th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

356 West 39th Street, Manhattan

104. I have reviewed the records of DOB and HPD for the building at 356 West 39th Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO 104134697F, issued November 27, 2009, the building at 356 West 39th Street is an 6-story old law tenement ("OL") consisting of 5 apartments. An OL is a tenement that was erected prior to April 12, 1901, and is a Class A multiple dwelling per MDL §4(8)(a).

105. According to DOB and HPD records, every apartment at 30 Carmine Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

106. HPD records also indicate that the building is not validly registered with HPD, although required to be so by Section 27-2097 of the New York City Housing Maintenance Code.

406 West 49th Street, Manhattan

107. I have reviewed the records of DOB and HPD for the building at 406 West 49th Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO 108190, issued on October 25, 1995, and HPD records, the building at 406 West 49th Street is a 4-story heretofore converted Class A multiple dwelling ("HCA") consisting of 4 apartments.[30] An HCA is a Class A multiple dwelling originally erected as a one- or two-family dwelling, and converted prior to April 18, 1929 to a multiple dwelling in accordance with such laws, and classified as a converted dwelling as per MDL §4.10.

108. According to DOB and HPD records, every apartment at 406 West 49th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

408 West 49th Street, Manhattan

109. I have reviewed the records of DOB and HPD for the building at 408 West 49th Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO 108190, issued on October 25, 1995, and HPD records, the building at 408 West 49th Street is a 4-story heretofore converted Class A multiple dwelling ("HCA") consisting of

[30] 406 West 49th Street is one of two different, adjacent buildings listed on CO 108190. The other is 408 West 49th Street (see paragraphs 112 and 113).

4 apartments.[31] An HCA is a Class A multiple dwelling originally erected as a one- or two-family dwelling, and converted prior to April 18, 1929 to a multiple dwelling in accordance with such laws, and classified as a converted dwelling as per MDL §4.10.

110. According to DOB and HPD records, every apartment at 408 West 49th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

450 Amsterdam Avenue, Manhattan

111. I have reviewed the records of DOB and HPD for the building at 450 Amsterdam Avenue, New York, New York. Those records indicate that there is no certificate of occupancy for the building. According to the I-Cards, the building at 450 Amsterdam Avenue is a five-story old Law tenement ("OL") consisting of 10 apartments. An OL is a tenement that was erected prior to April 12, 1901, and is a Class A multiple dwelling per MDL §4(8)(a).

112. According to DOB and HPD records, every apartment at 450 Amsterdam Avenue is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

454 West 57th Street, Manhattan

113. I have reviewed the records of DOB and HPD for the building at 454 West 57th Street, New York, New York. Pursuant to the most recent certificate of occupancy, CO 30719, issued January 24, 1945, the building at 454 West 57th Street is a 5-story old

[31] 408 West 49th Street is one of two different, adjacent buildings listed on CO 108190. The other is 406 West 49th Street (see paragraphs 107 and 111).

law tenement ("OL") consisting of 10 apartments. An OL is a tenement that was erected prior to April 12, 1901, and is a Class A multiple dwelling per MDL §4(8)(a).

114. According to CO 30719, every apartment at 454 West 57th Street is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancies of less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

465 Grand Street, Brooklyn

115. I have reviewed the records of DOB and HPD for the building at 465 Grand Street, Brooklyn, New York. Those records indicate that there is no certificate of occupancy for the building. According to DOB and HPD records for the building, it comprises three stories and contains a total of two apartments, with one apartment on the 3rd floor, one apartment on the second floor, a store on the first floor, and storage and a meter room in the Cellar. The occupancy group for the residential apartments on the second and third floors is Group R-3 because there are fewer than three lawful dwelling units in the building. The occupancy group of the store is Group M.

116. In accordance with Section 310.1.3 of the 2008 Building Code, Group R-3 dwelling units are occupied, as a rule, for shelter and sleeping accommodation on a long-term basis for a month or more at a time. The use of the Group R-3 dwelling units on the second and third floors for transient accommodations would be deemed R-1 transient occupancy in accordance with Section 310.1.1, Item 1, of the 2008 Building Code, and would constitute a violation of the AC.

117. In accordance with Section 309.1 of the 2008 Building Code, Group M retail stores includes, among others, buildings and structures or a portion thereof, used for

the display and sale of merchandise, and involves stocks of goods, wares or merchandise incidental to such purposes and accessible to the public. The use of the Group M retail store on the first floor as a transient accommodation would be deemed R-1 transient occupancy in accordance with Section 310.1.1, Item 1, of the 2008 Building Code, and would constitute a violation of the AC. Further, the use of the Group M retail store as a transient accommodation would cause the building to be deemed a multiple dwelling in violation of MDL §301.

118. According to DOB and HPD records, both apartments at 465 Grand Street are classified as R-3 dwelling units, and the retail store is classified as Group M occupancy. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is a violation of the AC, and the use of the retail store for transient occupancy for less than 30 days is a violation of the AC and MDL §301.

536 Madison Avenue, Manhattan

119. I have reviewed the records of DOB and HPD for the building at 536 Madison Avenue, New York, New York. Pursuant to the most recent certificate of occupancy, CO 113600, issued October 22, 1997, and HPD records, the building at 536 Madison Avenue is a 5-story heretofore converted Class A multiple dwelling ("HCA") consisting of 5 "bachelor apartments". An HCA is a Class A multiple dwelling originally erected as a one- or two-family dwelling, and converted prior to April 18, 1929 to a multiple dwelling in accordance with such laws, and classified as a converted dwelling as per MDL §4.10. Bachelor apartments are Class A apartments per MDL §4(8)(a).

120. Job Application No. 110448301, which seeks conversion of the bachelor apartments to three 3-bedroom apartments, one each on the 3rd through 5th Floors, was

approved on April 28, 2009, and a permit issued in 2011. Because Job Application No. 110448301 has not been signed off with a new certificate of occupancy, CO 113600, issued October 22, 1997, remains in effect.

121. Pursuant to CO 113600 and DOB and HPD records, every apartment at 536 Madison Avenue is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

663 Lexington Avenue, Manhattan

122. I have reviewed the records of DOB and HPD for the building at 663 Lexington Avenue, New York, New York. Pursuant to the most recent certificate of occupancy, CO 85313, issued January 16, 1984, the building at 663 Lexington Avenue is a 5-story old law tenement ("OL") consisting of 3 apartments. An OL is a tenement that was erected prior to April 12, 1901, and is a Class A multiple dwelling per MDL §4(8)(a).

123. There have been a number of job applications submitted to DOB which request a modification of occupancy, but the requested changes do not affect the 3 Class A apartments. Because these other job applications have not been signed off with a new certificate of occupancy, CO 85313, issued January 16, 1984, remains in effect.

124. According to CO 85313, every apartment at 633 Lexington Avenue is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancies of less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

808 Driggs Avenue, Brooklyn

125. I have reviewed the records of DOB and HPD for the building at 808 Driggs Avenue, Brooklyn, New York. Pursuant to the most recent certificate of occupancy, CO 310089203F, issued March 17, 2010, the building at 808 Driggs Avenue is a 6-story Class A multiple dwelling consisting of 35 apartments.

126. Job Application No. 320368892, which seeks alteration of the classification of the building to a class B transient hotel, is currently pending. The plans were approved on January 9, 2012, but subsequently failed an energy audit on January 30, 2012. Because no permit for the alteration work necessary to perform the conversion has been issued by DOB and because no new certificate of occupancy, CO 310089203F, issued March 17, 2010, remains in effect.

127. According to CO 310089203F, every apartment at 808 Driggs Avenue is classified as a Class A apartment. As currently classified, the use of any apartment in this building for transient occupancies of less than 30 days is contrary to MDL §4(8)(a) and a violation of the MDL and AC.

128. HPD records also indicate that the building is not validly registered with HPD, although required to be so by Section 27-2097 of the New York City Housing Maintenance Code.

1068 Second Avenue, Manhattan

129. I have reviewed the records of DOB and HPD for the building at 1068 Second Avenue, New York, New York. Pursuant to the most recent certificate of occupancy, CO 38315, issued March 22, 1951, the building at 1068 Second Avenue, is a 4-story plus cellar building, consisting of storage in the cellar, restaurant on the first

floor, offices on the second and third floors, and two apartments on the fourth floor. The occupancy group for the residential apartments on the fourth floor is Group R-3 because there are fewer than three lawful dwelling units in the building. The occupancy group of the restaurant and offices is Group B.

130. Job Application No. 101766803, which was disapproved in 1998, sought to convert the third floor office to a Class A apartment; to convert the fourth floor from two apartments to one, and to legalize conversion of the second floor office to a Class A apartment. This job application having been disapproved, CO 38315 is still in full force and effect.

131. In accordance with Section 310.1.3 of the 2008 Building Code, Group R-3 dwelling units are occupied, as a rule, for shelter and sleeping accommodation on a long-term basis for a month or more at a time. The use of the Group R-3 dwelling units on the on the fourth floor for transient accommodations would be deemed R-1 transient occupancy in accordance with Section 310.1.1, Item 1, of the 2008 Building Code, and would constitute a violation of the AC.

132. In accordance with Section 304.1 of the 2008 Building Code, Group B business occupancy includes, among others, buildings and structures or a portion thereof, used for office, professional, service-type transactions, or for conducting public or civic services, including the incidental storage of records and accounts and the incidental storage of limited quantities of stocks of goods for office use or purpose. Further, restaurants with occupant loads of fewer than 75 persons are deemed Group B business occupancy pursuant to Section 303.1, Exception 2 of the 2008 Building Code. The use of the Group B occupancies as transient accommodation would be deemed R-1 transient

occupancy in accordance with Section 310.1.1, Item 1, of the 2008 Building Code, and would constitute a violation of the AC. Further, the use of any of the Group B business occupancies in the building as a transient accommodation would cause the building to be deemed a multiple dwelling in violation of MDL §301.

133. According to DOB and HPD records, both apartments at 1068 Second Avenue are classified as Group R-3 dwelling units, and restaurant and offices are classified as Group B occupancy. As currently classified, the use of any apartment in this building for transient occupancy for less than 30 days is a violation of the AC, and the use of the business occupancies for transient occupancy for less than 30 days is a violation of the AC and MDL §301.

Dated: New York, New York
October 4, 2012

LISA M. ORRANTIA
Notary Public, State of New York
Reg. No. 02OR6010757
Qualified in ~~Dutchess~~ KINGS County
Commission Expires July 27, 2014

JAMES P. COLGATE