



## **CITY PLANNING COMMISSION**

March 2, 2009 Calendar No. 1

C 090053 ZSK

**IN THE MATTER OF** an application submitted by 145 West Street LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 62-736 of the Zoning Resolution to modify the height and setback requirements of Section 62-354 (Special height and setback regulations) to facilitate the development of a 39-story mixed use development on property bounded by West Street, India Street, the East River Pierhead Line, and Huron Street, (Block 2530, Lots 1, 55 and 56), in R6, R6/C2-4, and R8 Districts, Community District 1, Borough of Brooklyn.

The application for the special permit was filed by 145 West Street LLC on July 29, 2008, to facilitate the construction of a 39-story mixed use development with 640 dwelling units, 23,000 square feet of retail and community facility uses, and 22,000 square feet of waterfront public access area on an approximately 2.8-acre site in the Greenpoint neighborhood of Community District 1, Brooklyn.

### **RELATED ACTIONS**

In addition to the special permit, which is the subject of this report, implementation of the applicant's proposal also requires action by the City Planning Commission on the following applications which are considered concurrently with this application:

**N 090054 ZAK** – Authorization pursuant to Section 62-722(b) to permit modification of the requirements of Section 62-60 (Design Standards for the Waterfront Area) relating to planting and buffer requirements.

**N 090055 ZCK** – Certification by the Chairperson of the City Planning Commission pursuant to Section 62-711 that a site plan has been submitted showing compliance with the zoning regulations for waterfront public access and visual corridors.

## **BACKGROUND**

The project site is located at 155 West Street in the Greenpoint neighborhood of Community District 1, Brooklyn. It occupies the entirety of Block 2530 (Lots 1, 55 and 56) between India, Huron and West Streets and the East River and has an area of 123,363 square feet. It is occupied by one and two story vacant industrial buildings covering approximately 100,000 square feet. The area along the waterfront is paved, and a deteriorated loading platform extends from the bulkheaded shoreline to the US Bulkhead Line.

The eastern portion of the property within 275 feet of West Street is zoned R6 and the remainder of the property is zoned R8. A C2-4 overlay is mapped along West Street to a depth of 150 feet. The site was rezoned in 2005 as part of the Greenpoint-Williamsburg Rezoning and is subject to the requirements of Waterfront Access Plan BK-1.

A 50-foot wide sewer easement containing a 12-foot diameter pipe beneath the subject property runs diagonally from India Street to the center of the property's shoreline. No trees or permanent structures are permitted within the easement. The easement runs through the southwestern corner of the property, effectively prohibiting construction of large permanent structures within approximately 14,000 square feet of the property, or 20% of the area on the property zoned R8.

Waterfront parcels to the north and south of the site were also rezoned in 2005 to R6 and R8. They are vacant or industrial with one- to two-story warehouses and manufacturing buildings and open storage uses. A residential neighborhood of three- to six-story attached houses and apartment buildings is present to the east of West Street. Commercial uses occur on Franklin Street and Manhattan Avenue. Zoning districts in this area include M1-2/R6A within a Special Mixed Use District (MX-8), R6B, and R6.

## **Proposed Development**

The applicant proposes to construct an approximately 595,610 square-foot mixed-use development (approximately 4.8 FAR). The development will consist of three building segments: a 6-story, 65-foot tall segment fronting on West Street, a 5-story, 65-foot tall segment in the midblock, and a 39-story, 392-foot tall tower near the water. The tower portion would be three stories at the street, and rises to its full height with setbacks at the 4<sup>th</sup>, 10<sup>th</sup>, 32<sup>nd</sup>, and 37<sup>th</sup> floors. The tower has a roughly T-shaped floor plate that tapers down toward the East River to present a reduced width at the edge of the waterfront public access area.

The ground floor frontages along West, Huron, and India streets would be occupied by 18,760 square feet of commercial uses and 4,177 square feet of community facility uses and 640 dwelling units would be located above. The proposed development utilizes in the Inclusionary Housing Program, and will provide 20% of the development's floor area for affordable housing within the development. The permitted residential FAR on the site without utilizing the inclusionary housing bonus is 3.8. Two hundred fifty six parking spaces would be provided in a garage located in the interior of the first and second floors, surrounded by residential and non-residential floor area that fronts on the three neighboring streets. Parking is accessed via two-way entrances with 22-foot wide curb-cuts at the midblock along both India and Huron Streets. Open space for building tenants would be provided on terraces in the interior of the block at the level of the second and third floors.

As required by waterfront zoning regulations, the development would provide a 21,925-square-foot waterfront public access area along the water's edge. Within the waterfront public access area, a clear path would run from north to south along a bulkheaded edge. A central lawn area is provided landward of the clear path, and is flanked to the south by a small grove of trees and to the north by a 4,500-square-foot children's play area. The playground has been designed by

the applicant in coordination with the Department of Parks and Recreation (DPR). The play area would be furnished with play equipment and a water spray and treated with safety surface or other paving. Significant planted area or trees is not possible within the playground due to Parks Department safety and maintenance standards. The playground is accessible directly from Huron Street and a paved path in the eastern portion of the waterfront public access area provides access from India Street to the south.

The playground would be provided in accordance with the Parks Department Greenpoint-Williamsburg Waterfront Open Space Master Plan, which calls for such a playground within the area of the project site. The Master Plan is a non-binding planning document developed in consultation with local residents, open space advocacy organizations and Community Board 1 that provides programming and design guidance to private developers of waterfront open spaces to encourage an integrated network of open spaces along the Greenpoint and Williamsburg waterfronts.

The proposed waterfront public access area would have a total of 378 linear feet of seating at entrances, along paths, and adjacent to the play area. Thirty-one trees and other plantings including shade trees of various sizes and heights would provide shade and greenery along paths and in the play area. The applicant plans to transfer ownership of the waterfront access area to the Parks Department for operation as public open space. Section 62-624(e) allows a developer to transfer ownership of a completed waterfront public access areas to the City if accepted by the Parks Department.

The project requires the following actions:

**Special Permit to Modify Bulk Regulations on a Waterfront Block (C 090053 ZSK)**

In order to facilitate the proposed development, the applicant seeks a special permit pursuant to Section 62-736 to modify height and setback regulations. The sewer easement in the southwestern portion of the project site presents constraints to the configuration and location of building footprints, particularly within the R8 district, which permits taller towers. The applicant seeks a modification of the maximum building height to accommodate all floor area on the site within a configuration that includes a single high rise tower with the remainder of the development rising to heights consistent with the adjacent upland area.

Within the R8 district, the maximum building height for projects participating in the Inclusionary Housing Program is 300 feet. The requested waiver would allow the single tower within the project to rise to 392 feet (39 stories). The requested waiver could only be utilized if the project participates in the Inclusionary Housing Program

**Authorization to Modify Design Standards for the Waterfront Public Access Area (N090054 ZAK)**

The applicant seeks an Authorization pursuant to Section 62-722(b) for three modifications to the design standards for the waterfront public access area. Existing and proposed site features including the sewer easement and the proposed 4,500-square-foot playground constrain the amount of trees and planting that can be accommodated within the required waterfront public access area.

Minimum Planted Area

Section 62-831(b)(2)(iv) requires that seventy percent of the pedestrian circulation zone, exclusive of the required clear path (in this case 11,755 square feet) be planted with some type

of approved vegetation. The proposed playground and the associated path occupy over 5,000 square feet that cannot be planted. The proposed waterfront access area has 58% of the pedestrian circulation zone planted (or 9,786 square feet) to accommodate the playground and paths to access it.

#### Minimum Tree Planting Requirement

Section 62-831(b)(2)(v) requires that one shade tree be planted for each 1,900 square feet of shore public walkway and one additional shade or ornamental tree is required for each 850 square feet of shore public walkway. Twelve shade trees and 26 shade or ornamental trees are required for this waterfront public access area. Trees cannot be planted within the existing sewer easement or proposed playground. The proposed waterfront access area provides 12 shade trees, but only 19 shade or ornamental trees.

#### Minimum Buffer Zone

Section 62-831(a)(3)(ii) requires a 15-foot wide buffer zone within the waterfront public access area adjacent to all private areas of a zoning lot. The proposed design extends landscaping to the building's seaward-most wall to maximize the usable area between the building and the water's edge. To allow access to the seaward-most building wall for maintenance purposes, the proposed waterfront access area would include only a 5-foot wide buffer zone for a length of approximately 100 feet along the wall, leaving 10 feet between the waterfront public access area and the building wall. The 10-foot area between the reduced buffer zone and the building would be planted and maintained as if it were part of the buffer zone, producing a total of 15-feet of planted buffer. The 10-foot area could then be used to access the building wall for maintenance purposes subject to Parks Department approval.

**Certification by the Chair of the City Planning Commission that the site plan complies with the zoning regulations for waterfront public access and visual corridors (N090055ZCK)**

The applicant seeks approval of a site plan that includes a publicly accessible open area of 21,925 square feet, which is arranged in even width along the shoreline, and which includes plantings, and furnishings as described above. Waterfront zoning requires that publicly accessible open space be provided in the form of a 40-foot-wide shore public walkway and supplemental public access areas. Waterfront Access Plan BK-1 requires that the supplemental public access areas be arranged in even width along the length of the shore public walkway and sets forth specific planting and furnishing requirements for the site.

**ENVIRONMENTAL REVIEW**

This application (C 090053 ZSK), in conjunction with the related applications (N 090054 ZAK and N 090055 ZCK ) 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 08DCP013K. The lead agency is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on October 27, 2008.

**UNIFORM LAND USE REVIEW**

This application (C 090053 ZSK) was certified as complete by the Department of City Planning on October 27, 2008, and was duly referred to Community Board 1 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b), together

with the non-ULURP related actions (N 090054 ZAK and N 090055 ZCK) which were referred for review and comment.

### **Community Board Public Hearing**

Community Board 1 held a public hearing on this application (C 090053 ZSK) on November 12, 2008, and on December 2, 2008, by a vote of 37 to 2 with 0 abstentions, adopted a resolution recommending approval of the application.

### **Borough President Recommendation**

This application (C 090053 ZSK) was considered by the Borough President, who issued a recommendation approving the application on December 30, 2008.

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

On December 17, 2008 (Calendar No. 11), the City Planning Commission scheduled January 7, 2009, for a public hearing on this application (C 090053 ZSK). The hearing was duly held on January 7, 2009 (Calendar No. 30).

There were three speakers in favor of the application including the applicant's primary representative and two members of the project team. The speakers described the project, its architecture, site planning and affordable housing plan. They stated that this is the first waterfront site to develop in Greenpoint since the 2005 Greenpoint-Williamsburg Rezoning. They discussed how the proposed approvals, while adding height to the tower, would reduce the height of the building in the midblock closer to the upland neighborhood and would reduce the width of the proposed buildings profile. They also discussed the proposed waterfront public access area, its programming and design.

There were no other speakers and the hearing was closed.



## **WATERFRONT REVITALIZATION PROGRAM CONSISTENCY REVIEW**

This application, in conjunction with the applications for the related actions (N 090054ZAK), was reviewed by the Department of City Planning for consistency with the policies of the New York City Waterfront Revitalization Program (WRP), as amended, approved by the New York City Council on October 13, 1999 and by the New York State Department of State on May 28, 2002, pursuant to The New York State Waterfront Revitalization and Coastal Resources Act of 1981 (New York State Executive Law, Section 910 *et seq.*). The designated WRP number is 07-088.

This action was determined to be consistent with the New York City Waterfront Revitalization Program.

## **CONSIDERATION**

The Commission believes that the grant of this special permit (C 090053 ZSK), in conjunction with the related application for an authorization (N 090054 ZAK), is appropriate.

The proposed actions would facilitate the first development on the Greenpoint waterfront since the 2005 Greenpoint-Williamsburg Rezoning, which would result in the redevelopment of underutilized land on the waterfront and which would provide much needed public open space and affordable housing in Greenpoint. The project will be developed utilizing the Inclusionary Housing Program, providing affordable housing and will include publicly accessible open space pursuant to waterfront zoning and Waterfront Access Plan BK-1.

The applicant proposes a 640-unit mixed use development with approximately 23,000 square feet of retail and community facility uses on the ground floor and approximately 22,000 square feet of publicly accessible open space along the waterfront. The proposed buildings would

maintain a consistent 65-foot height on the eastern portion of the site, closer to the adjacent residential neighborhood. This height is consistent with other buildings in the low- to mid-rise upland neighborhood east of the project site. A 39-story tower would rise in the eastern portion of the site, closer to the East River. The tower would be set back from the street to present a profile of only 110 feet in width to the east and west for most of its height.

The Commission notes that 400-foot tall towers are permitted as-of-right within the R8 district in developments with multiple towers and that the sewer easement in the southwestern portion of the property, within which no structures may be built, restricts the siting of multiple towers. Further, the Commission believes that the proposed design allows the development to accommodate all permitted floor area while reducing the heights of the midblock buildings to 65 feet. This would make the development's profile slimmer in all directions and improve its relationship to the lower-scale upland neighborhood by maintaining building heights consistent with the upland area over the majority of the project site.

The Commission recognizes the value of active recreation amenities such as playgrounds and the recommendation of the Greenpoint-Williamsburg Waterfront Open Space Master Plan that a playground be constructed near this location. The Commission further notes that, Parks Department safety and maintenance standards do not recommend significant planted area or trees within such playgrounds due to safety concerns and to the difficulty of maintaining planting in a safe and functional manner in such heavily used areas.

The Commission also notes that the sewer easement and the playground together substantially reduce the area within which trees may be planted. Concentrating the required trees into the remaining area would result in sub-optimal tree spacing and arrangement and would preclude the possibility of planting larger shade trees to achieve vertical variation in the tree canopy.

The Commission believes that the proposed open space design would feature ample greenery including an accessible lawn and a variety of tree sizes and spacing that allow for both sun and shade on the site. The design promotes the continued health of trees and planting and a pleasant landscape with a variety of amenities within the waterfront public access area that is functionally equivalent or superior to that which could be obtained through strict adherence to the provisions of Section 62-60.

The Commission notes that the public open space would include an additional 10-foot wide area as buffer between the 5-foot wide reduced buffer zone and the building wall. This would result in a full 15 feet of planted buffer, equivalent to that required. The area would be planted consistent with requirements for the buffer zone, and would be maintained in the same manner as the waterfront public access area. The Commission believes that this proposal would provide buffering between the public and private areas of the site equivalent to that required by ZR Section 62-60.

## **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 62-736 (Height and Setback Regulations on Waterfront Blocks) of the Zoning Resolution that:

- (a) the zoning lot has unique natural features such as rock outcroppings, significant grade changes or wetlands; or has an irregular shoreline or shape; or contains existing buildings or other structures;
- (b) the site plan of the proposed development would result in better bulk placement and articulation of buildings, and a better arrangement of open spaces than would be possible by strict adherence to the bulk regulations;

- (c) the proposed development would provide physical or visual public access to the waterfront in a way that is superior to that which would be possible by strict adherence to the bulk regulations; and
- (d) such modifications would significantly enhance the relationship between the proposed development and the surrounding area.

## **RESOLUTION**

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

**RESOLVED**, that the City Planning Commission, in its capacity as the City's Coastal Commission, has reviewed the waterfront aspects of this application and finds that the proposed project is consistent with WRP policies; 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 of 145 West Street LLC for the grant of a special permit pursuant to Section 62-736 of the Zoning Resolution to modify the height and setback requirements of Section 62-354 (Special height and setback regulations) to facilitate the development of a 39-story mixed use development on property bounded by West Street, India Street, the East River Pierhead Line, and Huron Street, (Block 2530, Lots 1, 55 and 56), in R6, R6/C2-4, and R8 Districts, is approved subject to the following terms and conditions:

1. The property that is the subject of this application (C 090053 ZSK) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by

Langan Engineering and Ismael Leyva Architects, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
07.01	Boundary & Topographic Survey	2/15/08
A1	Zoning Analysis	9/11/08
A3	Site Plan	9/11/08
A5	Sections 1	9/11/08
A6	Sections 2	9/11/08
A7	Sections 3	9/11/08

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. Development pursuant to this resolution shall be allowed only after the attached Restrictive Declaration, together with any necessary administrative and technical changes acceptable to counsel to the City Planning Commission, is executed by 145 West Street LLC and 157-159 West Street LLC, such declaration is recorded in the Office of the City Registrar, Kings County, and application N 090055 ZCK is approved by the Chairperson of the City Planning Commission.
5. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.

6. 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 as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.

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 090053 ZSK), duly adopted by the City Planning Commission on March 2, 2009 (Calendar No. 1), is filed with the Office of the Speaker, City Council, and the Borough President, in accordance with the requirements of Section 197-d of the New York City Charter.

**AMANDA M. BURDEN, FAICP, Chair  
KENNETH J. KNUCKLES, ESQ., Vice Chairman,  
ANGELA M. BATTAGLIA, ANGELA R. CAVALUZZI, AIA,  
ALFRED C. CERULLO, III, BETTY Y. CHEN,  
RICHARD W. EADDY, NATHAN LEVENTHAL,  
KAREN A. PHILLIPS, Commissioners**

**RESTRICTIVE DECLARATION**

**Made by:**

**145 West Street LLC and 157-159 West Street LLC**

**Pursuant to:**

**Section 62-711 of the New York City Zoning Resolution**

**Dated:**

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**KINGS COUNTY**

**Block 2530, Lots 1, 55 & 56 (tentatively Lots 1 & 2)**

**RECORD AND RETURN TO:**

**NEW YORK CITY DEPARTMENT OF CITY PLANNING  
OFFICE OF THE COUNSEL  
22 READE STREET  
NEW YORK, NY 10007  
ATTN: GLENN FRIEDMAN**

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EXHIBIT N	FORM PAA ACCESS PERMIT
EXHIBIT O	ECB PENALTY SCHEDULE
EXHIBIT P	FORM OF DRAINAGE EASEMENT

## RESTRICTIVE DECLARATION

DECLARATION made this \_\_\_\_ day of \_\_\_\_\_, 200\_ (the "**Declaration**"), by 145 West Street LLC and 157-159 West Street LLC, each having an address c/o Palin Enterprises, 235 Park Ave South, 8th Floor, New York New York 10003-1405 (collectively, the "**Declarant**").

### W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain real property located in the Borough of Brooklyn, Kings County, City and State of New York, which property is designated as Block 2530, Lots 1, 55 & 56 (tentatively Lots 1 & 2) on the tax map of the Borough of Brooklyn in the City of New York (the "**Subject Property**"), as more particularly described in Exhibit A annexed hereto; and

WHEREAS, the Subject Property is located within a waterfront block, as that term is defined in Section 62-11 of the Zoning Resolution of the City of New York (the "**Zoning Resolution**") and is subject to the regulations of Article VI, Chapter 2 of the Zoning Resolution; and

WHEREAS, Declarant intends to develop the Subject Property by constructing two predominantly residential buildings, including accessory parking garages and retail space, (the "**Proposed Development**"); and

WHEREAS, Commonwealth Title Insurance Company has certified that as of January 15, 2009 Declarant and Manufacturers and Traders Trust Company are the sole parties in interest ("**Parties in Interest**"), as that term is defined in the zoning lot definition in Section 12-10 of the Zoning Resolution, to the Subject Property, a copy of which certification is attached hereto as Exhibit B; and

WHEREAS, all Parties in Interest have either executed this Declaration or waived their rights to execute this Declaration by written instruments annexed hereto as Exhibit C, which instruments are intended to be recorded simultaneously with this Declaration; and

WHEREAS, after the execution and recordation hereof, Declarant intends to convey portions of the Subject Property to one or more entities for development; and

WHEREAS, the New York City Planning Commission and the New York City Council have adopted, pursuant to Section 62-80 of the Zoning Resolution, "**Waterfront Access Plan BK-1; Greenpoint-Williamsburg**" and have designated the Subject Property as Parcels 8 & 9 under said Waterfront Access Plan BK-1; and

WHEREAS, pursuant to Section 62-711 of the Zoning Resolution, no excavation or building permit may be issued for development of the Subject Property until the Chair (as hereinafter defined) has certified to the Department of Buildings (as hereinafter defined) that a site plan has been submitted showing compliance with the requirements of Article VI, Chapter 2 of the Zoning Resolution and that an acceptable restrictive declaration has been executed and filed pursuant to Section 62-14; and

WHEREAS, Declarant intends to construct a Shore Public Walkway (as hereinafter defined) and Supplemental Public Access Area (as hereinafter defined; all of the foregoing, together, the “**Public Access Area**”, which is collectively comprised of the Fee Transferred PAA (as hereinafter defined), the PAA Easement Area (as hereinafter defined), and the Street Treatment Area (as hereinafter defined); and

WHEREAS, Declarant has submitted to the Department of City Planning application No. **N090055ZCK** requesting that the Chair certify that the Site Plan and Drawings (as hereinafter defined) submitted with such application comply with the requirements of Article VI, Chapter 2 of the Zoning Resolution (the “**Application**”); and

WHEREAS, the Declarant has directed a request (the “**Transfer Request**”) to the Office of the Mayor to transfer to the City (i) fee simple absolute title to the Fee Transferred PAA, pursuant to Section 62-624(e) of the Zoning Resolution, and (ii) a non-exclusive easement to the PAA Easement Area (collectively, the “**Transfer Parcels**”), and the Office of the Mayor has agreed to accept the Transfer Request, subject to the satisfaction of the conditions of this Declaration; and

WHEREAS, the conditions of this Declaration include, inter alia, (a) a requirement that the Declarant construct the Public Access Area as set forth herein and upon substantial completion, convey to the City (i) fee simple absolute title to the Fee Transferred PAA, and (ii) a non-exclusive easement to the PAA Easement Area (under the terms and conditions set forth herein), and (b) a requirement that an account be established for the funding of ordinary maintenance of the Public Access Area and a capital reserve for future repairs; and

WHEREAS, DPR (as hereinafter defined) shall be responsible for the maintenance and capital repair of the Public Access Area, pursuant to the PAA Maintenance Agreement annexed hereto as Exhibit D.

NOW, THEREFORE, Declarant does hereby declare and agree that the Subject Property shall be held, improved, operated, maintained, sold, transferred, conveyed and occupied subject to the following restrictions, covenants, obligations and agreements.

## ARTICLE 1

### DEFINITIONS

#### 1.1 Definitions.

(a) “**Affordable Building**” shall mean a building in the Proposed Development in which all residences are rented to “lower income households” (as such term is defined in Section 23-92 of the Zoning Resolution) or “moderate income households” (as such term is defined in Section 62-352 of the Zoning Resolution).

(b) “**Affordable Housing Unit**” any residential unit of housing within an Affordable Building.

- (c) **“Annual PAA Maintenance Payment”** shall be the amount calculated under Section 5.4(a).
- (d) **“Application”** shall have the meaning given in the Recitals to the Declaration.
- (e) **“Assessment Property”** shall have the meaning set forth in Section 11.6.
- (f) **“Association”** shall have the meaning set forth in Section 9.8.
- (g) **“Association Obligation Date”** shall have the meaning set forth in Section 9.8.
- (h) **“Chair”** shall mean the then Chair of the New York City Planning Commission.
- (i) **“City”** shall mean The City of New York.
- (j) **“Claim”** shall have the meaning set forth in Section 5.6.
- (k) **“Concept Drawings”** shall mean the concept drawings prepared by Abel Bainnson Butz, LLC, Landscape Architecture and attached hereto in reduced form as Exhibit E.
- (l) **“Consumer Price Index”** or **“CPI”** means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York - Northern New Jersey - Long Island, NY-NJ-CT area, All Items (1982-1984 = 100) or any successor index thereto, appropriately adjusted or such other index as DPR and Declarant may agree upon. If the Consumer Price Index ceases to be published, and there is no successor thereto, such other index as DPR and Declarant shall agree upon another index, each acting reasonably, and such index as appropriately adjusted, shall be substituted for the document. If the Consumer Price Index ceases to use 1982-1984 = 100 as the basis of calculation, the Consumer Price Index shall be adjusted accordingly.
- (m) **“CPC”** shall mean the New York City Planning Commission or any successor to its jurisdiction.
- (n) **“DCP”** shall mean the New York City Department of City Planning or any successor to its jurisdiction.
- (o) **“Declarant”** shall mean the named Declarant and the heirs, successors and assigns of the named Declarant except that (i) Declarant shall not include the holder of a mortgage or deed of trust on all or any portion of the Subject Property unless and until it succeeds to the interest or obligation of Declarant by purchase, assignment, foreclosure or otherwise, and (ii) Declarant shall include the Association only from and after the Association Obligation Date and only as set forth in Section 9.6(c).
- (p) **“Declaration”** shall have the meaning set forth in the first sentence of this document.

(q) **“Delay Notice”** shall have the meaning set forth in Section 5.7.

(r) **“Design Submissions”** shall have the meaning set forth in Section 3.3.

(s) **“Developer Declarant”** shall mean 145 West Street LLC and 157-159 West Street LLC and any successor(s) to their interests as fee owner of all or any portion of the Proposed Development, other than a Unit Interested Party unrelated to the Declarant named herein, during the time that the above named entity or its above described successor(s) owns all or any portion of the Proposed Development.

(t) **“Development Property”** shall mean the portion of the Subject Property exclusive of the Public Access Area.

(u) **“Disapproval Report”** shall have the meaning set forth in Section 3.5.

(v) **“DOB”** or **“Department of Buildings”** shall mean the New York City Department of Buildings or any successor to its jurisdiction.

(w) **“DPR”** shall mean the New York City Department of Parks and Recreation or any successor to its jurisdiction.

(x) **“Drawings”** shall mean the following drawings showing the plans for the Public Access Area prepared by Ismael Leyva Architects, P.C. and Abel Bainnson Butz, LLP and attached hereto as Exhibit G, as same may be modified thereafter in accordance with this Declaration:

Title	Drawing #	Last Revision Date
Survey	07.01	02/15/08
Waterfront Site Plan	L1.1	9/11/08
Waterfront Zoning Analysis	L1.2	9/11/08
Waterfront Zoning Analysis Plan	L1.3	9/11/08
Composite Site Plan	L2.1	9/11/08
Lighting Plan	L2.3	9/11/08
Site Furniture	L2.4	9/11/08
Site Details	L2.5	9/11/08
Grading Plan	L3.1	9/11/08
Planting Plan	L4.1	9/11/08
Planting Details	L4.2	9/11/08

(y) **“Federal/State Approvals”** shall have the meaning set forth in Section 3.7.

(z) **“Fee Transferred PAA”** shall mean that certain portion of the Public Access Area more particularly described on Exhibit H attached hereto and incorporated herein,

which Declarant intends to transfer to the City in accordance with the terms and conditions of this Declaration.

(aa) “**Final Completion**” or “**Finally Complete**” shall mean the completion of all relevant items of work, including any Punch List or other items that remain to be completed after Substantial Completion (as hereinafter defined).

(bb) “**Final Plans and Specifications**” shall have the meaning set forth in Section 3.11.

(cc) “**Force Majeure**” shall mean that the Chair has made the determination required in Section 5.7.

(dd) “**Force Majeure Event**” shall include, but not be limited to, (i) governmental restrictions, regulations or controls; (ii) enemy or hostile government action, civil commotion, insurrection, terrorism, revolution or sabotage; (iii) fire or other casualty; (iv) inclement weather substantially delaying construction of any relevant portion of the Subject Property; (v) failure or inability of a public utility to provide power, heat or light or any other utility service; (vi) strikes, lockouts or labor disputes; (vii) inability to obtain labor or materials or reasonable substitutes therefor (unless due to any act or omission of the Declarant); (viii) acts of God; (ix) a taking of the whole or a portion of the Subject Property by condemnation or eminent domain; (x) denial to Declarant by any party of a right of access to any adjoining real property which right is vested in Declarant by contract or pursuant to applicable law, if such access is required to accomplish the obligations of Declarant pursuant to this Declaration; (xi) any undue material delay in the issuance of approvals by any department or agency of the City, the State of New York or the United States that is not caused by any act or omission of the Declarant; (xii) underground or soil conditions that were not and could not reasonably have been foreseen by the Declarant prior to their discovery or occurrence; (xiii) the pendency of any litigation relating to the Applications or to the underlying sections of the Zoning Resolution, or (xiv) any other condition similar to the foregoing which are beyond Declarant’s control. No event shall constitute Force Majeure unless Declarant complies with the procedures set forth in Section 5.7.

(ee) Intentionally Omitted

(ff) “**Legal Requirements**” shall mean all laws, rules and regulations pertaining to the construction of the Public Access Area Work (as hereinafter defined).

(gg) “**Maintenance Funding Obligation**” shall have the meaning set forth in Section 5.4.

(hh) “**Mortgagee**” shall mean (i) the holder of a first mortgage on all or any portion of the Subject Property, other than the holder of a mortgage solely on one or more individual residential or commercial condominium units in the Proposed Development, who has given written notice of its name and address to DCP and DPR, and (ii) the holder of a pledge of the direct or indirect equity interests in Developer Declarant who has given written notice of its name and address to DCP and DPR. Any Party in Interest to this Declaration is not obligated to provide DCP and DPR its name and address.

- 6.1(a). (ii) **“Notice of Final Completion”** shall have the meaning set forth in Section
- (jj) **“Notice of Substantial Completion”** shall have the meaning set forth in Section 5.2.
- (kk) **“PAA Easement Area”** shall mean that certain portion of the Public Access Area more particularly described on Exhibit F attached hereto and incorporated herein, as to which Declarant intends to transfer to the City a non-exclusive easement in accordance with the terms and conditions of this Declaration.
- 5.4(a). (ll) **“PAA Maintenance Account”** shall have the meaning set forth in Section
- (mm) **“PAA Access Permit”** shall have the meaning set forth in Section 6.4.
- (nn) **“PAA Maintenance Agreement”** shall mean an agreement executed by Declarant and DPR substantially in the form attached hereto as Exhibit D.
- 5.4(b). (oo) **“PAA Maintenance Security”** shall have the meaning set forth in Section
- (pp) **“Party in Interest”** shall mean a party in interest as defined in Section 12-10 (definition of zoning lot) on the Zoning Resolution.
- (qq) **“PCO”** shall mean a Permanent Certificate of Occupancy issued by DOB.
- (rr) **“Permitted Encumbrances”** shall mean the matters described in Exhibit I annexed hereto and such other liens or encumbrances as the City shall approve, such approval not to be unreasonably withheld.
- (ss) **“Permitted Work”** shall have the meaning set forth in Section 3.7.
- (tt) **“Possessory Interest”** shall have the meaning set forth in Section 11.6.
- (uu) **“Proposed Development”** shall have the meaning set forth in the Recitals.
- (vv) **“Public Access Area”** or **“PAA”** shall have the meaning set forth in the Recitals.
- (ww) **“Public Access Area Work,” “PAA Work,”** or **“Work”** shall mean the work necessary to construct the Public Access Area in accordance with this Declaration.
- (xx) **“Punch List”** shall have the meaning set forth in Section 5.2.
- (yy) **“Resident Engineer”** shall have the meaning set forth in Section 4.3.
- (zz) **“Resident Engineer Payments”** shall have the meaning set forth in Section 4.3.



(aaa) “**Schedule**” shall have the meaning set forth in Section 3.8 and is contained in Exhibit J.

(bbb) “**Shore Public Walkway**” shall mean the areas labeled “Shore Public Walkway” on the Drawings.

(ccc) “**Site Plan**” shall mean the site plan for the Public Access Area, attached hereto as part of the Drawings and specifically identified as Drawing L-1.3.

(ddd) “**State**” shall mean the State of New York.

(eee) “**Street Treatment Area**” shall mean the City owned property, between the centerline and outside curbs of India and Huron Streets and the Subject Property's respective southern and northern property lines, as indicated on Drawing L-1.3.

(fff) “**Subject Property**” shall have the meaning set forth in the Recitals.

(ggg) “**50% Submission**” and the “**80% Submission**” shall have the respective meanings set forth in Section 3.3.

(hhh) “**Substantial Completion**” or “**Substantially Complete**”, shall mean that such Work has been constructed substantially in accordance with the Drawings and has been completed to such an extent that all portions of the improvement may be operated and made available for public use. An improvement may be deemed Substantially Complete notwithstanding that (i) minor or insubstantial items of construction, decoration or mechanical adjustment remain to be performed; or (ii) Declarant has not completed any relevant planting or vegetation or other tasks that must occur seasonally.

(iii) “**Supplemental Public Access Area**” or “**Supplemental PAA**” shall mean the area labeled “Supplemental Public Access Area” on the Drawings.

(jjj) “**TCO**” shall mean a Temporary Certificate of Occupancy issued by the Department of Buildings.

(kkk) “**Title Company**” shall mean a title insurance company licensed to do business in the State of New York.

(lll) “**Transfer Date**” shall mean the date that the Transfer Documents are delivered to and accepted by the City pursuant to Section 5.3(a).

(mmm) “**Transfer Documents**” shall have the meaning set forth in Section 5.3(a).

(nnn) “**Transfer Parcels**” shall have the meaning set forth in the recitals.

(ooo) “**Unit Interested Party**” shall mean any and all of the following: all owners, lessees, and occupants of any individual residential or commercial condominium unit, and all holders of a mortgage or other lien encumbering any such residential or commercial condominium unit.

(ppp) “Unit Owner” shall have the meaning set forth in Section 11.6.

(qqq) “Waterfront Access Plan BK-I; Greenpoint-Williamsburg” shall have the meaning set forth in the Recitals

(rrr) “Zoning Resolution” shall have the meaning set forth in the recitals.

## ARTICLE 2

### PERFORMANCE OF THE PUBLIC ACCESS AREA WORK

2.1 Construction of Public Access Area. If Declarant develops the Subject Property, the Public Access Area shall be constructed substantially in accordance with the Drawings and Final Plans and Specifications.

2.2 Permits and Other Approvals. Declarant, at its sole cost and expense, shall diligently apply for and prosecute the applications for all City, State and federal permits and approvals necessary for the Public Access Area Work.

2.3 Performance of Public Access Area Work. Declarant agrees that the Public Access Area Work shall be performed in accordance with all Legal Requirements and with the provisions of this Declaration.

## ARTICLE 3

### DESIGN DEVELOPMENT

3.1 Drawings. Declarant acknowledges that DCP and DPR have reviewed and approved the Drawings and agrees that it may not submit any Design Submission pursuant to this Article which is not in conformity with such Drawings without the prior written approval of DPR and DCP. Such written approval shall serve as a determination by the Chair that he or she is prepared to recertify the Drawings pursuant to Section 62-711 to incorporate the modification. Concurrent with submission of Final Plans and Specifications pursuant to Section 3.11, Declarant shall file an application pursuant to Section 62-711 of the Zoning Resolution revising the Drawings to incorporate all such modifications which have been previously approved in accordance with this Section and the Chair shall certify that the revised Drawings comply with the requirements of Article VI, Chapter 2 of the Zoning Resolution.

3.2 Concept Drawings. Declarant agrees that the architectural character and design of the Public Access Area shall be in substantial conformity with the design intent reflected in the Concept Drawings, as further defined, revised, and approved during the Design Development process set forth in this Article 3.

3.3 Submission of Construction Drawings. Declarant shall submit to DPR and DCP drawings for the Work at 50% and 80% completion (the “50% Submission” and the “80% Submission” and collectively, the “Design Submissions”). Each Design Submission shall include a schedule of estimated costs and designs showing how the Shore Public Walkway will relate to the adjoining properties. The 50% Submission shall include a lifecycle maintenance cost

estimate. At Declarant's option, the Design Submissions may include specifications for the Work. Nothing in this Section shall prevent Declarant from submitting construction drawings to DPR at other times as may be agreed by Declarant and DPR.

3.4 Administration. DPR shall, on behalf of the City, manage and coordinate on behalf of the City the review of the Design Submissions. All documents prepared by Declarant pursuant to this Article 3 shall be sent simultaneously to DPR and DCP.

3.5 Agency Review Time Periods. DPR shall review the Design Submissions and shall approve or disapprove the same by written notice to Declarant no later than thirty (30) calendar days after delivery to DPR. No separate approval of DCP or the Chair shall be required. If DPR disapproves a Design Submission, DPR shall set forth in detail the reasons for such disapproval (the "**Disapproval Report**"). Declarant shall thereafter submit a revised Design Submission responsive to DPR's Disapproval Report and, upon receipt thereof, DPR shall approve or disapprove all revised Design Submissions within thirty (30) calendar days after receipt thereof. DPR may approve a Design Submission with recommendations for modifications (the "**City Recommendations**") and Declarant shall incorporate the City Recommendations in revised construction drawings unless Declarant submits to DPR a written explanation of why it believes that such modifications would materially increase the cost of the Public Access Area Work or are otherwise not in conformity with the Drawings or the Concept Drawings. DPR shall, within ten (10) calendar days after receipt of a revised Design Submission incorporating the City Recommendations in a manner satisfactory to the DPR, approve such Design Submission, or if Declarant's written explanation or revised Design Submission are not satisfactory, disapprove such Design Submission. If DPR fails to respond to any submission by Declarant within the time periods set forth in this Section, then DPR shall be deemed to have approved such Design Submission including all of the construction drawings which comprise such Design Submission.

3.6 Standards for Review.

(a) Declarant acknowledges that DPR may disapprove any Design Submission thereof that:

(i) would, in DPR's reasonable judgment, make the Public Access Area too costly or impractical for DPR to maintain;

(ii) would, in DPR's reasonable judgment, create a risk to public safety; or

(iii) does not, in DPR's reasonable judgment following consultation with DCP, substantially conform to the Drawings, as the same have been previously modified with the approval of DPR and DCP pursuant to Section 3.1, or would not be in substantial conformity with the design intent reflected in the Concept Drawings.

(b) Upon approval by DPR of the 50% Submission or the 80% Submission, such approval shall be binding on DPR, and DPR may not disapprove a feature or element on a subsequent Design Submission or on the Final Plans and Specifications, which has not been

revised or modified by Declarant on such subsequent Design Submission or on the Final Plans and Specifications.

(c) In reviewing any Design Submission, DPR shall use reasonable efforts to minimize any requested changes that increase the cost of the Public Access Area Work.

3.7 State and Federal Permits. Declarant has advised the City that construction of the Public Access Area (the “**Permitted Work**”) will require certain permits and approvals from the state and federal governments (collectively, the “**Federal/State Approvals**”). Declarant covenants to proceed in good faith and exercise due diligence in seeking to obtain the Federal/State Approvals. In connection with its efforts to obtain the Federal/State Approvals, Declarant shall not file or otherwise formally submit to any federal or state agency any plans, drawings or illustrative representations of the Public Access Area that do not conform with the Drawings or Design Submissions submitted pursuant to this Declaration and have not been approved in writing by DPR and DCP.

3.8 Schedule. Attached hereto as Exhibit J is a schedule (the “**Schedule**”) setting forth the projected dates on which Declarant expects to (i) submit the 50% Submission, the 80% Submission and the Final Plans and Specifications; and (ii) obtain the Federal/State Approvals (including time periods for submitting revised applications in response to comments received from the permitting agency) for the Permitted Work in order to obtain the first TCO for the Proposed Development in accordance with the Schedule.

3.9 Modifications Due to Failure to Obtain Permits. (a) If Declarant is unable, despite its good faith efforts, to obtain the Federal/State Approvals for the Permitted Work by the date set forth in the Schedule, or Declarant otherwise determines that it will not be able to obtain the Federal/State Approvals by the date set forth in the Schedule for all or any portion of the Permitted Work, Declarant shall so notify DPR and DCP. Provided that, exercising their reasonable judgment, DPR and DCP concur that (i) Declarant has exercised good faith in seeking to obtain the Federal/State Approvals, and (ii) Declarant is unlikely to obtain the Federal/State Approvals by a date, upon which approvals are needed in order to obtain a TCO pursuant to the construction schedule, Declarant may submit to DPR and DCP for their approval a proposed modification to the Drawings to provide a substitute site plan and public amenity. Approval of such substitute site plan and public amenity shall serve as a determination by the Chair that he/she is prepared to recertify the Drawings pursuant to Section 62-711 to incorporate the substitute site plan and public amenity. In the event that, due to the substitute site plan and public amenity, Substantial Completion does not occur by the date that the Proposed Development is eligible for issuance of TCOs, Declarant may obtain TCOs for the Proposed Development notwithstanding the requirements of Section 5.1; provided that DPR and DCP may require Declarant to provide an alternative form of security as reasonably necessary to assure completion.

(b) Notwithstanding Section 3.9(a), DPR and DCP may decline to make such determination where the conditions set forth in such Section are met and direct Declarant by written notice to continue to seek the Federal/State Approvals; provided, however, that such direction shall constitute a Force Majeure Event so that any failure by Declarant to complete the Permitted Work by the time set forth in the Schedule shall entitle Declarant to obtain TCOs and

PCOs for the Proposed Development without having completed the Permitted Work; provided that DPR and DCP may require Declarant to provide an alternative form of security to assure the completion of the Proposed Development. In the event that DPR and DCP direct Declarant to continue to seek the Federal/State Approvals pursuant to this subdivision and Declarant is unable to obtain such Federal/State Approvals within six (6) months thereafter, DPR and DCP may at any time thereafter direct Declarant to provide a substitute site plan and public amenity in the manner provided for in Section 3.09(a).

3.10 Modification of Drawings. In the event that, in connection with the Design Submissions, Declarant and DCP and DPR agree that one or more modifications of the Drawings is appropriate, DCP shall issue a written approval thereof. Such written approval by DCP shall serve as a determination by the Chair that he or she is prepared to recertify the Drawings to incorporate the modification. Together with its application for approval of Final Plans and Specifications, Declarant shall file an application pursuant to Section 62-711 of the Zoning Resolution requesting that the Chair certify that the revised Drawings comply with the requirements of Article VI, Chapter 2. The Chair shall issue such certification within thirty (30) days of such application.

3.11 Final Plans and Specifications. No later than twenty (20) calendar days prior to the date on which Declarant intends to commence construction of the Public Access Area Work, Declarant shall submit to DPR the final plans and specifications (the "**Final Plans and Specifications**"). The Final Plans and Specifications shall be reviewed in accordance with the time periods and standards set forth in Sections 3.5 and 3.6. Upon approval of the Final Plans and Specifications, nothing contained in this Declaration shall be construed to give the City or any agency thereof (including the Resident Engineer or any engineers or field inspectors) the right to require changes to the Final Plans and Specifications.

3.12 Huron and India Streets. The Shore Public Walkway will connect at the mid-point of Huron and India Streets with a shore public walkway to be constructed by another entity pursuant to a separate restrictive declaration. Declarant and the City acknowledge that it is desirable that the areas of shore public walkway within the mapped street beds of Huron and India Streets reflect a consistent or compatible design. Declarant has in good faith cooperated with DCP and DPR to coordinate the design of the Street Treatment Areas and DCP and DPR have reviewed and approved the design of the Street Treatment Area, as reflected in the Drawings. Declarant shall continue to cooperate with the City to coordinate the design of the shore public walkway beyond the boundaries of the Street Treatment Areas, provided that such cooperation does not affect Declarant's construction schedule or materially increase the costs of the Public Access Area.

## ARTICLE 4

### CONSTRUCTION

4.1 Manner of Performance of the Construction Work; Permits. Declarant shall, at its sole cost and expense, undertake the performance of the Public Access Area Work so as to construct the Public Access Area substantially in accordance with the approved Final Plans and Specifications, except as modified in accordance with the provisions of this Article. Declarant

shall perform the Public Access Area Work in a good and workerlike manner, free from mechanics' and materials providers' liens (other than liens which have been bonded over) and in accordance with Legal Requirements, including without limitations, any applicable Legal Requirements pertaining to hazardous materials. Declarant will use reasonable efforts to provide DPR with a quantity of replacement parts for any custom designed elements of the Public Access Area so as to allow DPR to maintain and repair such custom designed elements for five (5) years.

4.2 Modifications of Final Plans and Specifications. Declarant shall have the right to make non-material modifications to the Final Plans and Specifications to respond to unanticipated field conditions. All material modifications to the Final Plans and Specifications may be modified only upon the written approval of DPR. DPR shall, within fifteen (15) calendar days after receipt of a request for approval of a material modification to Final Plans and Specifications, approve or deny such request. If DPR fails to respond to any request by Declarant within the time periods set forth in this Section, then DPR shall be deemed to have approved such request.

4.3 Resident Engineer. Declarant covenants to pay in advance for the costs of one engineer (who shall be a DPR employee or a consultant selected by DPR), with responsibilities for on-site monitoring of the Public Access Area Work ("**Resident Engineer**"); provided that the maximum amount which Declarant shall be required to pay shall be \$4,000 per month (including any charges for benefits and other related costs) for each month during which construction of the Public Access Area Work is occurring (such amount shall be adjusted based on any increases provided under applicable collective bargaining agreements) ("**Resident Engineer Payments**"). Upon approval of the Final Plans and Specifications, and every six months thereafter, until a Notice of Final Completion is issued by the City, DPR shall provide the Declarant with an invoice for 6 months of advance monthly payments. The Resident Engineer shall have access to all construction meetings and construction-related documents. Declarant agrees that in the event DPR advises Declarant of issues or concerns based on the Resident Engineer's report(s), Declarant shall meet and confer with DPR in order to resolve these issues or concerns.

4.4 Insurance.

(a) Prior to applying for a building permit for construction, Declarant shall obtain the following insurance:

(i) A Commercial General Liability (CGL) insurance policy. The CGL policy shall:

a. Provide coverage to protect the City, DPR and Declarant from claims for property damage and/or bodily injury, including death, which may arise from the Public Access Area Work;

b. Provide coverage for completed operations;

c. Provide coverage in an amount no less than \$5,000,000, commercial general liability and excess liability, combined single limit per occurrence;

d. Contain each of the following endorsements:

i. The City of New York, DPR, together with its officials and employees are Additional Insureds with coverage as set forth in ISO Forms CG 2010 (1/85 ed.) and CG 0001 (1/96 ed.).

ii. If and insofar as knowledge of an "occurrence", "claim" or "suit" is relevant to the City of New York as an Additional Insured under this policy, such knowledge by an agent, servant, official or employee of the City of New York will not be considered knowledge on the part of the City of New York of the "occurrence", "claim" or "suit" unless notice thereof is received by the Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department. This paragraph is void if, after New York City is properly served with a lawsuit, New York City requests coverage under the policy provided for herein of such lawsuit in which a default judgment has been entered against New York City and has not been vacated.

iii. Any notice, demand or other writing by or on behalf of the Named Insured to the insurance company shall also be deemed to be a notice, demand or other writing on behalf of the City and DPR as Additional Insureds. Any response by the insurance company to such notice, demand or other writing shall be addressed to the Named Insured and to the City at the following address: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department.

iv. This policy shall not be cancelled, terminated, modified or changed by the insurance company unless thirty (30) days prior written notice is sent by certified mail to the Named Insured and the Commissioner of DPR.

v. The limit of coverage under this policy applicable to the City and DPR as Additional Insureds is equal to the limit of coverage applicable to the Named Insured.

(ii) A Worker's Compensation insurance policy in accordance with the laws of the State of New York from a licensed insurance company.

(iii) Employer's Liability Insurance for any one occurrence with a limit of not less than \$1,000,000;

(iv) Any Auto, Hired Auto and Non-owned Auto Insurance for any one occurrence not less than \$3,000,000.

(b) Prior to applying for a building permit for construction, Declarant shall file with DPR proof that Declarant has insurance in place that meets the requirements stated in this Section with respect to construction and if Declarant chooses to meet this proof with an insurance certificate, duplicate copies of the insurance certificate shall be submitted, accompanied by a sworn statement in a form prescribed by DPR from the insurance company or from a licensed insurance broker certifying that the insurance certificates may be relied upon as proof that the applicant has insurance that meets the requirements stated in this Section with respect to construction.

(c) Declarant shall provide a copy of any required policy within thirty (30) days of a request for such policy to the DPR or the New York City Law Department.

(d) Declarant shall notify in writing the CGL insurance carrier and, where applicable, the worker's compensation and/or other insurance carrier, of any loss, damage, injury or accident and any claim or suit arising therefrom, immediately but not later than 20 days after receipt of knowledge of such event. Declarant's notice to the CGL insurance carrier (or other applicable carrier) must expressly specify that "this notice is being given on behalf of the City of New York and DPR as Additional Insured as well as the Declarant as Named Insured." Declarant's notice to the insurance carrier shall contain the following information: the name of the Declarant, Declarant's phone number, the date of the occurrence, the location (street address and borough) of the occurrence and the identity of the persons or things injured, damaged or lost. Declarant's failure to comply with the provisions of this Section 4.4(d) shall not be a default under this Declaration unless Declarant's failure to follow such provisions shall result in a denial of coverage to the City.

(e) All insurance required under this Section 4.4 shall be issued by companies which have an A.M. Best rating of at least A-7 or a Standards & Poors rating of at least AA and are duly licensed to do business in the State of New York and must be in effect until the Transfer Parcels are transferred to the City or a Notice of Final Completion is issued by the City.

## **ARTICLE 5**

### **TEMPORARY CERTIFICATES OF OCCUPANCY**

#### **5.1 Temporary Certificates of Occupancy.**

(a) Declarant shall not apply for or accept a TCO for any building in the Proposed Development until all of the following conditions have been met with respect to construction of such building, provided that the requirements of this Section shall not be applicable in the event of a Force Majeure or to an Affordable Building:

(i) DPR has issued a Notice of Substantial Completion for the Public Access Area;

(ii) Declarant has delivered the Transfer Documents to DPR relating to the Public Access Area (provided that this condition shall not be satisfied if the City has notified Declarant that the Transfer Documents are not satisfactory as provided in Section 5.3(a));

(iii) Declarant has reimbursed DPR for the costs of Resident Engineer, subject to the further provisions of this Section. DPR shall, within ten (10) days of receipt of a request by Declarant for a statement of account for the Resident Engineer, deliver such statement. If DPR does not timely deliver such statement, then the failure by Declarant to make any outstanding payment shall not be a condition for issuance of the TCO;

(iv) DPR and Declarant have executed the PAA Maintenance Agreement for such construction;



(v) Declarant has made the first Annual PAA Maintenance Payment pursuant to Section 5.4; and

(vi) Declarant has posted the PAA Maintenance Security.

(b) Within ten days after satisfaction of all of the conditions set forth in this Section 5.1, the Chair shall certify in writing to DOB that Declarant has met the requirements of Section 62-624(e) of the Zoning Resolution.

(c) In the event that due to a Force Majeure Declarant has obtained a TCO prior to completion of the conditions set forth in Section 5.1(a), upon cessation of the Force Majeure Event Declarant shall, as promptly as possible, satisfy the conditions of Section 5.1(a).

5.2 Notice of Substantial Completion. Declarant shall notify DPR and DCP at such time as it believes that construction is Substantially Complete and shall request that DPR issue a certificate, in the form of Exhibit K (a "**Notice of Substantial Completion**") to Declarant certifying Substantial Completion of construction. Not later than twenty (20) calendar days after receipt of such request, DPR shall either issue the Notice of Substantial Completion or deliver to Declarant a notice setting forth the reasons why construction is not Substantially Complete and the items which need to be completed. If DPR notifies Declarant that construction has not been Substantially Completed in accordance with the approved Final Plans and Specifications, such notice shall contain a detailed statement of the reasons for such non-acceptance in the form of a so-called "punch list" of items remaining to be completed or unsatisfactorily performed ("**Punch List**"). The Punch List shall not include items which, pursuant to the definition of Substantial Completion in Section 1.1, are not required to be completed prior to Substantial Completion. Declarant shall promptly perform the work specified on the Punch List, after which it shall notify DPR of such completion. Not later than twenty (20) calendar days after receipt of such notice, DPR shall either issue the Notice of Substantial Completion or notify Declarant that it has not completed the Punch List. If DPR fails to respond to any such request within the time period set forth in this Section, then DPR shall be deemed to have issued a Notice of Substantial Completion.

### 5.3 Transfer of Title.

(a) In connection with the transfer of the Transfer Parcels and no earlier than the date on which the Declarant notifies DPR and DCP pursuant to Section 5.2 that construction is Substantially Complete, Declarant shall deliver to DPR the following documents (collectively, the "**Transfer Documents**") (i) a bargain and sale deed with covenants against grantor's acts, signed and acknowledged by Declarant and in proper form for recording, conveying all of Declarant's right, title and interest in and to the Fee Transferred PAA and to the land thereunder; (ii) an easement agreement in the form attached hereto as Exhibit L, granting the DPR access to the PAA Easement Area for the purpose of performing the DPR's obligations with respect to the Public Access Area located thereon in accordance with the terms and conditions of this Declaration, (iii) a title commitment from a Title Company with a limit of liability acceptable to DPR showing evidence of paid premium and that there are no liens or encumbrances on the land and easement being conveyed to the City, except for Permitted Encumbrances; (iv) a survey of the land and easement being conveyed to the City prepared by a land surveyor licensed in New

York State in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys for Urban Surveys (2005); (v) all required transfer tax returns signed by Declarant; (vi) documentation evidencing the subdivision of all applicable tax lots incident to such conveyance; and (vii) the PAA Maintenance Agreement in the form attached as Exhibit D, as executed by Declarant. If DPR determines that the Transfer Documents are not satisfactory, it shall notify Declarant within ten (10) days of receipt thereof. Such notice shall include a specification of the deficiencies in the Transfer Documents. Declarant shall address the identified deficiencies, after which it shall deliver revised Transfer Documents to DPR. No later than ten (10) days following receipt of such revised Transfer Documents, DPR may notify Declarant that such deficiencies have not been addressed. If DPR fails to notify Declarant within such ten (10) day periods, Declarant shall be deemed to have satisfied the requirements of Section 5.1(a)(ii) for purposes of Certification by the Chair under Section 5.1(b). In the event that the City Register makes an objection to the recordation of some or all of the Transfer Documents in the form delivered by Declarant, Declarant shall cooperate with DPR in curing any such objections. Upon satisfaction of the foregoing conditions, DPR shall promptly countersign, notarize and deliver to Declarant those certain Transfer Documents that require DPR's execution. DPR acknowledges that prior to the transfer of title contemplated by this Section 5.3, Declarant may record an easement agreement in the form attached hereto as Exhibit P for the purpose of accessing and maintaining a drainage pipe located on the transferred property (the "**Drainage Easement**").

(b) The transfer of title to the Fee Transferred PAA as provided for herein shall not reduce the floor area (as defined under the Zoning Resolution) that may be developed or redeveloped on the Subject Property or affect any calculations relating to lot coverage or any other provision of the Zoning Resolution wherein the land of the Public Access Area was included, and Declarant shall have the right to use the total area of the Subject Property, including the land conveyed to the City as provided herein, for all purposes related to permitted floor area, floor area ratio, lot coverage and other zoning calculations for the Proposed Development, notwithstanding that Public Access Areas have been conveyed to the City.

#### 5.4 PAA Maintenance Account and PAA Maintenance Security.

(a) Pursuant to Section 62-624(e) of the Zoning Resolution, Declarant shall establish an account for the funding of the ordinary maintenance and future capital repairs of the Public Access Area (the "**PAA Maintenance Account**"). Prior to issuance of a TCO for the Proposed Development pursuant to Section 5.1 and annually thereafter on July 1, Declarant shall deposit into the PAA Maintenance Account the Annual PAA Maintenance Payment (the "**Maintenance Funding Obligation**"). The Annual PAA Maintenance Payment shall be calculated by multiplying the amount of square feet in the Public Access Area which has been Substantially Completed or Finally Completed times \$2.22 per square foot, as adjusted at the beginning of each year, based on the change in the Consumer Price Index. For any year where Declarant is completing construction, the amount of the Annual PAA Maintenance Payment for such year shall be adjusted by multiplying the Annual PAA Maintenance Payment for such year, as determined pursuant to the preceding sentence, times a fraction the numerator of which is the number of days remaining from the Transfer Date to June 30 and the denominator of which is 360.

(b) To secure its obligation to make the Annual PAA Maintenance Payment and as a condition to issuance of the TCO for a building as set forth in Section 5.1(a), Declarant shall deliver to the City security in the form of a maintenance bond or irrevocable letter of credit (such maintenance bond or letter of credit shall be in such form as shall be reasonably acceptable to the City), naming the City as beneficiary in an amount equal to four (4) months of the Annual PAA Maintenance Payment (such security, the **"PAA Maintenance Security"**).

5.5 Security for Final Completion.

(a) Upon issuance of the Notice of Substantial Completion, Declarant shall deliver to DPR one or more irrevocable letters of credit (the **"Completion Letter of Credit"**) in a form acceptable to the City, naming the City as beneficiary, in an amount that has been certified by Declarant's architect or landscape architect as being 175% of the cost of Finally Completing construction.

5.6 Intentionally Omitted

5.7 Force Majeure. In the event that Declarant is unable to Substantially Complete construction as a result of a Force Majeure Event, then Declarant shall so notify DCP and DPR as soon as Declarant actually learns of such circumstances. Declarant's written notice (the **"Delay Notice"**) shall include a description of the condition or event, its cause and probable duration (if known to Declarant), and in Declarant's reasonable judgment, the impact it is reasonably anticipated to have on the completion of the item of work. The Chair shall, after consulting with DPR and within ten (10) calendar days of its receipt of the Delay Notice, (i) certify in writing that a Force Majeure Event has occurred, or (ii) notify Declarant that it does not reasonably believe a Force Majeure Event has occurred, in which case the Chair shall state with particularity the reasons it believes Force Majeure has not occurred. Such certification or notice shall constitute the Chair's final determination. Upon a determination that a Force Majeure Event has occurred, the Chair shall grant Declarant appropriate relief for such delay, including certifying in writing to the DOB that the Chair has no objection to the issuance of a TCO for all or part of the building(s) in the Proposed Development. Any delay caused as the result of a Force Majeure Event shall be deemed to continue only as long as the Force Majeure Event is continuing. Upon cessation of the events causing such delay, the Declarant shall promptly recommence the Work. As a condition of granting such relief, the Chair may require that Declarant post a bond or other security in a form and amount acceptable to the Chair in order to ensure that the portion of the Public Access Area Work is Substantially Completed and that all other requirements of Section 5.1 are satisfied. Such security shall be in a sum equal to 175% of the cost of the remaining work in order to Finally Complete Development, such estimated cost subject to the reasonable approval of the Chair. Declarant shall be obligated to Substantially Complete or Finally Complete construction within the period of time specified in the Delay Notice, or such lesser period of time as the Chair reasonably determined in the Delay Notice, or such lesser period of time as the Chair reasonably determined the Force Majeure Event shall continue; provided, however, that if the Force Majeure Event has a longer duration than as set forth in the Delay Notice or as reasonably determined by the Chair, the Chair shall grant additional time for Substantial Completion or Final Completion, as the case may be.

## ARTICLE 6

### PERMANENT CERTIFICATES OF OCCUPANCY

6.1 PCO. Subject to Force Majeure, Declarant shall not accept a PCO for any building in the Proposed Development until DPR has issued a Notice of Final Completion with respect to the building, provided that the requirements of this Section shall not be applicable to an Affordable Building.

(a) Notice of Final Completion. Declarant shall notify DPR and DCP that it believes construction is Finally Complete and shall request that DPR issue a certificate in the form of Exhibit M (a "**Notice of Final Completion**") to Declarant certifying Final Completion. Not later than twenty (20) calendar days after receipt of such request, DPR shall either issue the Notice of Final Completion or deliver to Declarant a notice setting forth the reasons construction is not Finally Complete. Such notice shall include a Punch List of items remaining to be completed or unsatisfactorily performed. Declarant shall promptly perform the work specified on the Punch List, after which it shall notify DPR of such completion. No later than twenty (20) calendar days after receipt of such notice, DPR shall either issue the Notice of Final Completion or notify Declarant that it has not completed the Punch List. If DPR fails to provide a notice to Declarant within the time periods set forth in this Section, then DPR shall be deemed to have issued a Notice of Final Completion. The issuance of a Notice of Final Completion in accordance with the provisions of this Section 6.1 shall be conclusive evidence with respect to Declarant that the Public Access Area has been constructed in accordance with the design and construction specifications approved by DPR, including the Final Plans and Specifications.

(b) Declarant agrees, where possible, to obtain initial replacement parts on all products used in the Public Access Area, as are customarily provided by manufacturers in connection with such products. Declarant agrees to obtain such warranties on all products used in the Public Access Area, as are customarily provided by manufacturers in connection with such products and to have the City included as a named beneficiary on all such warranties. Declarant further agrees to provide to the City, from its Construction Manager or its subcontractors, a warranty against defects, including customary warranties with respect to plant material installed by Declarant or its contractors, and including the obligation to repair same, in the Public Access Area conveyed to the City, for a period of one year from the date of Notice of Final Completion.

#### 6.2 Failure to Perform.

(a) Subject to Force Majeure, Declarant shall within three (3) months after issuance of a Notice of Substantial Completion, Finally Complete construction, unless the Resident Engineer certifies, in writing, that it will take longer than three (3) months to Finally Complete; provided that if Final Completion requires planting or other tasks that must occur seasonally and the Notice of Substantial Completion is issued after October 1st, then Declarant shall have until June 1st to Finally Complete. In the event that Declarant fails to Finally Complete construction within such time period, then DPR may, at its option, upon not less than thirty (30) days written notice to Declarant, (i) Finally Complete construction in accordance with the Final Plans and Specifications; (ii) cause Declarant to remove all of its equipment and any other items impeding DPR's completion of construction; and (iii) draw upon the Completion

Letter of Credit for so much of the proceeds as is necessary to pay for the reasonable costs and expenses incurred in performing the uncompleted construction, and, if necessary, removing such equipment and impediments. If the full amount of the Completion Letter of Credit is not drawn upon, then DPR shall return the balance of the proceeds of the Completion Letter of Credit to Declarant promptly after Final Completion.

(b) Declarant hereby grants the City and its contractors, agents, employees, sub-contractors a license to enter upon the Public Access Area portion of the Subject Property for the purposes of exercising its rights under Section 6.2(a) as may be necessary to Finally Complete construction.

6.3 Security for Construction Defects. Declarant hereby guarantees the construction of the Public Access Area against all defects for a period of one year from the date of the Notice of Final Completion. To secure this obligation, the Declarant shall make DPR and the City third party beneficiaries of all construction guaranties and warranties under its construction contracts for construction of the Work.

6.4 Permit. To allow the Declarant to Finally Complete the Work on the Public Access Area, the City hereby grants Declarant and its contractors, agents, employees, and sub-contractors a permit to enter upon the Public Access Area in such manner as will not unduly interfere with the use and enjoyment thereof by the public for the purpose of performing the construction work required to obtain the Notice of Final Completion (the "PAA Access Permit"). Declarant shall execute a form of permit provided by DPR which contains the City's standard provisions relating to a permit agreement, including, without limitation, insurance requirements and indemnification. The PAA Access Permit shall be substantially in the Form of Exhibit N annexed hereto.

6.5 Force Majeure. The provisions of Section 5.7 shall apply to the use of Force Majeure in connection with a PCO.

## ARTICLE 7

### ADMINISTRATION

7.1 Hours of Operation. Declarant acknowledges that the hours of operation of the Public Access Area shall be determined by the City. Notwithstanding the foregoing, the City has advised Declarant that it intends that the Public Access Area shall be open and accessible to the public no earlier than 6 a.m. and no later than midnight. If the City wishes to change these hours, it shall consult with Declarant prior to implementing such change. The City further agrees that the hours of operation for the Public Access Area shall be consistent with the hours of operation for other waterfront parks managed by DPR.

7.2 Maintenance by City. Commencing on the Transfer Date, the City shall be solely responsible for maintenance of and capital repairs to the Public Access Area. The City acknowledges and agrees that Declarant shall thereupon have no obligation or responsibility for maintenance of the Public Access Area from and after the conveyance to the City. The City

further agrees that it shall maintain the Public Access Area pursuant to the terms and conditions of the PAA Maintenance Agreement.

7.3 Private Residential Access to Public Access Area. Declarant acknowledges that any direct access to the Public Access Area from private residences in the Proposed Development is subject to DPR review and approval, in the reasonable exercise of its discretion, and that in the event of approval, DPR may impose reasonable conditions with respect to the configuration and operation of such access to the Public Access Area.

7.4 Private Commercial Access to Public Access Area. Declarant acknowledges that any direct access to the Public Access Area from commercial establishments in the Proposed Development is subject to DPR review, in the reasonable exercise of its discretion, and approval and that in the event of approval, DPR may impose reasonable conditions with respect to the configuration and operation of such access to the Public Access Area.

7.5 Commercial and Non-Public Uses of Public Access Area.

(a) Declarant acknowledges that any commercial use of the Public Access Area is subject to review and approval by DPR, in the reasonable exercise of its discretion, and that in the event of approval DPR may impose reasonable conditions with respect to the operation of such commercial uses in the Public Access Area.

(b) DPR agrees to consult with Declarant before approving any fixed, third-party, commercial use of the Public Access Area for the purpose of serving food or beverages, other than a moveable cart.

(c) To allow the Declarant to perform routine maintenance to the Building, which requires Declarant to enter the PAA Easement Area, the City hereby grants Declarant and its contractors, agents, employees, and sub-contractors a PAA Access Permit, which DPR shall promptly process and not unreasonably deny, substantially in the Form of Exhibit N, to enter upon the PAA Easement Area.

7.6 Signage. If the title to the Fee Transferred PAA is transferred to the City in accordance with Section 5.3, it is understood that DPR will establish and install signage customary for a Public Access Area.

7.7 Lands Under Water. Declarant covenants that it shall not construct and make use and enjoyment of lands under water adjacent to the Fee Transferred PAA without permission of DCP and DPR.

## ARTICLE 8

### ENFORCEMENT

8.1 Failure to Make Annual PAA Maintenance Payment. If Declarant fails to make the Annual PAA Maintenance Payment by the date set forth in Section 5.4 and such default is not cured within fifteen (15) days after receipt by Declarant of written notice of such failure, then the City shall have the right to draw upon the PAA Maintenance Security, and then, subject to

the provisions of Section 8.6 hereof, such other rights as may be available to it at law or equity and as are provided in this Declaration. If the City has drawn down on the PAA Maintenance Security pursuant to this Section, Declarant shall, within sixty (60) days of such action by the City, deposit with DPR an amount equal to the required amount of the PAA Maintenance Security.

8.2 Denial of Public Access. If DPR has reason to believe that the use and enjoyment of the Public Access Area by any member of the public has, without reasonable cause, been denied by Declarant, and the City determines that such denial of access was in violation of Sections 7.1 with respect to the right of public access to the Public Access Area, the City shall, after notice to Declarant and an opportunity for Declarant to present evidence disputing such alleged denial of access, in addition to such other rights as may be available to it at law or equity and as are provided under this Declaration, have the right to seek civil penalties at the Environmental Control Board for a violation relating to privately owned public space, as set forth in Exhibit Q and as such penalties may be adjusted from time to time by the Environmental Control Board.

8.3 Enforcement by the City.

(a) 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.

(b) No person or entity other than the Declarant, its successors and assigns, or the City shall have any right to enforce the provisions of this Declaration. Nothing contained herein shall be deemed to allow any other person or entity, public or private, any interest or right of enforcement of any provision of this Declaration or any Exhibit hereto, including any claim by any public or private landowner to be the beneficiary of an easement appurtenant to lands adjoining the Subject Property which could or might be affected by the enforcement of the provisions of this Declaration with respect to the Subject Property.

8.4 Additional Remedies. 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 to comply with any provision, whether major or minor of this Declaration.

8.5 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 with respect to an alleged violation of an ongoing nature, it shall give Declarant thirty (30) 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 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 Declarant continues to proceed diligently with the effectuation of such cure.

(b) Notwithstanding the foregoing, in the event of a denial of public access of an on-going nature, Declarant shall have the opportunity to effect a cure within twenty four (24) hours of receipt of notice thereof. If such denial of access or interference continues beyond such period, the City may thereupon exercise any and all of its rights hereunder, including seeking a mandatory injunction, and the provisions of Section 8.6 shall not apply to the denial of public access.

8.6 Notice to Mortgagee.

(a) If Declarant fails to cure a violation within the applicable grace period provided in Section 8.5(a), 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 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.

(b) If after due notice as set forth in this Section, Declarant and any 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.

## ARTICLE 9

### MISCELLANEOUS

9.1 Filing and Recording. Declarant has not as of the date hereof and will not at any time hereafter sell, lease, transfer, use, mortgage, finance or encumber the Fee Transferred PAA, nor shall Declarant take any action which may subordinate DPR's interests in the PAA Easement Area. This Declaration shall become effective upon approval of the Application by the Chair. Within ten (10) days of such approval, Declarant shall file and record at its sole cost and expense this Declaration in the Register's Office, indexing it against the Subject Property. Declarant shall promptly deliver to the DCP and the DPR two (2) duplicate executed originals and, following recordation, three (3) copies of this Declaration as recorded. Upon receipt of the recorded, original Declaration, DCP will notify Declarant's counsel via email of such receipt. 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.

9.2 Binding Nature; Successors.

(a) The provisions of this Declaration shall be covenants running with the land and shall inure to the benefit of and be binding upon the respective heirs, successors, legal representatives and assigns of Declarant, including Mortgagee (provided Mortgagee shall have



no performance or payments obligations unless and until any such Mortgagee succeeds to a Possessory Interest in accordance with Section 16(d) herein), and references to Declarant shall be deemed to include such heirs, successors, legal representatives and assigns as well as the successors to their interests in the Subject Property, subject to the further provisions of this Section 9.2. Reference in this Declaration to agencies or instrumentalities of the City shall be deemed to include agencies or instrumentalities succeeding to jurisdiction thereof pursuant to the laws of the State of New York and the New York City Charter.

(b) Notwithstanding anything to the contrary contained in this Declaration, (i) the Association and any Unit Interested Party (except that where the Developer Declarant is also a Unit Interested Party, it shall remain obligated as Declarant pursuant to the provisions of this Declaration) shall not have any obligations under this Declaration to construct the Public Access Area, and (ii) any Affordable Housing Unit shall not have any obligation for and shall not be subject to levy or execution for the Maintenance Funding Obligation. Notwithstanding the foregoing, in the event that a temporary or permanent certificate of occupancy has been issued for any portion of the Proposed Development prior to the receipt of a Notice of Substantial or Final Completion due to Force Majeure, and the Developer Declarant is no longer a Unit Interested Party, the Developer Declarant shall remain obligated as Declarant until a Notice of Final Completion has been issued.

### 9.3 Limitation of Liability.

(a) In the event that any building in the Proposed Development is converted to condominium form of ownership, every condominium unit (other than any condominium unit that contains only "lower income households" as defined in Section 23-92 of the Zoning Resolution or "moderate income households" as defined in Section 62-352 of the Zoning Resolution) shall, as successor in interest to Declarant, be subject to levy or execution for the satisfaction of any monetary remedies of the City, to the extent of each Unit Interested Party's Individual Assessment Interest. The "**Individual Assessment Interest**" shall mean the Unit Interested Party's percentage interest in the common elements of the condominium in which such condominium unit is located applied to the assessment imposed by the Association on the condominium in which such condominium unit is located. The City agrees that, prior to enforcing its rights against a Unit Interested Party, the City shall first attempt to enforce its rights under this Declaration against the Declarant, the Association and the boards of managers of any condominium association.

(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 Property and only to the extent of such fee interest or the interest rendering such person or entity a Party in Interest. At such time as the named Declarant has no further fee interest in the Subject Property and is no longer a Party in Interest of the Subject Property, such 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 Property by acceptance of such conveyance automatically shall be deemed to assume Declarant's obligations and liabilities hereunder to the extent of such successor-in interest's interest.

9.4 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

9.5 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.

9.6 Modifications.

(a) This Declaration may be modified, amended or canceled by the Chair only upon application by the Declarant. No other approval or consent by any other public body or private body shall be required for such modification, amendment or cancellation. Declarant shall not modify this Declaration so as to make any Affordable Housing Unit subject to the Maintenance Funding Obligation or to assessment for either of the foregoing during the term of the Lower Income Housing Plan Written Agreement, to be entered into between the Developer Declarant and the City, acting through the New York City Department of Housing Preservation and Development.

(b) Notwithstanding anything to the contrary contained in this Declaration, for so long as Developer Declarant shall hold any fee interest in the Subject Property, (i) all owners, lessees, and occupants of any individual residential or commercial condominium unit, (ii) all boards of managers of any condominium association, and (iii) the Association, hereby (x) irrevocably consent to any amendment, modification, cancellation, revision or other change in this Declaration by Declarant; (y) waive and subordinate any rights they may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration; and (z) nominate, constitute and appoint Declarant their true and lawful attorney-in-fact, coupled with an interest, to execute any document or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

(c) From and after the date that no Declarant holds any fee interest in the Subject Property or any portion thereof (other than one or more individual residential or commercial condominium units), and provided the Association shall have been organized as provided in this Declaration, the Association shall be deemed to be the sole Declarant and Party-in-Interest under this Declaration. In such event, the Association shall be the sole party with any right to amend, modify, cancel, revise or otherwise change the Declaration, or make any application therefore, and each and every Unit Interested Party hereby (x) irrevocably consents to any amendment, modification, cancellation, revision or other change in this Declaration by the Association; (y) waives and subordinates any rights it may have to enter into an amended Declaration or other instrument amending, modifying, canceling, revising or otherwise changing this Declaration, and (z) nominates, constitutes and appoints the Association its true and lawful attorney-in-fact, coupled with an interest to execute any documents or instruments that may be required in order to amend, modify, cancel, revise or otherwise change this Declaration.

(d) Notwithstanding any other provision herein, this Declaration shall automatically and without any further public or private action be canceled, and the restrictions, covenants, obligations, liens and agreements hereof shall be of no further force and effect if, prior to the issuance by the DOB of a building permit for the Proposed Development, Declarant delivers to the Chair and records with the City Register's Office, a document duly executed and acknowledged in which the Declarant discharges this Declaration of record and surrenders its rights to develop the Proposed Development.

(e) Declarant may cancel the Declaration, subsequent to the issuance by the DOB of a building permit for the Proposed Development, if Declarant demonstrates to the Chair that no construction pursuant to the building permit has commenced.

9.7 Offering Plan. In the event that cooperative or condominium units are offered for sale in any building in the Proposed Development, a summary of the terms of this Declaration shall be included in any offering plan issued in connection therewith. Such offering plan shall clearly identify the rights and obligations pursuant to this Declaration of any cooperative or condominium that may be formed.

9.8 Homeowner's Association. In order to perform Declarant's obligations to pay the Annual PAA Maintenance Payment, and to renew and maintain the PAA Maintenance Security, as required in the PAA Maintenance Agreement, set forth in Exhibit D, Declarant shall cause to be organized, pursuant to Article 11 of this Declaration, a homeowner's association (the "Association") at the earlier to occur of the following: (i) the issuance of a TCO for the Proposed Development and (ii) the Transfer Date, provided however, that if the Association has been organized prior to such date, the obligations of the Association under this Declaration shall commence on the earlier of such dates (the "Association Obligation Date"). If an Association is required to be formed as set forth above, the provisions of Article 11 shall be operative.

9.9 Indemnification. If Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration 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 enforcement of Declarant's obligations under this Declaration. If any judgment is obtained against Declarant from a court of competent jurisdiction in connection with this Declaration and such judgment is upheld on final appeal or the time for further review of such judgment or appeal 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 enforcement of said judgment.

9.10 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.

9.11 Acknowledgement of Covenants. Declarant acknowledges that the restrictions, covenants, easements, obligations and agreements in this Declaration 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.

9.12 Representations. Declarant represents and warrants that there are no restrictions of record on the use of the Subject Property, nor any present or presently existing future estates or interest in the Subject Property, nor any 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 and agreements of this Declaration.

9.13 Further Assurances. Declarant and the City each agree to execute, acknowledge and deliver such further instruments, and take such other or further actions as may be reasonably required in order to carry out and effectuate the intent and purpose of this Declaration or to confirm or perfect any right to be created or transferred hereunder, all at the sole cost and expense of the party requesting such further assurances.

9.14 Estoppel Certificates. Whenever requested by a party, the other party shall within ten (10) days thereafter furnish to the requesting party a written certificate setting forth: (i) that this Declaration is in full force and effect (or if there have been modifications that the Declaration is in full force and effect as modified and identifying the modifications), and (ii) whether or not, to the best of its knowledge, the requesting party is in default under any provisions of this Declaration and if such a default exists, the nature of such default.

9.15 Parties in Interest.

(a) As of the date hereof, Commonwealth Title Insurance Company has determined that 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 Subject Premises as of the date hereof.

(b) Declarant shall not encumber the Subject Property, with any encumbrances not contained within Exhibit I, subsequent to the date hereof and prior to the recording of this Declaration.

9.16 Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be an original and all of which, together, shall constitute one agreement.

## ARTICLE 10

### 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 as follows:

If intended for Declarant, to: 145 West Street LLC and 157-159 West Street LLC  
c/o Palin Enterprises  
235 Park Ave South, 8th Floor  
New York New York 10003-1405  
Attention: Dean Palin

With a copy to:

Kenneth K. Fisher, Esq.  
Wolf Block LLP  
250 Park Avenue  
New York, New York 10177

If intended for the City, to:

Director,  
Department of City Planning  
22 Reade Street  
New York, New York 10007

and

Commissioner  
Department of Parks and Recreation  
The Arsenal, Central Park  
830 Fifth Avenue  
New York, New York 10065

With copies to:

Office of the General Counsel  
Department of Parks & Recreation  
The Arsenal, Central Park  
830 Fifth Avenue  
New York, New York 10065

and

Office of the General Counsel  
Department of City Planning  
22 Reade Street  
New York, New York 10007

If intended for DCP, to:

Director,  
Department of City Planning  
22 Reade Street  
New York, New York 10007

With a copy to:

Office of the General Counsel  
Department of City Planning  
22 Reade Street  
New York, New York 10007

If intended for DPR, to:

Commissioner,  
Department of Parks & Recreation  
The Arsenal, Central Park

830 Fifth Avenue  
New York, New York 10065

With a copy to:

Office of the General Counsel  
Department of Parks & Recreation  
The Arsenal, Central Park  
830 Fifth Avenue  
New York, New York 10065

From and after the Association Obligation Date, a copy of all notices to Declarant shall include a copy to the Association, and the Association shall give notice to the city and DPR of its address for notice.

Declarant, DCP or DPR or their respective representatives, by notice given as provided in this paragraph, 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, overnight courier 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.

## ARTICLE 11

### HOMEOWNERS ASSOCIATION

11.1 Filing Requirements. The Association shall be organized in accordance with the terms of this Declaration and in accordance with the New York State Not-for-Profit Corporation Law. Declarant shall certify in writing to the Chair and the Commissioner, or any individual succeeding to their jurisdiction, that the certificate of incorporation of the Association has been filed with the New York Secretary of State and that the certificate of incorporation and all other governing documents of the Association are in full compliance with the requirements of this Declaration and shall provide the Chair with copies of such certificate of incorporation and the other governing documents of the Association. If Declarant fails to comply with the provisions of this Section 11.1, the City may proceed with any available enforcement measures.

11.2 Obligations. The Association shall be established for, among other things, the purposes of assuming the Declarant's obligations to pay the Annual PAA Maintenance Payment and to renew and maintain the PAA Maintenance Security as set forth in this Declaration.

11.3 Members. the members of the Association (the "Association Members") shall consist of (a) the fee owners of any portion of the Proposed Development other than any Unit Interested Party, and (b) the Boards of Managers of any portion of the Proposed Development which is subject to a declaration of condominium.

11.4 Powers. To the extent permitted by law, Declarant shall cause the Association to be established with the power and authority to:

(a) impose fees or assessments against the Association Members, for the purpose of collecting funds necessary to satisfy the obligations of the Association pursuant to this Declaration;

(b) collect, receive, administer, protect, invest and dispose of funds;

(c) bring and defend actions and negotiate and settle claims to recover fees or assessments owed to the Association pursuant to this Article 11; and

(d) exercise any and all of such powers as may be necessary or appropriate for purposes of this Declaration and as may be granted to the Association in furtherance of the Association's purposes pursuant to the New York Not-for-Profit Corporation Law.

11.5 Successors. Every deed conveying title to, or a partial interest in, the Development Property, other than a deed to an Affordable Housing Unit, every lease held or granted by a cooperative corporation owning the Development Property or any portion thereof, every lease of all or substantially all of the Development Property, or the declaration of condominium imposed on any portion of the Development Property shall contain a recital or other provision that (i) the Unit Interested Party (other than a Unit Interested Party that owns an Affordable Housing Unit) is liable for its pro rata share of the assessment by the Association to the condominium in which such Unit is located for the Association's obligations under this Declaration, and (ii) the cost of maintenance of the Public Access Area and the obligations of the Association under this Declaration are essential elements of the City actions permitting the development of the Proposed Development in accordance with the provisions of this Declaration and in accordance with any other approvals granted by the City.

#### 11.6 Assessments

(a) The Association shall assess all real property within the Development Property, other than the Affordable Housing Units (the "**Assessment Property**"), in order to obtain funds for the Maintenance Funding Obligation or for any other obligations of the Association pursuant to this Declaration. The Assessment Property shall be assessed on a reasonable prorated basis as determined by Declarant, in compliance with all applicable laws. For Association Members who are the Boards of Managers of a Condominium, a reasonable basis for such proration shall be conclusively established if the New York State Attorney General accepts for filing an offering plan for the sale of interests in such Condominium, as applicable, which plan describes such proration. The Boards of Managers of each Condominium shall collect such assessments from the owners of individual residential or commercial units ("**Unit Owners**"), other than the Affordable Housing Unit, for delivery to the Association in accordance with the condominium declarations.

(b) Each periodic assessment by the Association, together with such interest, costs and reasonable attorney's fees as may be assessed in accordance with the provisions of this Declaration, shall be the obligation of the Association Members against whom the assessment is charged at the time such assessment falls due and may not be waived by such Association Member. The Association may bring an action to recover any delinquent assessment, including interest, costs and reasonable attorney's fees of any such action, at law or at equity, against the

Association Member obligated to pay the same. In the event an Association Member has not paid its assessment to the Association within ninety (90) days of the date such payment was due, the Association shall take all reasonable measures as may be required in order to collect such unpaid assessment.

(c) The periodic assessments shall be a charge on the land and a continuing lien upon the property owned by the Association Member against which each such assessment is made, except that if the Association Member is the Board of Managers of a Condominium, such lien shall be subordinate to the lien of any prior recorded mortgage in respect of such property given to a bank or other institutional lender (including but not limited to a governmental agency), the lien of any real property taxes, and the lien of the Board of Managers of such Condominium for unpaid common charges of the Condominium. The periodic assessments charged to an Association Member which is the Board of Managers of a Condominium shall be included within the common charges of the Condominium. The Association may bring an action to foreclose the Association's lien against the property owned by such Association Member, or a Unit Interested Party (other than the owner of an Affordable Housing Unit), as the case may be, to recover such delinquent assessment(s), including interest and costs and reasonable attorneys' fees of any such action. Any Unit Interested Party, other than the owner of an Affordable Housing Unit, by acceptance of a deed or a lease to a portion of the Development Property, thereby agrees to the provisions of this Section 11.6. Any Unit Owner may eliminate Association's lien described above on his or her unit by payment to the Association of such Unit Owner's prorated share of the periodic assessment by the Association to the Condominium in which such Unit is located. No Association Member or Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Public Access Area or abandonment of the Association's property, or by renunciation of membership in the Association, provided, however, that a Unit Owner's liability with respect to future assessments ends upon the valid sale or transfer of such Unit Owner's interest in the Development Property. A Unit Owner may give to the Association nevertheless, subject to acceptance thereof by the Association, a deed in lieu of foreclosure.

(d) It is expressly understood that Association Members who may be assessed for the operation and maintenance of the Public Access Area shall not include the holder of a mortgage or other lien encumbering (i) the fee estate in the Development Property or any portion thereof, or (ii) the lessee's estate in a ground lease of all or substantially all of the Development Property or all or substantially all of any Parcel or portion thereof, or (iii) any single building to be built on the Development Property, unless and until any such mortgagee succeeds to either (x) a fee interest in the Development Property or any portion thereof or (y) the lessee's estate in a ground Lease of all or substantially all the Development Property or all or substantially all of any Parcel or portion thereof (the interests described in sub-clauses (x) or (y) immediately preceding being each referred to as a "**Possessory Interest**") by foreclosure of the lien of the mortgage or other lien or acceptance of a deed or other transfer in lieu of foreclosure or exercise of an option to convert an interest as mortgagee into an Possessory Interest in any such fee or ground leasehold estate in the Development Property or by other means permitted under applicable law from time to time and no such mortgagee or lien holder shall be liable for any assessment imposed by the Association pursuant to this Article 11 until the mortgagee or lien holder succeeds to such Possessory Interest.



IN WITNESS WHEREOF, this Declaration has been duly executed by the Declarant as of the date first written above.

145 WEST STREET LLC

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

Name: Dean Palin

Title:

157-159 West Street LLC

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

Name: Dean Palin

Title:

The City hereby joins in the execution of this Declaration solely for the purpose of confirming its obligations hereunder.

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

Name: Robert C. Lieber

Title: Deputy Mayor for Economic Development

Approved as to Form:

\_\_\_\_\_  
Name:

Title:

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

On the \_\_\_\_ day of \_\_\_\_\_, 200\_\_ before me, the undersigned, personally appeared Dean Palin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

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

On the \_\_\_\_ day of \_\_\_\_\_, 200\_\_ before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

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

On the \_\_\_\_ day of \_\_\_\_\_, 200\_\_ , before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

## SCHEDULE OF EXHIBITS

EXHIBIT A	DESCRIPTION OF SUBJECT PROPERTY
EXHIBIT B	CERTIFICATION OF PARTIES IN INTEREST
EXHIBIT C	WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION
EXHIBIT D	FORM OF PAA MAINTENANCE AGREEMENT
EXHIBIT E	CONCEPT DRAWINGS
EXHIBIT F	PAA EASEMENT AREA
EXHIBIT G	DRAWINGS
EXHIBIT H	FEE TRANSFERRED PAA
EXHIBIT I	PERMITTED ENCUMBRANCES
EXHIBIT J	SCHEDULE
EXHIBIT K	FORM OF NOTICE OF SUBSTANTIAL COMPLETION
EXHIBIT L	PAA EASEMENT
EXHIBIT M	FORM OF NOTICE OF FINAL COMPLETION
EXHIBIT N	FORM PAA ACCESS PERMIT
EXHIBIT O	ECB PENALTY SCHEDULE
EXHIBIT P	FORM OF DRAINAGE EASEMENT

## EXHIBIT A

### DESCRIPTION OF SUBJECT PROPERTY

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

BEGINNING at the corner formed by the intersection of the southerly side of Huron Street with the westerly side of West Street;

RUNNING THENCE southerly along the said westerly side of West Street, 200 feet;

THENCE westerly along the northerly side of India Street and a line in continuation thereof westerly, 596 feet 7 1/2 inches to the exterior line of the established bulkhead along the East River approved by the Secretary of War on November 7, 1917 and by the Secretary of the Army on December 20, 1957;

THENCE northerly along the exterior line of said bulkhead, 204 feet 1/2 inch to the southerly side of Huron Street and a line in continuation thereof westerly;

THENCE easterly along said southerly side of Huron Street and a line in continuation thereof westerly, 637 feet to the intersection of the said southerly side of Huron Street with the said westerly side of West Street, the point or place of BEGINNING;

TOGETHER WITH the land lying under the waters of the East River adjoining the above described premises between said bulkhead line and the U.S. Pierhead line established by the Secretary of War on November 7, 1917 contained in the parcels described in Letters Patent granted by the People of the State of New York to Daypac Industries, Inc., dated December 10, 1969 and recorded in the Office of the New York City Register, Kings County, on January 2, 1970 in Reel 385 page 1936 (the "Letters Patent").

**EXHIBIT B**

**CERTIFICATION PURSUANT TO DEFINITION OF  
ZONING LOT SUBDIVISION IN  
SECTION 12-10 OF THE ZONING RESOLUTION OF  
DECEMBER 15, 1961 OF THE CITY OF NEW YORK -  
AS AMENDED - EFFECTIVE AUGUST 18, 1977**

N.B. # \_\_\_\_\_  
or  
ALT. # \_\_\_\_\_

**EXHIBIT "II"**

**CERTIFICATION PURSUANT TO ZONING LOT SUBDIVISION D  
OF SECTION 12-10 OF THE ZONING RESOLUTION OF  
DECEMBER 15, 1961 OF THE CITY OF NEW YORK  
AS AMENDED, EFFECTIVE AUGUST 18, 1977**

COMMONWEALTH LAND TITLE INSURANCE COMPANY, a title insurance company licensed to do business in the State of New York, and having an office at 630 Third Avenue, New York, New York, 10017, hereby certifies 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 Section 12-10, subdivision (d) of the Zoning Resolution of The City of New York, effective December 15, 1961, as amended are the following:

<b><u>NAME AND ADDRESS</u></b>	<b><u>NATURE OF INTEREST</u></b>
1. <b>145 WEST STREET LLC</b> c/o Palin Enterprises 235 Park Avenue South New York, NY 10003	Fee Owner-Block 2530 Lot 1 by Deed recorded under CRFN 2006000335525
2. <b>MANUFACTURERS AND TRADERS TRUST COMPANY</b> c/o M&T Bank 350 Park Avenue New York, NY 10022	Mortgagee- Block 2530 Lot 1 by Mortgage recorded under CRFN 2006000335526
3. <b>157-159 WEST STREET, LLC</b> c/o Palin Enterprises 235 Park Avenue South New York, NY 10003	Fee Owner-Block 2530 Lots 55 and 56 by Deed recorded under CRFN 2007000472978

**The subject tract of land with respect to which the foregoing parties are the parties in interest as aforesaid, is known as Tax Lots 1, 55 and 56 in Block 2530 on the Tax Map of the City of New York, County of Kings, and more particularly described as follows:**

Parcel A (Block 2530, Lot 1)

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

BEGINNING at the corner formed by the intersection of the northerly side of India Street and the westerly side of West Street;

RUNNING THENCE westerly along the northerly side of India Street and a line in continuation thereof westerly, 596 feet 7 ½ inches to the exterior line of the established bulkhead along the East River approved by the Secretary of War on November 7, 1917 and by the Secretary of the Army on December 20, 1957;

THENCE northerly along the exterior line of said bulkhead, 204 feet 1/2 inch to the southerly side of Huron Street and a line in continuation thereof westerly;

THENCE easterly along said southerly side of Huron Street and a line in continuation thereof westerly, 537 feet to a point thereon distant 100 feet westerly from the westerly side of West Street;

THENCE southerly parallel with West Street, 50 feet;

THENCE easterly parallel with Huron Street, 100 feet to the westerly side of West Street;

THENCE southerly along the westerly side of West Street, 150 feet to the corner aforesaid, the point or place of BEGINNING;

TOGETHER WITH the land lying under the waters of the East River adjoining the above described premises between said bulkhead line and the U.S. Pierhead line established by the Secretary of War on November 7, 1917 contained in the parcels described in Letters Patent granted by the People of the State of New York to Daypac Industries, Inc., dated December 10, 1969 and recorded in the Office of the New York City Register, Kings County, on January 2, 1970 in Reel 385 page 1936 (the "Letters Patent").

Parcel B (Block 2530, Lot 55)

ALL that certain plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, known as part of Lot 476 on Map of Greenpoint Farm property of John A. Meserole, deceased, surveyed November 1836, filed April 20, 1840, as Map #722, together bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Huron Street with the westerly side of West Street;

RUNNING THENCE southerly along the westerly side of West Street, 24 feet 6 inches;

THENCE westerly parallel with Huron Street and part of the distance through a party wall, 45 feet 6 inches;

THENCE southerly parallel with West Street, 6 inches;

THENCE westerly parallel with Huron Street, 54 feet 6 inches;

THENCE northerly parallel with West Street, 25 feet to the southerly side of Huron Street;

THENCE easterly along the southerly side of Huron Street, 100 feet to the corner the point or place of BEGINNING.

Parcel C (Block 2530, Lot 56)

ALL that certain plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, known and designated as Lot 475 and part of Lot 476 on Map of Greenpoint Farm of Estate of John Meserole, deceased, filed April 20, 1840, as Map #722, together bounded and described as follows:

BEGINNING at a point on the westerly side of West Street (Washington Street) distant 24 feet 6 inches southerly from the corner formed by the intersection of the westerly side of West Street with the southerly side of Huron Street;

RUNNING THENCE southerly along the westerly side of West Street, 25 feet 6 inches;

THENCE westerly parallel with Huron Street, 100 feet;

THENCE northerly parallel with West Street, 25 feet;

THENCE easterly parallel with Huron Street, 54 feet 6 inches;

THENCE northerly parallel with West Street, 6 inches;

THENCE easterly parallel with Huron Street and part of the distance through a party wall, 45 feet 6 inches to the westerly side of West Street to the point or place of BEGINNING.



Perimeter Description

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

BEGINNING at the corner formed by the intersection of the southerly side of Huron Street with the westerly side of West Street;

RUNNING THENCE southerly along the said westerly side of West Street, 200 feet;

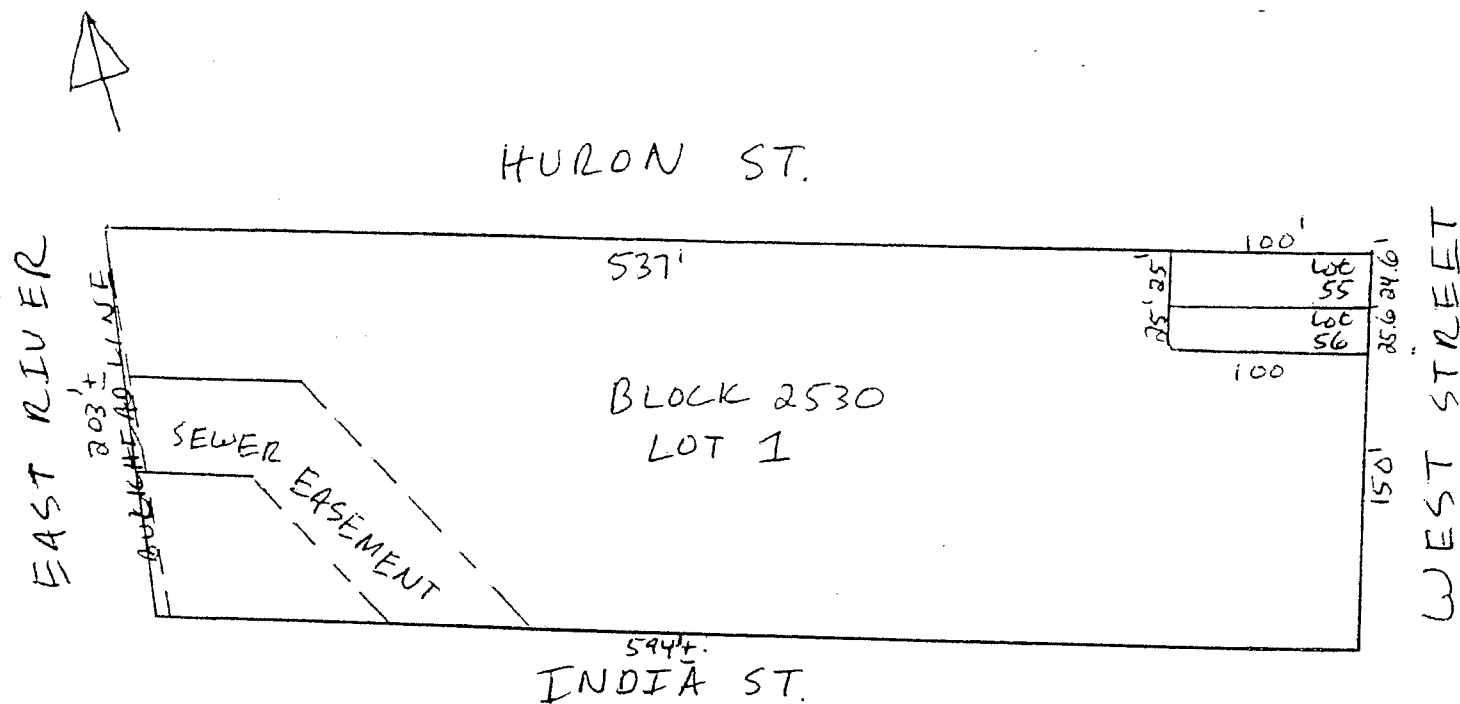
THENCE westerly along the northerly side of India Street and a line in continuation thereof westerly, 596 feet 7 ½ inches to the exterior line of the established bulkhead along the East River approved by the Secretary of War on November 7, 1917 and by the Secretary of the Army on December 20, 1957;

THENCE northerly along the exterior line of said bulkhead, 204 feet 1/2 inch to the southerly side of Huron Street and a line in continuation thereof westerly;

THENCE easterly along said southerly side of Huron Street and a line in continuation thereof westerly, 637 feet to the intersection of the said southerly side of Huron Street with the said westerly side of West Street, the point or place of BEGINNING;

TOGETHER WITH the land lying under the waters of the East River adjoining the above described premises between said bulkhead line and the U.S. Pierhead line established by the Secretary of War on November 7, 1917 contained in the parcels described in Letters Patent granted by the People of the State of New York to Daypac Industries, Inc., dated December 10, 1969 and recorded in the Office of the New York City Register, Kings County, on January 2, 1970 in Reel 385 page 1936 (the "Letters Patent").

The said premises are known as and by the street addresses 145 West Street and 157-159 West Street, Brooklyn, New York, Block No. 2530, Lots 1, 55 and 56 as shown on the following DIAGRAM:

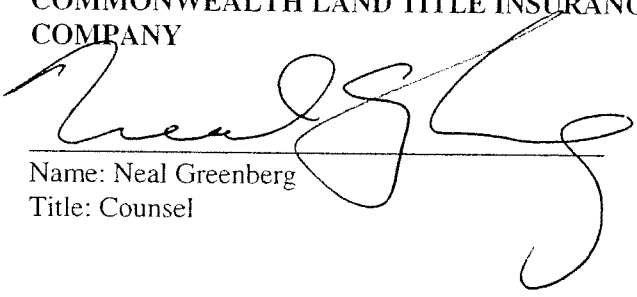


Certified as of the 15th day of January 2009 to 145 West Street LLC and 157-159 West Street, LLC, the applicants for this certification.

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 all the buildings thereon shall comply with the applicable provisions of the zoning lot resolution.

THIS CERTIFICATION IS MADE FOR AND ACCEPTED BY THE APPLICANT UPON THE EXPRESS UNDERSTANDING THAT LIABILITY HEREUNDER IS LIMITED TO FOUR HUNDRED FIFTY DOLLARS (\$450.00).

COMMONWEALTH LAND TITLE INSURANCE  
COMPANY



Name: Neal Greenberg  
Title: Counsel

State of New York       )  
                                          ) S.S.:  
County of New York    )

On the 26<sup>th</sup> day of January 2009, before me, the undersigned, personally appeared Neal Greenberg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

YOSSI ZARFATI  
Notary Public, State Of New York  
No. 02ZA6082146  
Qualified In ~~Queens~~ County  
Commission Expires 10/21/20 10

*Handwritten initials*

**EXHIBIT C**

**WAIVER AND CONSENT AND SUBORDINATION OF MORTGAGE TO  
RESTRICTIVE DECLARATION**

THIS WAIVER AND CONSENT AND SUBORDINATION OF MORTGAGE TO RESTRICTIVE DECLARATION (the "Waiver") is made by Manufacturers and Traders Trust Company, having an office c/o M&T Bank, 350 Park Avenue, New York, New York ("**Mortgagee**").

Mortgagee is the holder of a certain mortgage (as the same may be amended, restated, spread, replaced or otherwise modified from time to time, collectively, the "**Mortgage**") encumbering the premises (the "Premises") known as Block 2530, Lots 1, 55 & 56 (tentatively Lots 1 & 2) on the Tax Map of the Borough of Brooklyn in the City of New York, County of Kings, as more particularly described in Schedule A attached hereto (the "**Property**") and is a "party in interest" (as defined in the definition of the term "zoning lot" in Section 12-10 of the Zoning Resolution of the City of New York, effective December 15, 1961, as amended from time to time) with respect to the Property. Mortgagee does hereby:

Waive its right to execute, and consents to the execution, delivery and recordation of a certain Restrictive Declaration (the "**Declaration**") dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009 made by 145 West Street LLC and 157-159 West Street LLC; and

Agrees that the Mortgage shall in all respects be subject to and subordinate to the Declaration.

IN WITNESS WHEREFORE, the undersigned has executed this Waiver as of this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**MANUFACTURERS AND TRADERS  
TRUST COMPANY**

---

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

On the \_\_\_\_ day of \_\_\_\_\_, 2009, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

## SCHEDULE A

### DESCRIPTION OF SUBJECT PROPERTY

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

BEGINNING at the corner formed by the intersection of the southerly side of Huron Street with the westerly side of West Street;

RUNNING THENCE southerly along the said westerly side of West Street, 200 feet;

THENCE westerly along the northerly side of India Street and a line in continuation thereof westerly, 596 feet 7 1/2 inches to the exterior line of the established bulkhead along the East River approved by the Secretary of War on November 7, 1917 and by the Secretary of the Army on December 20, 1957;

THENCE northerly along the exterior line of said bulkhead, 204 feet 1/2 inch to the southerly side of Huron Street and a line in continuation thereof westerly;

THENCE easterly along said southerly side of Huron Street and a line in continuation thereof westerly, 637 feet to the intersection of the said southerly side of Huron Street with the said westerly side of West Street, the point or place of BEGINNING;

TOGETHER WITH the land lying under the waters of the East River adjoining the above described premises between said bulkhead line and the U.S. Pierhead line established by the Secretary of War on November 7, 1917 contained in the parcels described in Letters Patent granted by the People of the State of New York to Daypac Industries, Inc., dated December 10, 1969 and recorded in the Office of the New York City Register, Kings County, on January 2, 1970 in Reel 385 page 1936 (the "Letters Patent").

**EXHIBIT D**  
**FORM OF PAA MAINTENANCE AGREEMENT**

**RECORD AND RETURN TO:**

New York City Department of Parks and Recreation  
The Arsenal, Central Park  
830 Fifth Avenue  
New York, NY 10065  
Attn: General Counsel

## FORM OF PAA MAINTENANCE AGREEMENT

AGREEMENT made as of \_\_\_\_\_, 200\_ among 145 West Street LLC and 157-159 West Street LLC, each having an address c/o Palin Enterprises, 235 Park Ave South, 8th Floor, New York NY 10003-1405 (collectively hereinafter, "**Palin**") and the City Of New York ("**City**"), acting by and through the New York City Department of Parks & Recreation ("**Parks**"), having its headquarters at The Arsenal, Central Park, 830 Fifth Avenue, New York, NY 10065.

WHEREAS, Palin is the owner of certain real property located in the Borough of Brooklyn, Kings County, City and State of New York, which property is designated as Block 2530, Lots 1, 55 & 56 (tentatively Lots 1 & 2) on the tax map of the Borough of Brooklyn in the City of New York (the "**Subject Property**"), as more particularly described in Schedule A annexed hereto; and

WHEREAS, the Subject Property is located within a waterfront block, as that term is defined in Section 62-11 of the Zoning Resolution of the City of New York (the "**Zoning Resolution**") and is subject to the regulations of Article VI, Chapter 2 of the Zoning Resolution; and

WHEREAS, Palin intends to develop the Subject Property by constructing two (2) predominantly residential buildings (the "**Proposed Development**"); and

WHEREAS, Palin has submitted application No. N090055ZCK (the "**Application**") to the Department of City Planning requesting that the Chair certify that the drawings (the "**Drawings**") submitted with the Application comply with the requirements of Article VI, Chapter 2 of the Zoning Resolution; and

WHEREAS, in connection with the approval by the Chair of the City Planning Commission of the Application, Palin has executed, delivered and recorded a restrictive declaration dated \_\_\_\_\_, \_\_\_\_\_, governing the development of the Subject Property (the "**Declaration**"); and

WHEREAS, Palin intends to construct a Shore Public Walkway (the "**Shore Public Walkway**") and Supplemental Public Access Area ("**Supplemental Public Access Area**"), which together, are collectively known as the "**Public Access Area**," and which Public Access Area is collectively comprised of the Fee Transferred PAA (as defined in the Declaration) and the PAA Easement Area (as defined in the Declaration) and the Street Treatment Area (as defined in the Declaration); and

WHEREAS, pursuant to the terms of the Declaration, upon completion of construction of the Public Access Area, Palin will convey to the City (i) fee simple absolute title to the Fee Transferred PAA, and (ii) a non-exclusive easement to the PAA Easement Area; and

WHEREAS, pursuant to the Declaration, upon conveyance of the Public Access Area, Parks shall be responsible for the maintenance and capital repair of the Public Access Area; and



WHEREAS, pursuant to the Declaration, Palin has established the PAA Maintenance Account and has made the required Annual PAA Maintenance Payment; and

WHEREAS, Palin and the City wish to provide for their respective rights and obligations in connection with the maintenance and operation of the Public Access Area; and

WHEREAS, it is the intent of the parties that the Public Access Area be maintained in accordance with the standards and specifications set forth in this PAA Maintenance Agreement.

NOW THEREFORE, in consideration of the mutual obligations contained herein, the parties agree as follows:

## **1. DEFINITIONS**

Any capitalized term herein which is defined in the Declaration shall have the meaning set forth therein.

1.1 “**Commissioner**” shall mean the Commissioner of Parks and Recreation or any successor to the jurisdiction thereof.

1.2 “**Declaration**” shall have the meaning set forth in the recitals to this Agreement.

1.3 “**Parks**” shall mean the New York City Department of Parks and Recreation or any successor to its jurisdiction.

## **2. TERM**

Commencing on the Transfer Date, Parks shall be solely responsible for the ordinary maintenance of and capital repairs to the Public Access Area. Parks acknowledges and agrees that Palin shall thereupon have no obligation or responsibility for maintenance of the Public Access Area.

## **3. SERVICES**

3.1 General Scope. Parks will perform all ordinary maintenance and repairs, capital repairs and improvements, recreational, horticultural and security services for the Public Access Area in accordance with the Zoning Resolution. Parks will operate and maintain the Public Access Area to a high standard of service and cleanliness consistent with an “acceptable” rating under the Parks Inspection Program. The PAA Maintenance Account shall be used by Parks exclusively for the funding of the services set forth in this Agreement for the Public Access Area. Notwithstanding the foregoing, Parks agrees and acknowledges that its obligations to maintain and repair the Public Access Area in accordance with this Agreement is not conditioned upon or limited by the amount of funds in the PAA Maintenance Account. Parks further agrees and acknowledges that if the amount of funds in the PAA Maintenance Account is not sufficient to maintain or repair the Public Access Area as required hereunder, Parks shall be solely responsible for any additional costs attributable to such maintenance or repairs.

3.2 Hours of Operation. The hours of operation of the Public Access Area shall be determined by the City. Notwithstanding the foregoing, Parks has advised Palin that the Public Access Area shall be open and accessible to the public no earlier than 6 a.m. and no later than midnight. Parks agrees that if it wishes to change these hours, it shall consult with Palin prior to

implementing any change and further agrees that the hours of operation for the Public Access Area shall be consistent with the hours of operation for other waterfront parks owned and managed by Parks.

### 3.3 Cleaning.

(a) Dirt, litter and obstructions shall be removed as needed and leaves collected and removed as needed to maintain the Public Access Area in clean, neat and good condition.

(b) All walkways, sidewalks, lighting and all other improvements and facilities installed in the Public Access Area shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat and good condition.

(c) Graffiti shall be regularly painted over or removed, as appropriate to the nature of the surface, within 48 hours of its appearance.

(d) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.

(e) Branches and trees damaged or felled by excessive winds, ice, vandalism, or by any other reason whatsoever, shall be promptly removed.

3.4 Snow Removal. Snow and ice shall be promptly removed from all walkways so as not to interfere with safe passage and from all other paved surfaces no more than 24 hours after each snowfall or accumulation of ice.

3.5 Landscape Maintenance. The maintenance program for the planted portions of the Public Access Area shall consist of a "Spring Start-up Period" program, a "Season Closing Period" program, and a continuing maintenance program through the "Growing Season."

3.6 Spring Start-up Period. The Spring Start-up Period shall commence on March 1st and terminate not later than the end of the second week of April of each calendar year. The following work shall be undertaken and carried out annually during the Spring Start-up Period:

(a) Remove any winter protectives from trees, shrubs and other planting materials.

(b) Remove all landscaping debris including leaves and dead branches.

(c) Prune and trim trees that have overextended, dead or otherwise unsightly branches to maintain natural form.

(d) Remove or destroy any weeds growing between paving blocks, pavement, cobbled and concrete areas.

(e) Apply commercially available nitrogen rich fertilizer to trees, shrubs, planting materials and other lawn areas as appropriate.

(f) Remove any sand deposited as a result of winter sandings.

(g) Replace any plant material or trees that are dead, diseased and/or otherwise unhealthy with healthy specimens of substantially equal type and reasonable size.

- (h) Reseed grassed areas as needed.

3.7 Season Closing Period. The Season Closing Period shall begin on October 1st and shall terminate not later than November 1st of each calendar year. The following work shall be undertaken and carried out during the Season Closing Period:

- (a) Rake and collect leaves from Public Access Area.
- (b) Wrap trees, shrubs and other plant materials as necessary to ensure adequate winter protection.
- (c) Apply commercially available nitrogen rich fertilizer to all lawn areas.
- (d) Reseed grassed areas as needed.

3.8 Growing Season. The Growing Season shall commence with the commencement of the Spring Start-up Period and shall terminate at the end of the Season Closing Period. The following work shall be undertaken and carried out during the Growing Season:

- (a) Inspect trees on a regular basis and spray when necessary.
- (b) Water all trees, shrubs, plantings and grass areas as necessary to maintain in a healthy condition. In extended periods of drought (i.e., little precipitation/high temperatures for more than one week) ground cover, trees, shrubs and other plantings shall be thoroughly watered, subject to any City or State regulations governing water usage.
- (c) Mow grassed areas on a bi-weekly basis. During periods of excessive growth, mowing shall occur on a weekly basis. Reseed grassed areas as needed.
- (d) Weed as needed, no less than on a bi-weekly basis.

3.9 Repairs and Replacement. Non-capital replacements and repairs of park facilities within the Public Access Area, including, without limitation, furnishings, equipment and light bulbs, shall occur as needed to maintain such facilities in good order and working condition. Parks shall exercise due diligence in commencing the repair or replacement of same as promptly as possible and completing the same within a reasonably expeditious time after commencement. Repairs shall include, but not be limited to, the following, as applicable to the facilities in the Public Access Area:

- (a) Benches, Bleachers or Other Seating: Maintenance, including replacement of any broken or missing slats and painting, as necessary.
- (b) Walls, Barriers and/or Fencing: Any broken or materially cracked walls, barriers and/or fencing shall be repaired or removed and replaced. To the extent feasible, replacement materials and designs shall match the materials and designs of existing walls, barriers and/or fencing.
- (c) Pavements: All paved surfaces shall be maintained so as to be safe and attractive. To the extent feasible, replacement materials shall match existing materials.
- (d) Signage: All park graphics shall be maintained in a first class condition and all vandalized or damaged signage shall be promptly cleaned or replaced with new signage to match other installed signs.

(e) Painting: All items with painted surfaces shall be painted on an “as needed” basis. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the installed color.

3.10 Plant Materials and Trees: Plant materials and trees that are dead, diseased and/or otherwise unhealthy shall be replaced with healthy specimens of substantially equal type and reasonable size. Branches from mature trees that are at eye level (six feet or less from the ground) in an active area shall be pruned.

3.11 Park Repairs: Small, non-capital repairs to benches, walls, fencing, gates, paved surfaces, walkways and other structures and features of the Public Access Area shall be performed as needed to maintain the facilities in good and working condition. Parks will report to Palin on any park repairs that can not be completed within 48 hours and will provide a timeframe for completion for these repairs.

3.12 Capital Repairs: Parks shall be fully responsible for capital repairs. All capital repairs shall be performed in accordance with the Final Plans and Specifications unless Parks reasonably determines that such compliance is not feasible or economic in which event Parks shall use, to the extent feasible, replacement materials which are consistent with the quality and design set forth in the Final Plans and Specifications.

3.13 Illumination: During the period in which the Public Access Area is opened, all pedestrian walkways and paths shall be adequately illuminated from one half hour before sunset to one half hour after sunrise.

3.14 Signs: Parks will post and maintain all standard park signs.

3.15 Security: Parks shall provide security using its Park Enforcement Patrol (PEP) personnel as reasonably determined by Parks to provide appropriate coverage for the Public Access Area, based upon coverage needs for other Parks properties constructed pursuant to Section 62-831 of the Zoning Resolution, and acknowledges that the Annual PAA Maintenance Payment includes funding for such security. In addition, PEP personnel will be available 24 hours a day through Parks’ Central Communication’s Office.

3.16 Maintenance: Parks shall maintain the Public Access Area to a high standard of service and cleanliness. Parks staff assigned to the Public Access Area will be available 24 hours a day through Parks Central Communication’s Office.

3.17 Performance Monitoring and Inspection: The Public Access Area will be included in the Parks Inspection Program, and random inspections will be conducted by Parks inspection staff. These inspections will be based on the guidelines contained in the Park Inspection Manual. Parks will provide the results of all inspections to Palin.

#### **4. VEHICLES AND EQUIPMENT**

Parks will provide needed vehicles, equipment and supplies to perform the agreed services

#### **5. MAINTENANCE SECURITY**

Simultaneously with the execution of this Agreement, Palin shall post security in the form of a maintenance bond or irrevocable letter of credit (such maintenance bond or letter of credit shall be in such form as shall be reasonably acceptable to the City) naming the City as

beneficiary in an amount equal to four (4) months of the Annual PAA Maintenance Payment (such security, the "**PAA Maintenance Security**"). Upon completion of the Public Access Area, the PAA Maintenance Security shall be replaced every five years with a new security in an amount that is equal to one third of the Annual PAA Maintenance Payment for such year. If Palin fails to make the Annual PAA Maintenance Payment by June 30 of each year and such default is not cured within fifteen (15) days after receipt by Palin of written notice of such failure, then the City shall have the right to draw upon the PAA Maintenance Security. If the City has drawn down on the PAA Maintenance Security pursuant to this Section, Palin shall, within sixty (60) days of such action by the City, deposit with Parks an amount equal to the required amount of the PAA Maintenance Security.

## **6. SUBCONTRACTING**

Parks will notify Palin of any sub-contracts it plans to utilize for the performance of its obligations, in whole or in part, under this Agreement.

## **7. NOTICES AND REPORTING**

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 as follows:

If to Palin:

145 West Street LLC and 157-159 West Street LLC  
c/o Palin Enterprises  
235 Park Ave South, 8th Floor  
New York New York 10003-1405  
Attention: Dean Palin

If to Parks:

Department of Parks & Recreation  
The Arsenal, Central Park  
830 Fifth Avenue  
New York, NY 10065  
Attn: Office of the General Counsel

Either party may at any time change its address or add additional parties to receive a notice by mailing a notice to the other party. Each notice, demand, request, consent, approval or other communication shall be either sent by registered or certified mail, postage prepaid, overnight courier 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.

## **8. MISCELLANEOUS**

8.1 Amendments. This Agreement may not be modified or amended except by a written instrument executed by Palin and Parks after consultation with the Chair.

8.2 Cancellation. This Agreement may not be canceled except by written instrument executed by Palin and Parks.

8.3 Governing Law. This Agreement shall be governed by and construed under and in accordance with the laws of the State of New York. All actions arising under or relating to this Agreement shall be brought exclusively in the appropriate court in the County of New York State of New York. Each of the parties hereto agree to submit to personal jurisdiction and to waive any objection as to venue in the County of New York, State of New York.

8.4 Reliance by Third Parties. No person or entity other than Palin, the City, the Parks or a legal representative, successor in interest or assignee of such party shall be entitled to rely on this Agreement or the performance of Palin or the City hereunder. This Agreement is not made for the benefit of any other person or entity and no such other person or entity shall be entitled to enforce, or assert any claim arising out of or in connection with this Agreement.

8.5 Intentionally Omitted.

8.6 Right to Sue.

(a) Nothing contained herein shall prevent Palin from asserting any claim or action against the City arising out of the City's performance, or failure of performance as to any of the City's obligations under this Agreement or the exercise, by the City, of any of its rights under this Agreement. Notwithstanding the foregoing, Palin shall have no right to assert any claim or action against the City under this Agreement during the pendency of any action brought by the City to enforce its rights under the Maintenance Easement.

(b) The obligation of Palin to make the Annual PAA Maintenance Payment is absolute and unconditional and nothing contained herein, including, without limitation, any claim which Palin may assert against the City, shall entitle Palin to a right of set-off against its obligation to make the Annual PAA Maintenance Payment.

(c) If Parks believes that Palin is interfering on a continuing basis with the City's rights under the Maintenance Easement, then, in addition to any other remedies as may be available to it at law or equity and as are provided in this Agreement or in the Declaration, the City may seek a mandatory injunction to enforce its rights under the Maintenance Easement.

(d) Nothing contained herein shall prevent the City from asserting any claim or action against Palin arising out of Palin's obligations under this Agreement, or the exercise, by Palin of any of its rights under this Agreement.

(e) In the event any claim is made or any action brought in any way relating to the Agreement herein (except any claim made or action brought by Palin, or any claim or any action brought by the City or any of its agencies or instrumentalities against Palin) Palin shall diligently render to Parks and/or the City of New York without compensation any and all assistance which Parks and/or the City of New York may require of Palin.

(f) Palin shall report to Parks and the Department of Law in writing within ten (10) business days of the initiation by or against Palin of any legal action or proceeding in connection with or relating to this Agreement.

(g) In the event that any provision of this Agreement shall be deemed, decreed, adjudged or determined to be invalid or unlawful by any court of competent jurisdiction after all appeals are exhausted or the time for appeal has expired, such provisions shall be severable and the remainder of the Agreement shall continue to be in full force and effect.

(h) If Palin is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Agreement 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, Palin shall indemnify and hold harmless the City, Parks and DCP from and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of Palin's obligations under this Agreement. If any judgment is obtained against Palin from a court of competent jurisdiction in connection with this Agreement and such judgment is upheld on final appeal or the time for further review of such judgment or appeal by other proceeding has lapsed, Palin shall indemnify and hold harmless the City, Parks and DCP from and against all of its reasonable legal and administrative expenses arising out of or in connection with the enforcement of said judgment.

8.7 Agreement Runs with Land: Binding on Successors. This Agreement and all of the restrictions, covenants and agreements set forth in this Agreement, are intended to and shall run with the real property benefited and burdened hereby, and shall bind, and inure to the benefit of, the parties and their respective successors in title. Without limiting the generality of the foregoing, the restrictions, covenants and agreements set forth in this Agreement shall be binding upon Palin and any successor-in interest only for the period during which Palin or any such successor-in-interest is the holder of a fee interest in, or is a party-in-interest of the Subject Property and only to the extent of such fee interest or the interest rendering Palin a party-in-interest. At such time as Palin has no further fee interest in the Subject Property and is no longer a party-in-interest of the Subject Property, Palin's obligations and liability with respect to this Agreement shall wholly cease and terminate from and after the conveyance of Palin's interest and Palin's successors-in-interest in the Subject Property by acceptance of such conveyance automatically shall be deemed to assume Palin's obligations and liabilities hereunder to the extent of such successor-in-interest's interest.

8.8 Recording. Upon receipt of the recorded, original Agreement, Parks will notify Palin's counsel via email of such receipt.

8.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which, together, shall constitute one agreement.

SIGNATURES APPEAR ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

145 WEST STREET LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

157-159 West Street LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NEW YORK CITY DEPARTMENT OF PARKS &  
RECREATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



[illegible]

On the \_\_\_\_ day of \_\_\_\_\_, 200\_ before me, the undersigned, personally appeared Dean Palin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

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

On the \_\_\_\_\_ day of \_\_\_\_\_, 200\_ before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

[illegible]

On the \_\_\_\_ day of \_\_\_\_\_, 200\_ , before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

## SCHEDULE A

### DESCRIPTION OF SUBJECT PROPERTY

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

BEGINNING at the corner formed by the intersection of the southerly side of Huron Street with the westerly side of West Street;

RUNNING THENCE southerly along the said westerly side of West Street, 200 feet;

THENCE westerly along the northerly side of India Street and a line in continuation thereof westerly, 596 feet 7 1/2 inches to the exterior line of the established bulkhead along the East River approved by the Secretary of War on November 7, 1917 and by the Secretary of the Army on December 20, 1957;

THENCE northerly along the exterior line of said bulkhead, 204 feet 1/2 inch to the southerly side of Huron Street and a line in continuation thereof westerly;

THENCE easterly along said southerly side of Huron Street and a line in continuation thereof westerly, 637 feet to the intersection of the said southerly side of Huron Street with the said westerly side of West Street, the point or place of BEGINNING;

TOGETHER WITH the land lying under the waters of the East River adjoining the above described premises between said bulkhead line and the U.S. Pierhead line established by the Secretary of War on November 7, 1917 contained in the parcels described in Letters Patent granted by the People of the State of New York to Daypac Industries, Inc., dated December 10, 1969 and recorded in the Office of the New York City Register, Kings County, on January 2, 1970 in Reel 385 page 1936 (the "Letters Patent").

**EXHIBIT E**  
**CONCEPT DRAWINGS**



HURON STREET - VIEW WEST

Scale: NTS



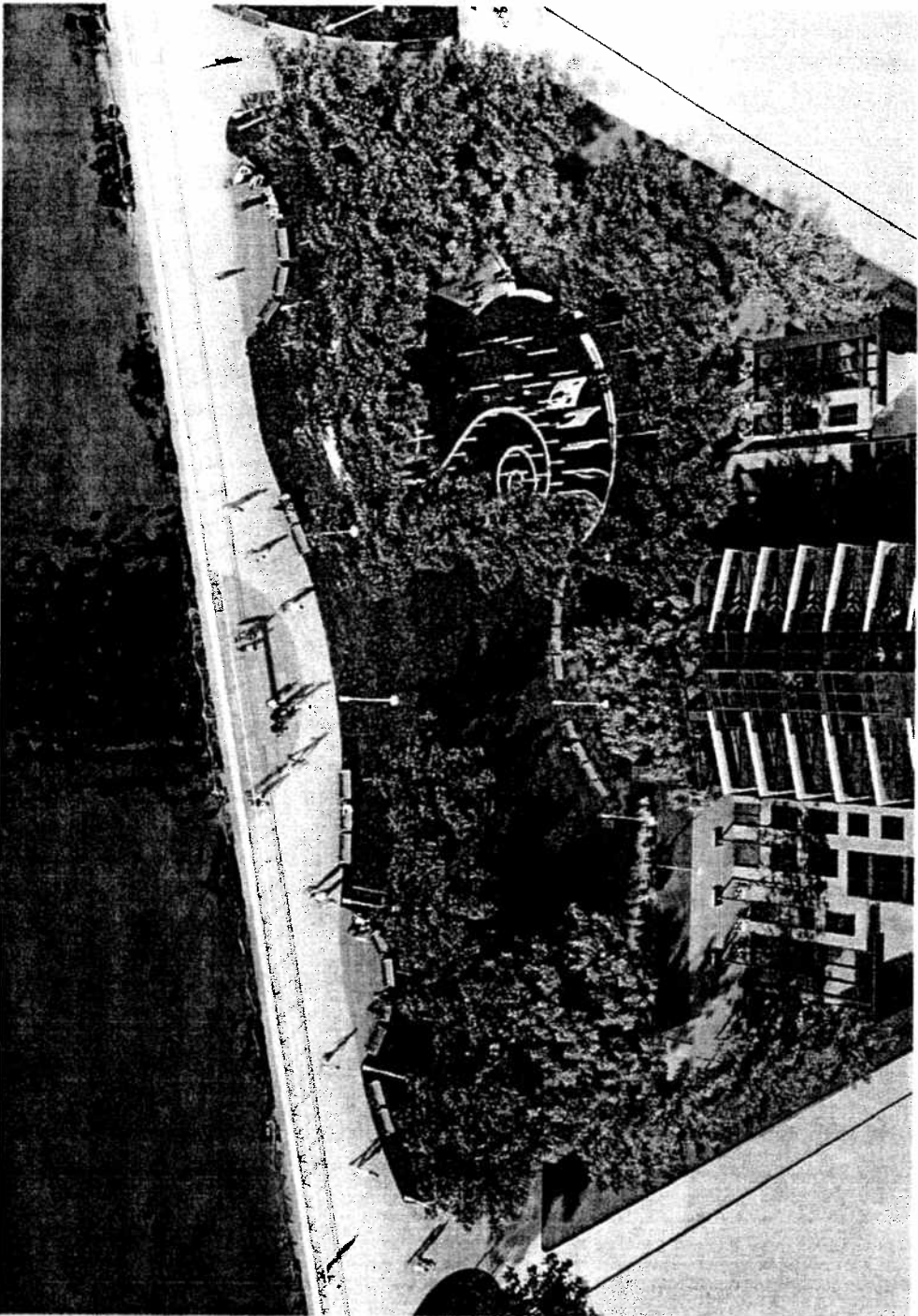
AERIAL

Scale: 1"

# EXHIBIT E, DRAWING L-5.1

## PAGE 2 OF 4

9 10 11 12 13 14 15



**ISMAEL LEYVA**  
ARCHITECTS, P.C.  
45 West 37th St., New York, NY 10018  
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### WSP Cantor Seimuk

**Structural Engineer**  
228 East 45th Street, 3rd Floor  
NEW YORK, N.Y. 10017  
TEL: 212.687.9885  
FAX: 646.487.5501

### George Langer Associates

**MEP/FP Engineering**  
13 West 29th Street  
NEW YORK, N.Y. 10001  
TEL: 212.633.0590  
FAX: 212.627.1837

### Langan Engineering & Environmental Services Inc.

**Geotechnical Engineers**  
21 Penn Plaza, 360 West 31st Street  
NEW YORK, N.Y. 10001  
TEL: 212.512.5500  
FAX: 212.279.5444

### Abel Baimson Butz, LLP

**Landscape Architects**  
80 8th Avenue, Suite 1105  
NEW YORK, N.Y. 10011  
TEL: 212.626.0630  
FAX: 212.626.0630

### No. Date: Issue:

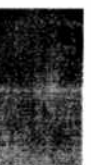
1	9/12/07	DRAFT WAP - DC SUBMISSION
2	1/18/08	WAP - DC SUBMISSION - TECH REVIEW
3	4/10/08	DRAFT WAP - DC SUBM - REVISED DESIGN
4	4/24/08	WAP - DC SUBMISSION - TECH REVIEW
5	7/14/08	DC SUBMISSION - TECH REVIEW
6	9/11/08	DC SUBMISSION

### NOTES:



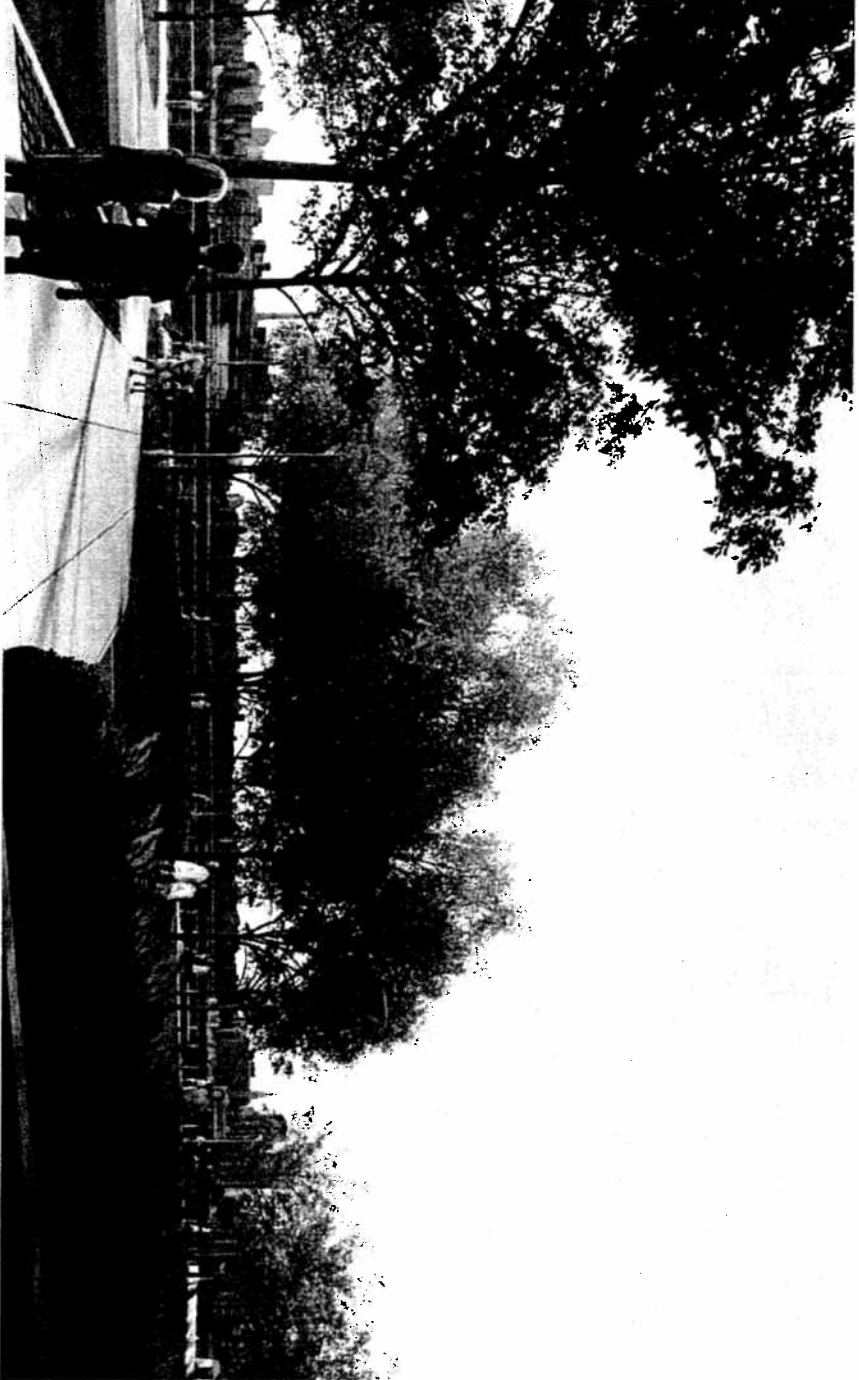

1 HURON STREET - VIEW WEST  
Scale: NTS

Scale: NTS



3  
AER  
Scale:

Scale:



2 INDIA STREET - VIEW WEST  
Scale: NTS

Scale: NTS



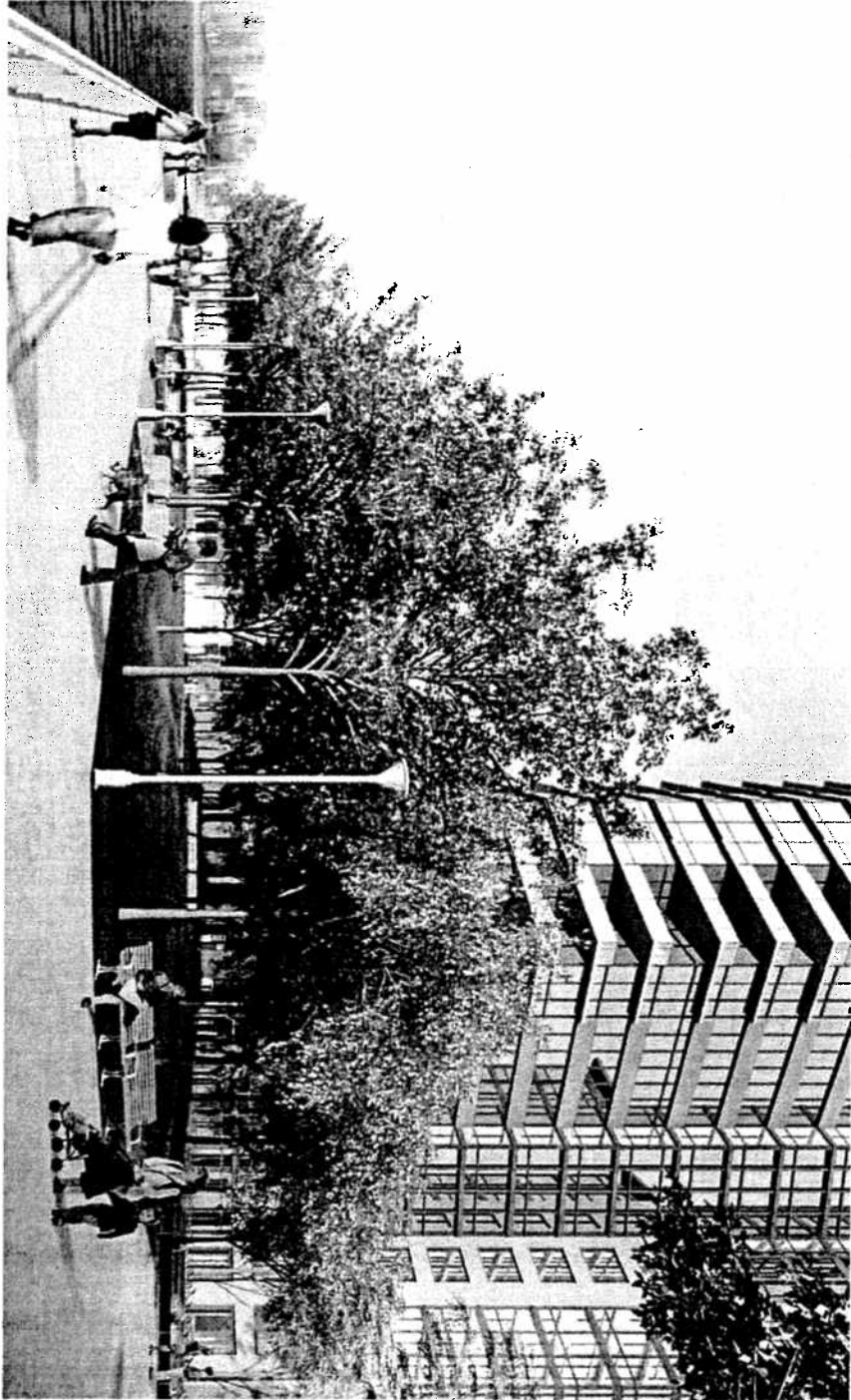
4  
ESPI  
Scale:

## Scala



3 AERIAL  
Scale: NTS


NOTES:



4 ESPLANADE- VIEW NORTH  
Scale: NTS

ILLUSTRATIVE  
RENDERINGS

PROJECT  
155 WEST STREET  
155 WEST STREET  
BROOKLYN

CLIENT  
145 WEST STREET, LLC.  
235 Park Avenue South  
New York, NY

No. Date: Revision:


SCALE: N/A  
DATE: 09-11-2008  
PROJECT No: 05.156



CP

5.1

## **EXHIBIT F**

### **PAA EASEMENT AREA**

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

BEGINNING at a point 470.87 feet west of the intersection of the northerly side of India Street and the westerly side of West Street, along India Street and extending 60.75 feet north of such line on an angle parallel with West Street;

RUNNING THENCE westerly, parallel with India Street, 23.20 feet;

THENCE northerly, at a 111.89 degree angle, 42.33 feet;

THENCE northeasterly, at a 136.01 degree angle, 42.33 feet;

THENCE easterly, at a 111.99 degree angle, 23 feet;

THENCE southerly, at a 90 degree angle, 10 feet;

THENCE westerly at a 90 degree angle, 16.46 feet;

THENCE southwesterly at a 111.99 degree angle, 31.55 feet;

THENCE southerly, at a 136.01 degree angle, 31.55 feet;

THENCE westerly, at a 111.99 degree angle, 16.46 feet;

THENCE southerly, at a 90 degree angle, 10 feet to the point or place of BEGINNING.



**EXHIBIT G**  
**DRAWINGS**

# EXHIBIT G, CP-SURVEY PAGE 1 OF 4



## SITE LOCATION MAP N.T.S.

N80°00'00"E 304.00'

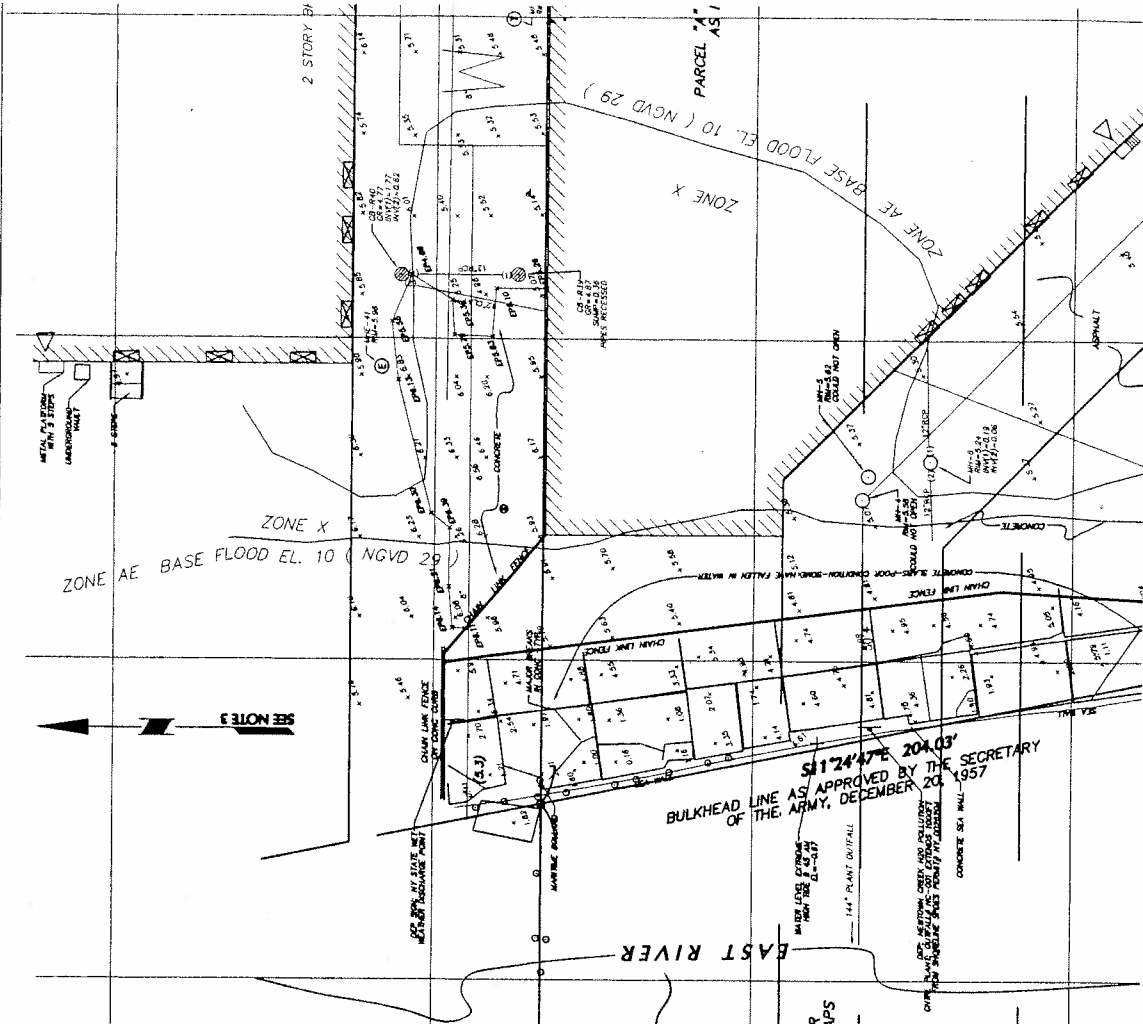
ADJACENT LAND UNDER WATERS OF THE EAST RIVER NOT DESCRIBED IN "LETTERS PATENT" AS PER GCM 200600035525

APPROX. 50' WIDE SEWER EASEMENT AS PER TAX MAPS

PARCEL "B" CONTAINED IN "LETTERS PATENT" AS PER REEL 365 PAGE 1336

PARCEL "C" CONTAINED IN "LETTERS PATENT" AS PER REEL 365 PAGE 1336

PIERHEAD LINE AS APPROVED BY THE SECRETARY OF THE WAR, NOVEMBER 7, 1917



SEE NOTE 3

ZONE AE BASE FLOOD EL. 10 (NGVD 29)

ZONE X

BULKHEAD LINE AS APPROVED BY THE SECRETARY OF THE ARMY, DECEMBER 20, 1957

EAST RIVER

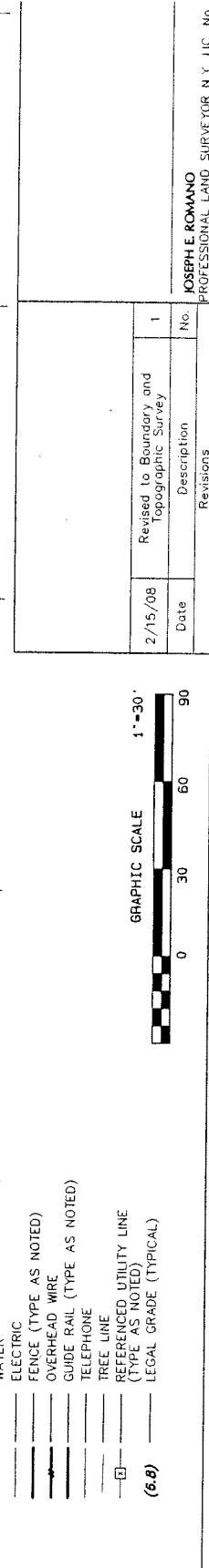
APPROX. 50' WIDE SEWER EASEMENT AS PER TAX MAPS

PARCEL "B" CONTAINED IN "LETTERS PATENT" AS PER REEL 365 PAGE 1336

PARCEL "C" CONTAINED IN "LETTERS PATENT" AS PER REEL 365 PAGE 1336

PIERHEAD LINE AS APPROVED BY THE SECRETARY OF THE WAR, NOVEMBER 7, 1917

[illegible]



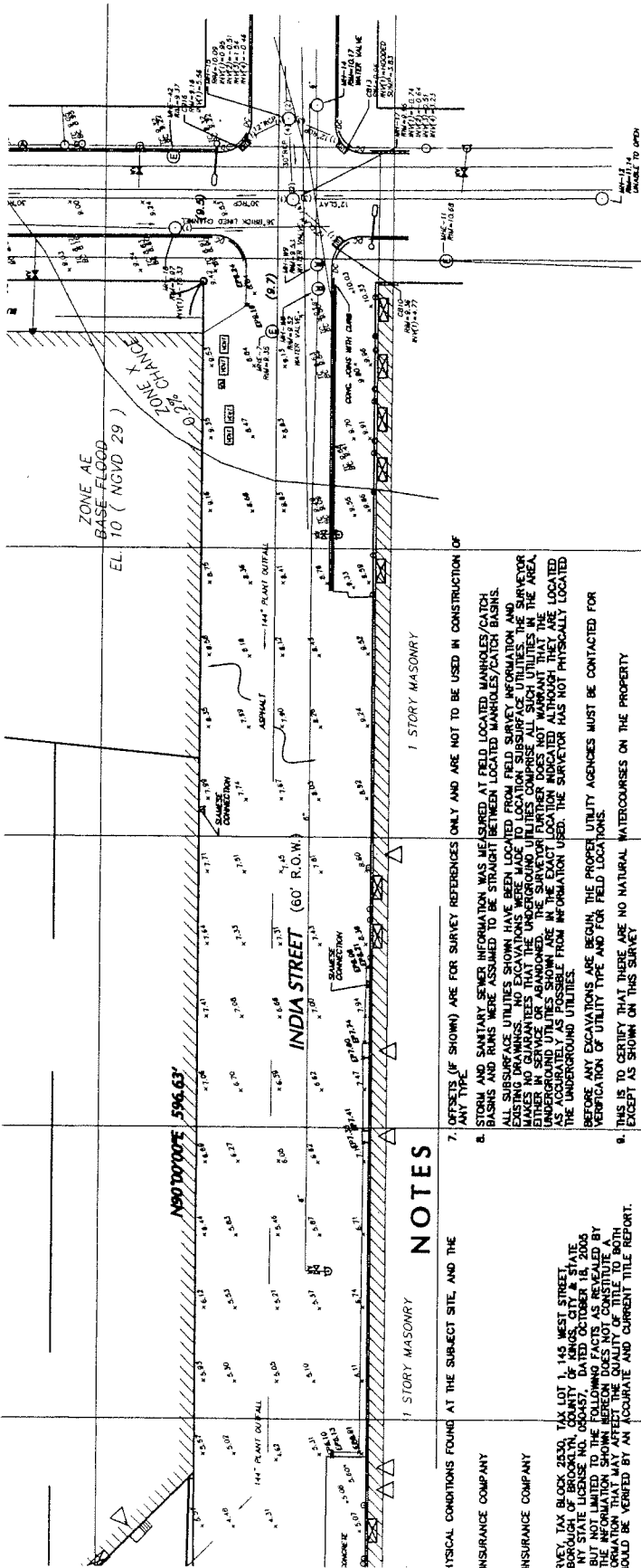
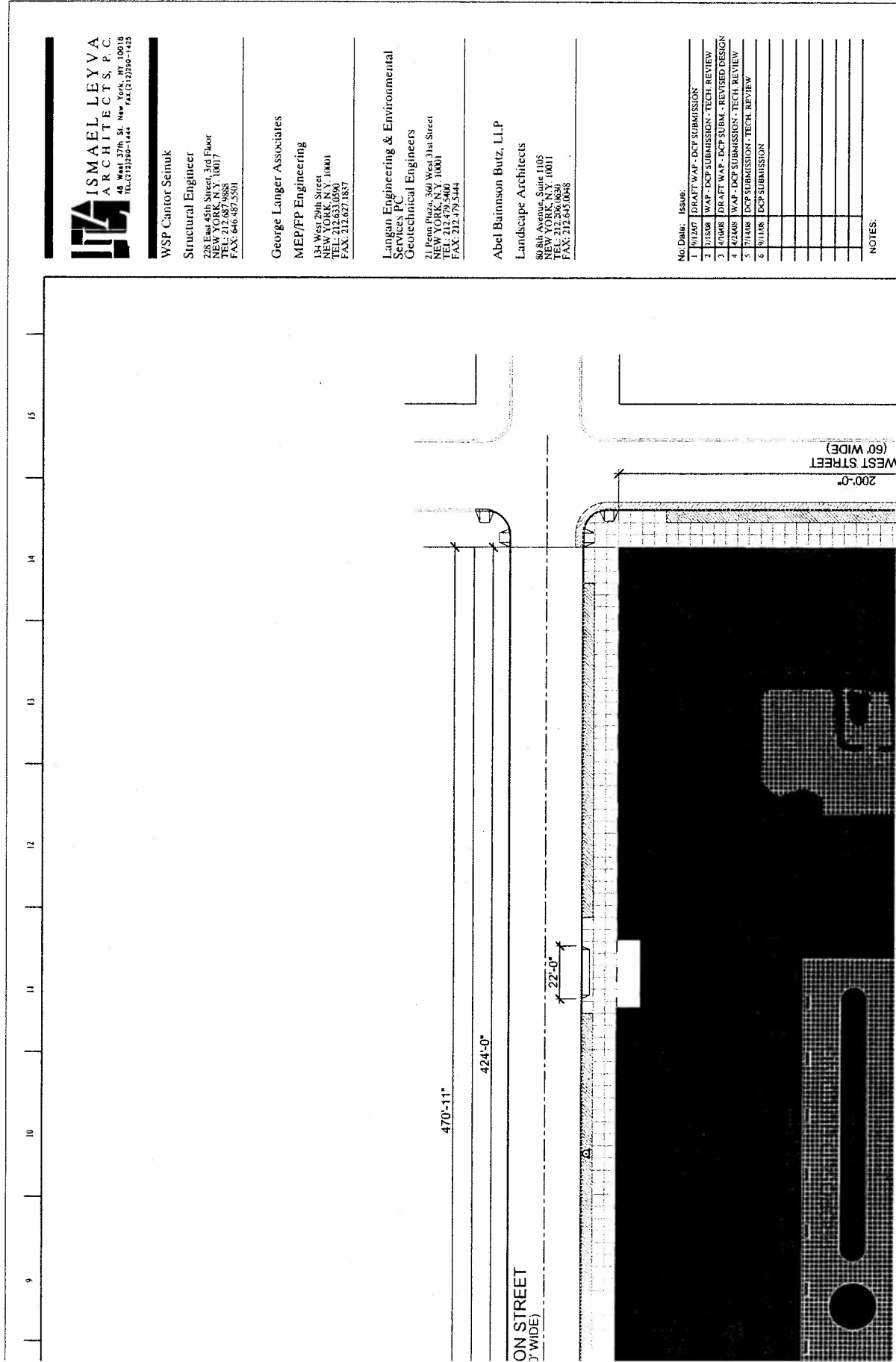


EXHIBIT G, CP-SURVEY  
PAGE 4 OF 4





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14 West 29th St., New York, NY 10018  
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**WSP Cantor Seinuk**  
Structural Engineer  
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NEW YORK, NY 10017  
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FAX: 212-685-5501

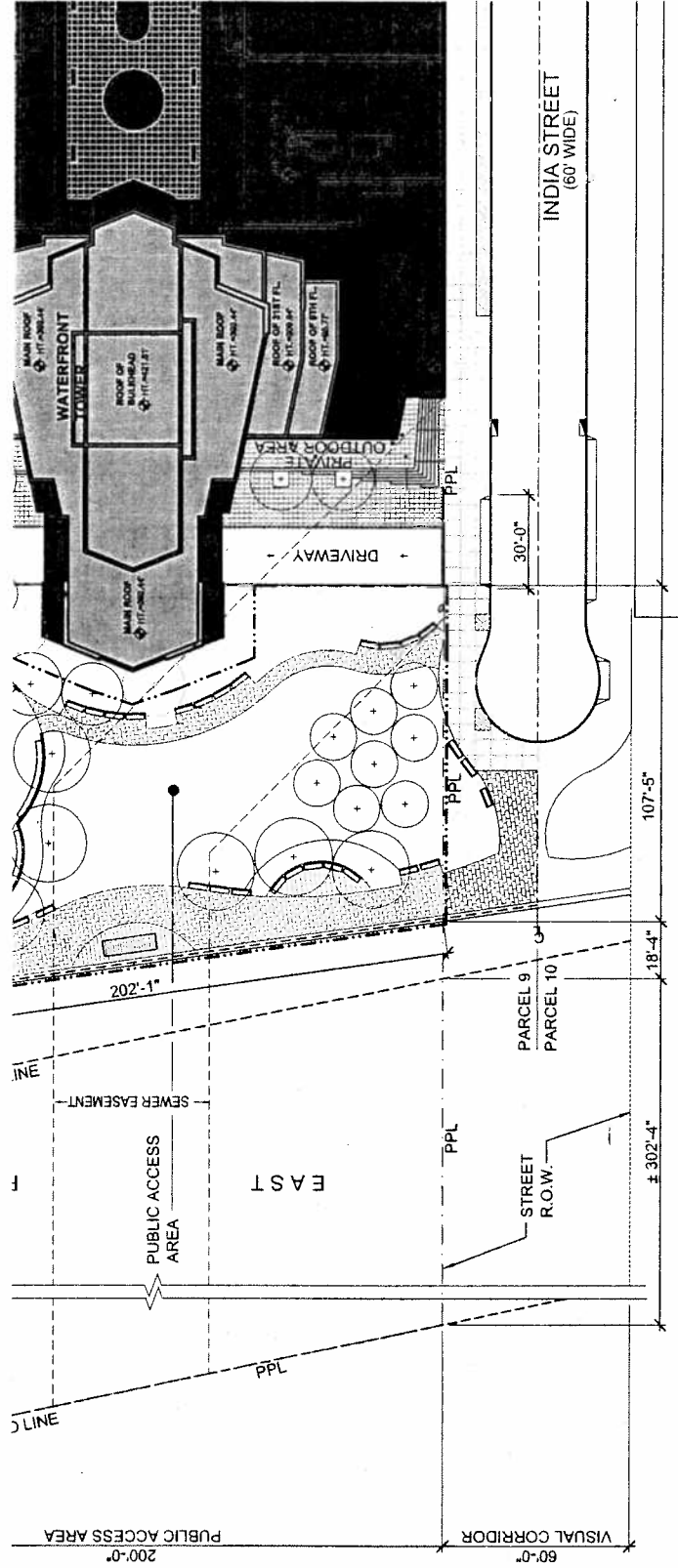
**George Langer Associates**  
MEP/FP Engineering  
134 West 29th Street  
NEW YORK, NY 10001  
TEL: 212-633-0590  
FAX: 212-627-1857

**Langan Engineering & Environmental**  
Services PC  
Geotechnical Engineers  
21 Penn Plaza, 360 West 31st Street  
NEW YORK, NY 10001  
TEL: 212-479-5400  
FAX: 212-479-5444

**Abel Bainson Butz, LLP**  
Landscape Architects  
80 8th Avenue, Suite 1105  
NEW YORK, NY 10011  
TEL: 212-206-0830  
FAX: 212-645-0048

No.	Date	Issue
1	7/12/07	DRAFT WAP - DCP SUBMISSION
2	7/15/08	WAP - DCP SUBMISSION - TECH REVIEW
3	4/10/08	DRAFT WAP - DCP SUBM. - REVISED DESIGN
4	4/24/08	WAP - DCP SUBMISSION - TECH REVIEW
5	7/14/08	DCP SUBMISSION - TECH REVIEW
6	9/11/08	DCP SUBMISSION

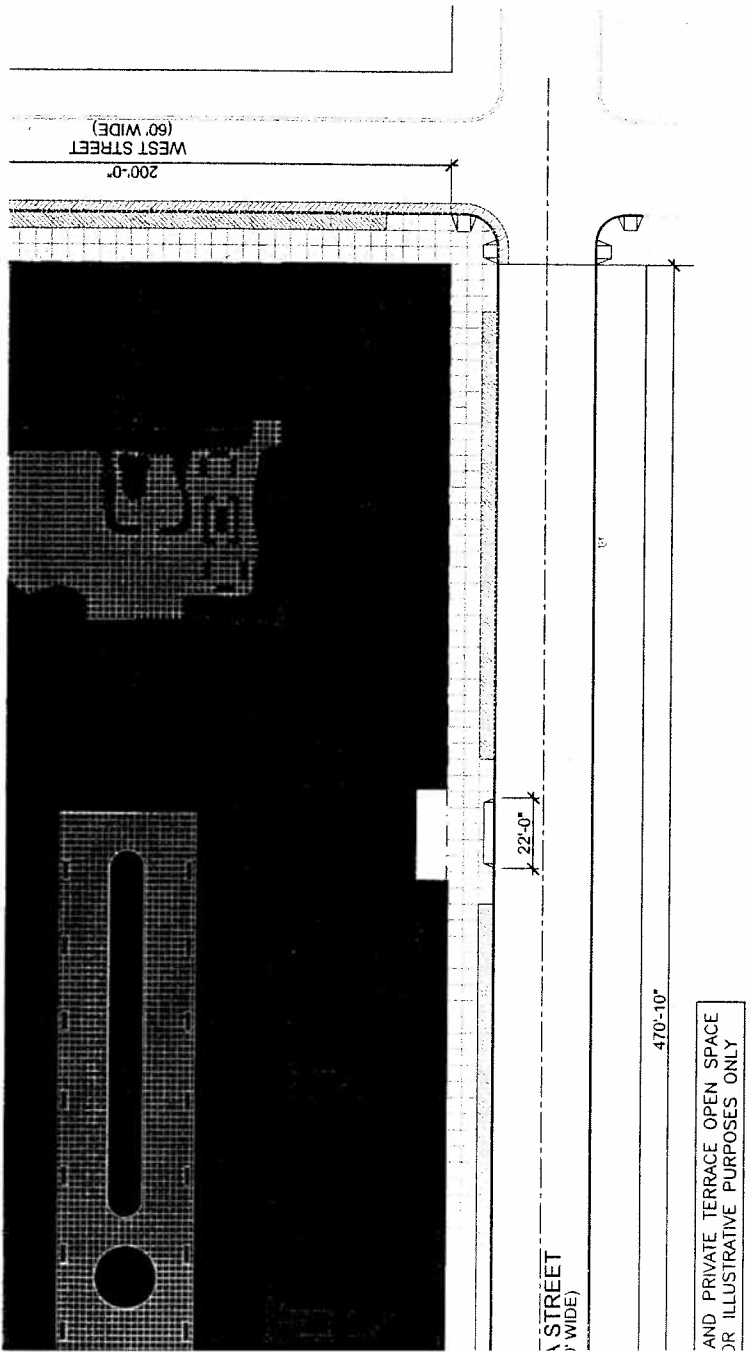
NOTES



NOTE: BUILDING AND PRIVATE TERR  
SHOWN FOR ILLUSTRATIVE P

1 Waterfront Site Plan  
Scale: 1" = 30'-0"





**LEGEND**

- PPL — PROPERTY LINE
- [ - - - - - ] PUBLIC ACCESS AREA

NO.	DATE	REVISION

NOTES:

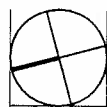
NO.	DATE	REVISION

**CLIENT**  
 145 WEST STREET, LLC.  
 235 Park Avenue South  
 New York, NY

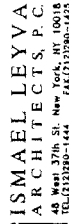
**PROJECT**  
 155 WEST STREET  
 155 WEST STREET  
 BROOKLYN

**WATERFRONT  
 SITE PLAN**

SCALE:	1" = 30'-0"
DATE:	09-11-2008
PROJECT NO:	05.196



[illegible]



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No.	Date:	Issue:
1	9/12/07	DRAFT WAP - DCP SUBMISSION
2	1/15/08	WAP - DCP SUBMISSION - TECH REVIEW
3	4/01/08	DRAFT WAP - DCP SUBM. - REVISED DESIGN
4	4/24/08	WAP - DCP SUBMISSION - TECH REVIEW
5	7/14/08	DCP SUBMISSION - TECH REVIEW
6	9/11/08	DCP SUBMISSION

NOTES:

62-674: Signage The New York Waterfront Symbol Plaque shall be used to direct the public to waterfront public access areas and to identify the entry points of these areas.	(a)(1): Entry Plaque location (b)(1)(2),(3) and (4): Entry Plaque (c) (1)(2),(3),(4) and (5): Information Plaque	An entry plaque shall be provided at the entrance to a WPAA from a street. Entry plaques shall contain waterfront symbol and "Public Waterfront" watermark or icons, symbol for physically handicapped and direction, compass for orientation. A separate information plaque with information of not less than 2x2' shall be constructed from a permanent material and located at a clearly visible point within the transition zone of any required SPAA with information regarding SPAA type, tree and bench quantities, owner information, directions for complaints and physically handicapped accessibility statement.	Information plaque is provided at transition zone with all required information. Information plaque is provided at transition zone with all required information.	Plaque provided at main entry & plaque provided at south entry. Entry plaques contains all required information. Information plaque is provided at transition zone with all required information.	Complex. Complex. Complex.
62-675: Planting and Trees (a): Plant Material and Installation Requirements (1): Minimum Planting Standard (2): Tree Height and Caliper (3): Tree and Shrub Spacing (4): Root Zone (5): Soil (c): Design Requirements for Planting Areas (2)(1): Continuous Tree Pits (6): Tree Spacing (c): Design Requirements for Planting Areas (3): Planting Beds (4): Raised planting beds and berms (5): Lawn	Min. planting standard for planting areas shall be turfgrass or groundcover. Min. of 3" caliper for large and medium shade trees. Min. 2" caliper for small trees. Large trees must be spaced at least 25' apart. Medium trees spaced at least 20' apart, small trees spaced at least 15' apart, small trees may be spaced 20' from large trees. The root zone shall be surrounded with barrier hedge planting. All planting areas shall be located on undisturbed subsoil or clean fill. Continuous tree pits shall be a min. of 6' wide and 36" deep and have a length as required to meet min. plant spacing standards. Trees shall be located a min. of 3' from any side of a continuous tree pit and 5' from any end. Retaining walls are permitted along the perimeter of a planting bed. Planting beds shall be a min. of 3'x3'x2' 6" deep for turfgrass or groundcover and 3' x3'x3' 6" deep for shrubs. Trees, shrubs and groundcovers may be combined in a single bed only if bed meets min. dimensions for largest plant. A raised planting bed or berm shall comply with the dimensional standards for a planting bed except that the height from the adjacent paved walking surface to the top of a berm shall be a max. of 60". A "lawn" area planted with turfgrass must have a min. soil depth of 2' 6". At least 60% of its perimeter shall have a grade level within 6" of that of the adjacent pedestrian circulation zone providing unobstructed pedestrian access.	Proposed planting exceeds min. standards. Large and medium shade trees have 3" min. caliper and small trees have 2" min. caliper. Trees are spaced at least the required distance apart from the smallest tree. The root zone is surrounded by barrier hedge planting. Planting areas located on undisturbed subsoil or clean fill. Continuous tree pits are a min. of 6' wide and 36" deep and have a length that will meet min. plant spacing requirements. Trees are located at least 3' from any side and 5' from any end. Planting beds have at least a 3'x3'x2' 6" dimension and meets at least minimum requirements for largest plant. Raised planting beds or berms are no taller than 60" from adjacent paved surfaces and comply with dimension standards for a planting bed. Lawn area has a min. depth of 2'6" and 100% of turfgrass perimeter has a grade level within 6" of adjacent pedestrian circulation zone.	Proposed planting exceeds min. standards. Large and medium shade trees have 3" min. caliper and small trees have 2" min. caliper. Trees are spaced at least the required distance apart from the smallest tree. The root zone is surrounded by barrier hedge planting. Planting areas located on undisturbed subsoil or clean fill. Continuous tree pits are a min. of 6' wide and 36" deep and have a length that will meet min. plant spacing requirements. Trees are located at least 3' from any side and 5' from any end. Planting beds have at least a 3'x3'x2' 6" dimension and meets at least minimum requirements for largest plant. Raised planting beds or berms are no taller than 60" from adjacent paved surfaces and comply with dimension standards for a planting bed. Lawn area has a min. depth of 2'6" and 100% of turfgrass perimeter has a grade level within 6" of adjacent pedestrian circulation zone.	Complex. Complex. Complex. Complex. Complex. Complex. Complex. Complex. Complex. Complex.	
62-676: Paving (a): Paving Material (1): Sealing Areas (b): Dimensional Requirements	Paving shall consist of unit pavers or wood decking. All unit pavers shall have min. 2" thickness for pedestrian use and 3" for vehicular use and shall not exceed a max. of 4 SF in area. Wood planks for decking shall be a min. of 3" thick (nominal dimension). The direction of the planks shall not be	Paving consists of unit pavers and wood decking. All paving material provided is in pedestrian areas and use a thickness of at least 2". Direction of planks is perpendicular to traffic.	Paving consists of unit pavers and wood decking. All paving material provided is in pedestrian areas and use a thickness of at least 2". Direction of planks is perpendicular to traffic.	Complex. Complex.	

WPAA complies with ADA and ANSI standards.	Complies.
Pedestrian Circulation Zone with circulation path provided. 15' wide Buffer Zone along boundary with the non-public portions of the zoning lot provided. Buffer zone improved entirely as planting except for permitted obstructions. A Transition Zone is provided when the pedestrian circulation zone is located within 10' of another public access network.	Complies. Complies. Complies. Complies.
The waterfront public access area is unobstructed from its lowest point to the sky, except for permitted obstructions (see 62-628 below).	Complies.
SPW consists of a pedestrian circulation zone along its seaward edge and a buffer along its landward edge.	Complies.
set forth in this section.	
Cross-sectional grading of circulation path has a slope between 1.5% and 3%.	Complies.
No steps, stairways and ramps in required circulation path.	Complies.
No steps or ramps located in WPAA.	Complies.
No steps located in a required pedestrian circulation path within the boundaries of a transition zone.	Complies.
The buffer zone grade level is no more than 15' different than that within 5' of adjoining pedestrian circulation zone.	Complies.
WPAA is unobstructed from its lowest level to the sky except for permitted obstructions. WPAA is unobstructed with the exception of trees, plants, retaining walls, site furniture, fountains, lights, open artors and quarrels. Only permitted obstructions are located without restriction as to location.	Complies. Complies. Complies.
Permitted obstructions with restrictions as to location only occur within 5' of the pedestrian circulation zone.	Complies.

0.2-4.10 requirements for Supplemental Public Access Area	SPAA shall be provided in order to meet the total amount of waterfront public access area required. In R6 and R6C2.4: 15% x 55,000 = 8,250 SF In R2 district: 20% x 66,363 = 13,673 SF Total: 21,923 SF required.	21,923 SF provided.	Complies.	
62-831 Waterfront Access Plan BK-1 Greenpoint-Williamsburg: Parcels 8 and 9	(a): Areas wide modifications (c): Supplemental Public Access Areas (f): Connection  (b): Buffer Zone  (4): Street Treatment	A required supplemental public access area shall be directly connected to the waterfront or a shore public walkway on either its landward or seaward side and its pedestrian circulation zone shall be contiguous with the adjacent pedestrian circulation zone.  A buffer zone shall only be required where a supplemental public access area adjoins a non-publicly accessible portion of a zoning lot, in which case its minimum width shall be 15 feet.  All streets adjacent to a shore public walkway or supplemental public access area shall be improved as a continuation of such shore public walkway or supplemental public access area, pursuant to the design requirements of paragraph (b) of this Section, inclusive.	The required SPAA is directly connected to an upland connector (public streets) and the SPW. SPAA and SPW are combined into Williamsburg Shore Public Walkway and their pedestrian circulation zones are contiguous.  5-15' wide planted buffer provided where SPAA adjoins non-publicly accessible part of zoning lot.  Adjacent streets are improved as a continuation of SPW and SPAA.	Complies.  Does not comply - Requesting authorization to modify per 62-722.  Complies.
62-831(e): Special Public Access Provisions by Parcel	62-831(e)(3)(i)(R): Parcel 9: Williamsburg Shore Public Walkway	The requirements for Prototype 4 shall apply. The SPAA requirements shall be provided to widen the Pedestrian Circulation Zone of the SPW, evenly distributed along the entire length of such SPW.	SPAA placed adjacent to Pedestrian Circulation Zone of SPW evenly distributed along the entire length of SPW. Total Public Access Area width varies between 10'-5" and 136'-2".  Pedestrian Circulation Zone not including Buffer: 19,557 SF.  Planted Buffer where SPAA adjoins non-publicly accessible area.  Total Buffer: 2,368 SF.  Total Public Access Area and Buffer: 21,925 SF	Complies.
62-831(b)(2): Greenpoint-Williamsburg Shore Public Walkway Prototype II	(i) Widths  (ii) Circulation  (iii) Seating  (iv) Planting  (v) Trees	SPW shall have a min. 30 foot Pedestrian Circulation Zone and min. 15 foot Buffer Zone.  12' minimum clear width circulation path required within 10' of the seaward edge.  1 LF770 SF of Shore Public Walkway required; 21,925/70 = 314 LF.  70% of pedestrian circulation zone - excl. circulation path - to be planted: 11,755 SF required. (19,557-2,764 = 16,793) (70% of 16,793 = 11,755)  min. 50% of planting to be lawn: 1 shade tree/1,900 SF of SPW - to be located in Pedestrian Circulation Zone: 12 required. (21,925/1900 = 11.54)  1 shade or ornamental tree/850 SF of SPW - to be located in the pedestrian circulation zone or in the Buffer Zone: 26 required (21,925/850 = 25.79)  Fifty percent of total shade trees shall be located within 10 feet of the required clear path.	45' wide SPW provided with 45' wide Pedestrian Circulation Zone. 5-15' wide Buffer Zone provided in SPAA.  12' clear circulation path provided along expanse within 10' of seaward edge. 2,764 SF. 378 LF provided.  9,768 SF planted zone provided (83% of required). (9,768 = 58% of 16,793) (8,768 = 83% of 11,755) 7,099 SF lawn (73% of planted zone). 12 shade trees provided and located in pedestrian circulation zone.  19 shade or ornamental trees provided (5 shade trees and 14 ornamental trees).  7 shade trees (> 50%) within 10 feet of the clear path.	Complies  Does not comply - Requesting authorization to modify per 62-722.  Complies.  Complies.  Does not comply - Requesting authorization to modify per 62-722.  Complies.
62-831(g) Waterfront Access Plan	BK-1a Parcels BK-1b Upland Connection BK-1c Visual Corridor	8 & 9 no upland connection traversing through zoning lot required no visual corridor through zoning lot required	N/A  Mapped India and Huron Streets	Complies

WPAA is unobstructed with the exception of trees, plants, retaining walls, site furniture, fountains, lights, open arbors and guardrails. Only permitted obstructions are located without restriction as to location.	Complies.
Permitted obstructions with restrictions as to location only occur within 5' of the pedestrian circulation zone.	Complies.
Required clear paths remain unobstructed	Complies.
x above its lowest level.	
Only permitted obstructions interfere with the visual corridor, within the two periods within 15' of the centerline of the visual corridor.	Complies.
Guardrail provided continuously along water edges of platform.	Complies.
Guardrail provided as per illustration. See detail 5 on drawing CP-L-2.5.	Complies.
Walls within buffer zone do not obstruct access to required seating and are 48" in height or shorter.	Complies.
344 LF provided with 12" high backs and 14"-22" depth. 344 LF provided without backs with 16" min. depth.	Complies.
100% of seating is 16"-20" above level adjacent seating surfaces.	Complies.
All benches are set back 3' from circulation path.	Complies.
174 LF provided. See detail 3 on drawing CP-L-2.5	Complies.
tion's requirement.	
20 poles provided at 40' OC max. at 15' height, within 5' of circulation path.	Complies.
Luminaire has been selected to meet all design criteria as per zoning section.	Complies.
All Light poles as per III C1. See detail 1 on drawing CP-L-2.5	Complies.

62-476: Paving	adjacent pedestrian circulation zone providing unobstructed pedestrian access.	
Paving in WPAA shall comply with the requirements of this section.		
(a): Paving Material	Paving shall consist of unit pavers or wood decking.	Complies.
(1): Sealing Areas		
(b): Dimensional Requirements	All unit pavers shall have min. 2" thickness for pedestrian use and 3" for vehicular use and shall not exceed a max. of 4 SF in area. Wood planks for decking shall be a min. of 3" thick (nominal dimension). The direction of the planks shall not be parallel to the direction of traffic.	Complies.
62-481(d)(5): Paving	Paving for required clear path to be gray; min. 50% of all other paved areas to be paved in the same color range.	Complies.


NOTES:


No. Date: Revision:

CLIENT  
145 WEST STREET, LLC.  
235 Park Avenue South  
New York, NY

PROJECT  
155 WEST STREET  
155 WEST STREET  
BROOKLYN

## WATERFRONT ZONING ANALYSIS

SCALE:	N/A
DATE:	09-11-2008
PROJECT No:	05196

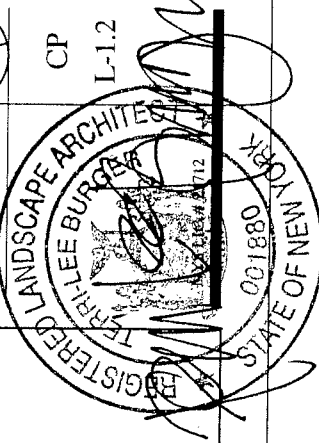
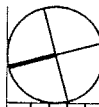
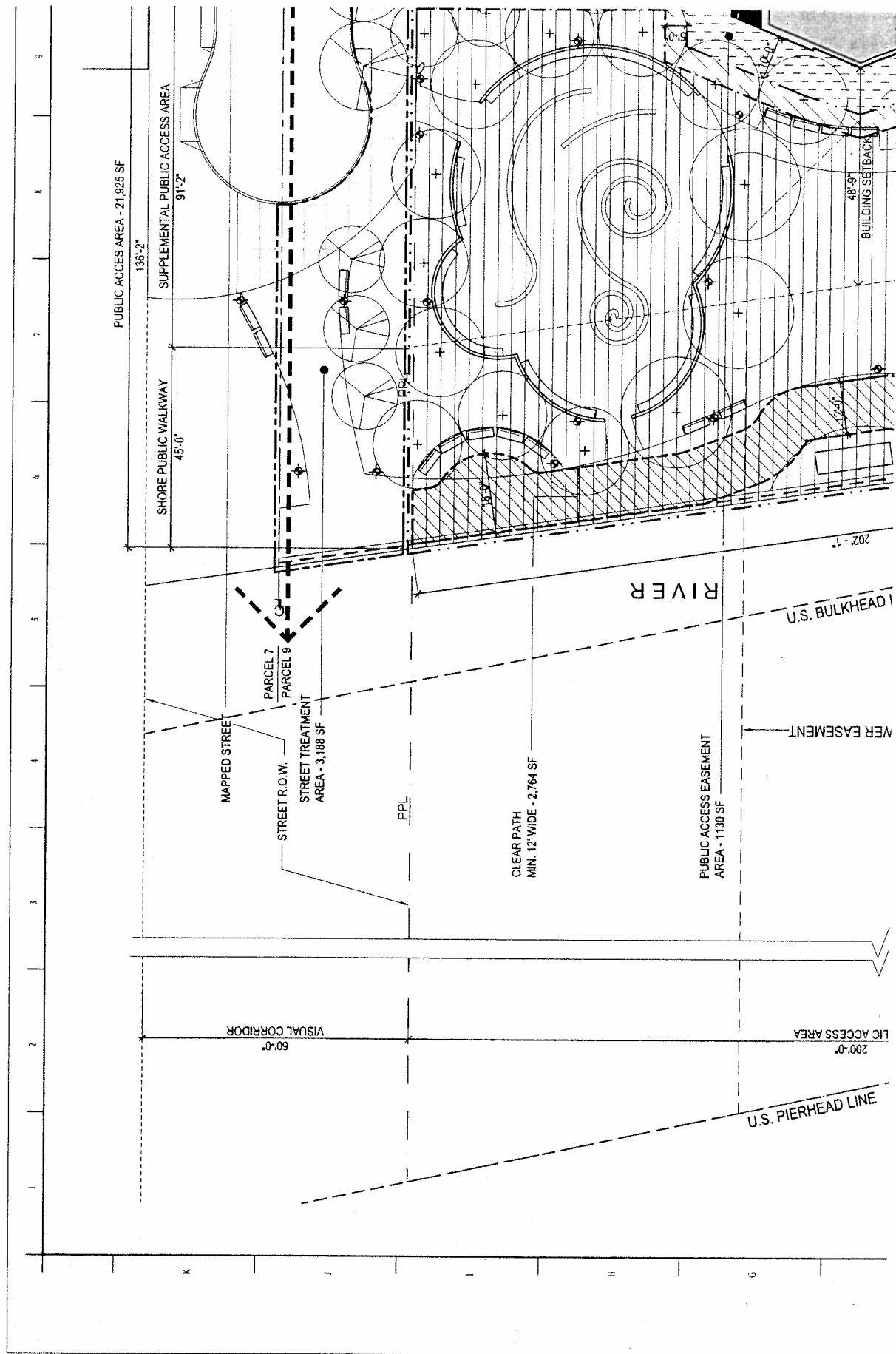
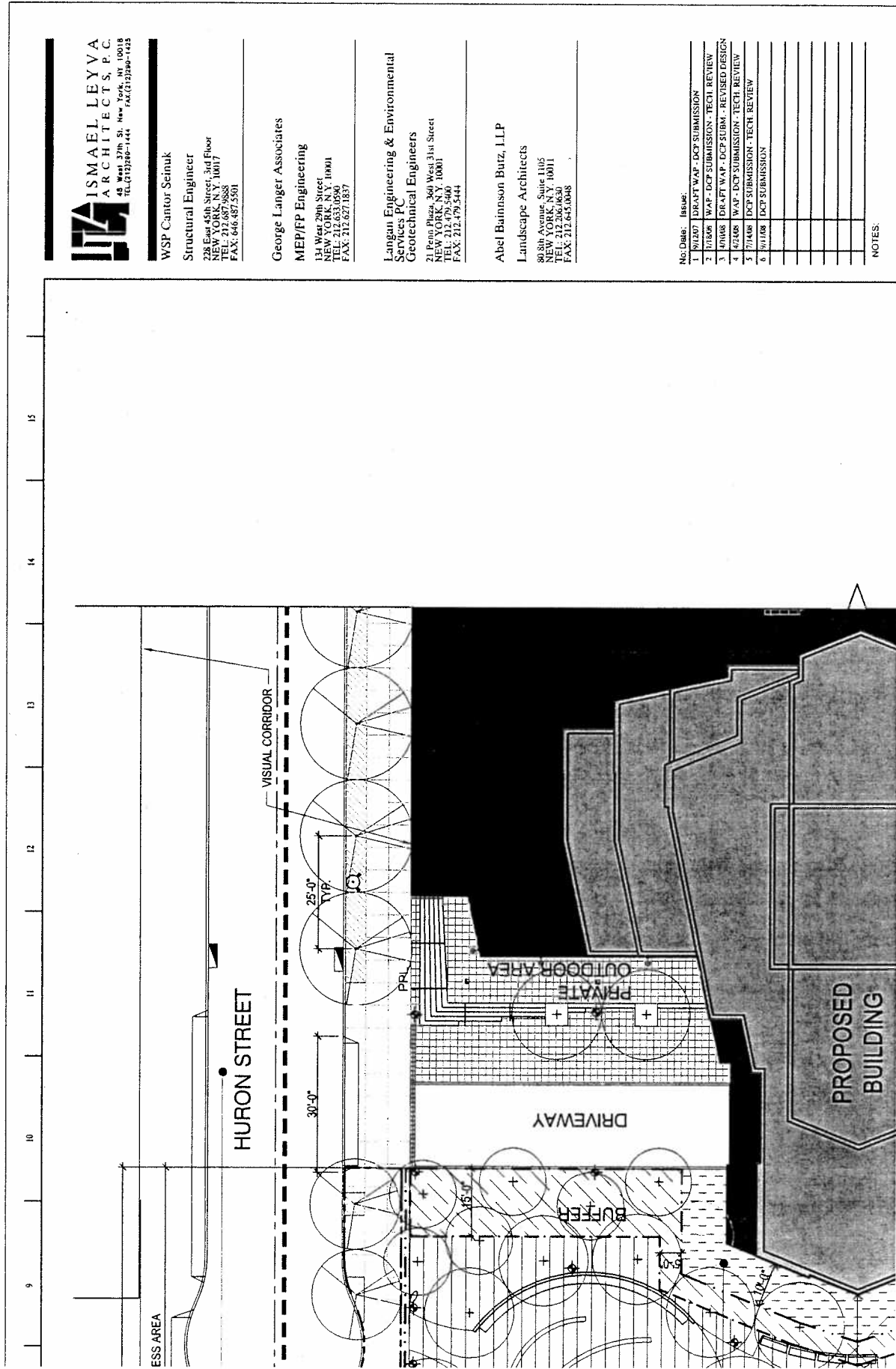


EXHIBIT G, DRAWING L-1.3  
PAGE 1 OF 4





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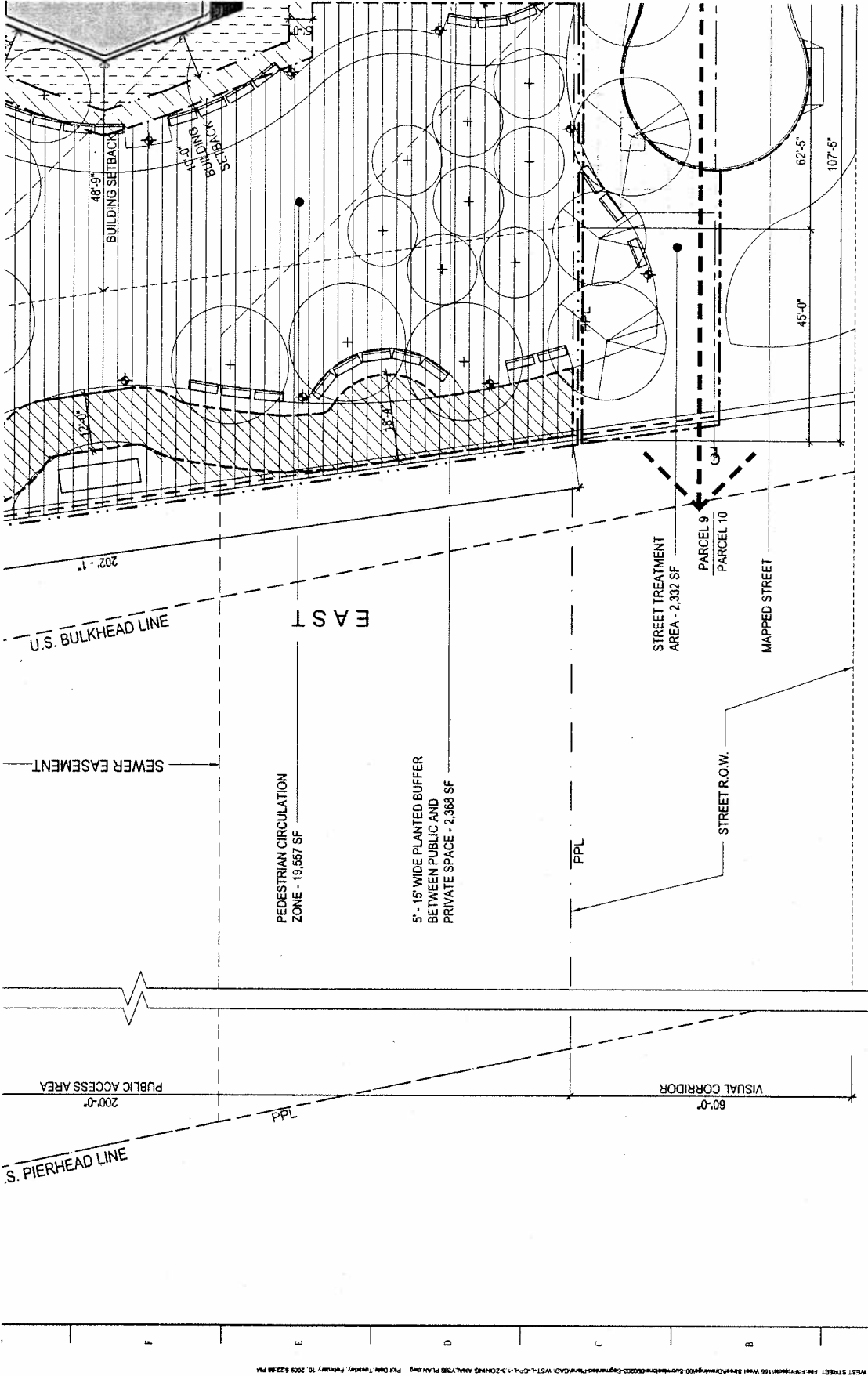
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No.	Date	Issue
1	10/20/07	DRAFT WAP - DCP SUBMISSION
2	10/18/08	WAP - DCP SUBMISSION - TECH REVIEW
3	10/18/08	DRAFT WAP - DCP SUBM - REVISED DESIGN
4	4/24/08	WAP - DCP SUBMISSION - TECH REVIEW
5	7/14/08	DCP SUBMISSION - TECH REVIEW
6	5/11/08	DCP SUBMISSION

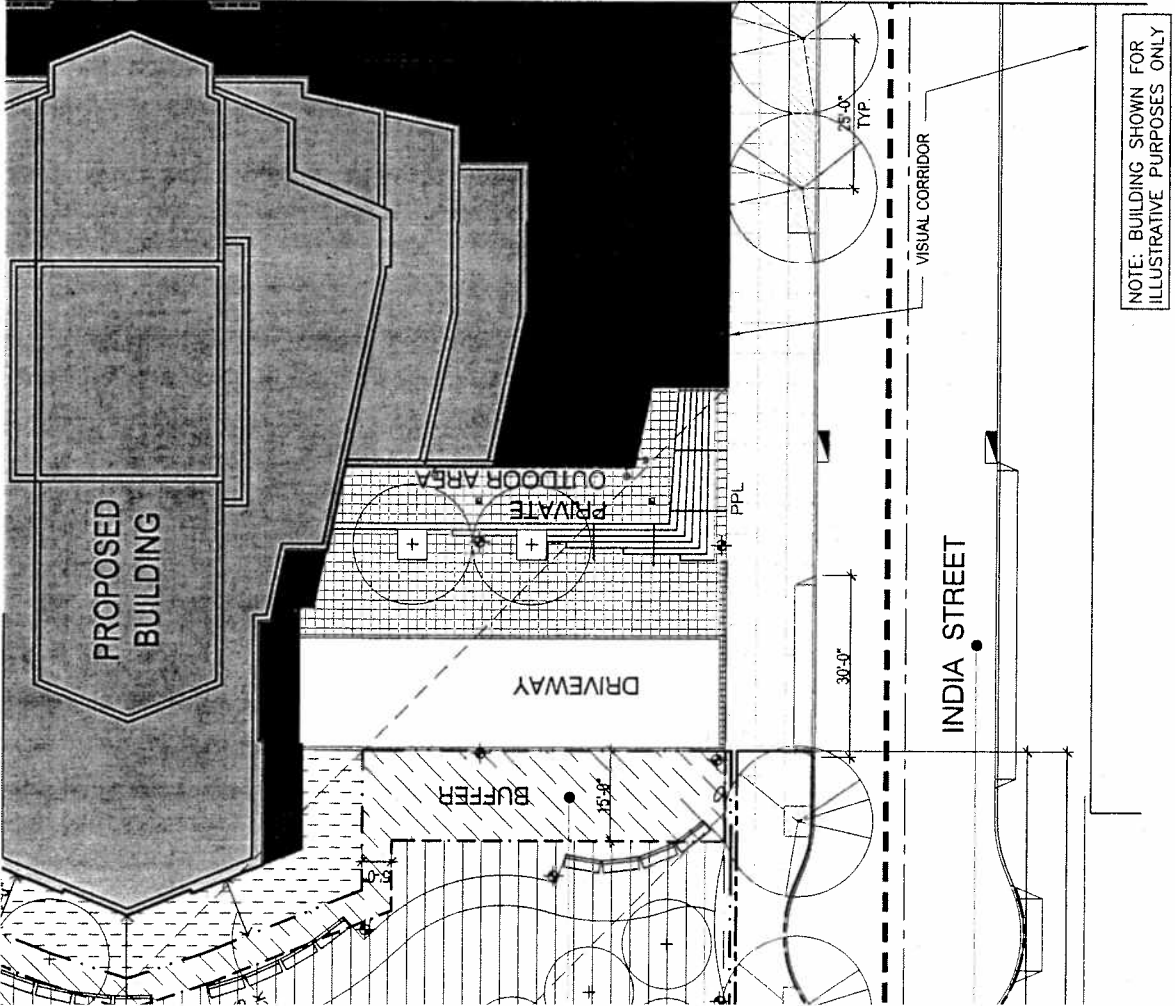
NOTES



# 1 Zoning Analysis Plan

Scale: 1/16" = 1'-0"





NOTE: BUILDING SHOWN FOR  
ILLUSTRATIVE PURPOSES ONLY

# LEGEND

- PROPERTY LINE
- PUBLIC ACCESS AREA
- BUFFER AREA
- STREET TREATMENT AREA
- CLEAR PATH
- PEDESTRIAN CIRCULATION ZONE
- BUFFER
- PUBLIC ACCESS EASEMENT AREA
- VISUAL CORRIDOR

No.	Date	Revision

NOTES:

No.	Date	Revision

CLIENT  
145 WEST STREET, LLC.  
235 Park Avenue South  
New York, NY

PROJECT  
155 WEST STREET  
155 WEST STREET  
BROOKLYN

## WATERFRONT ZONING ANALYSIS PLAN

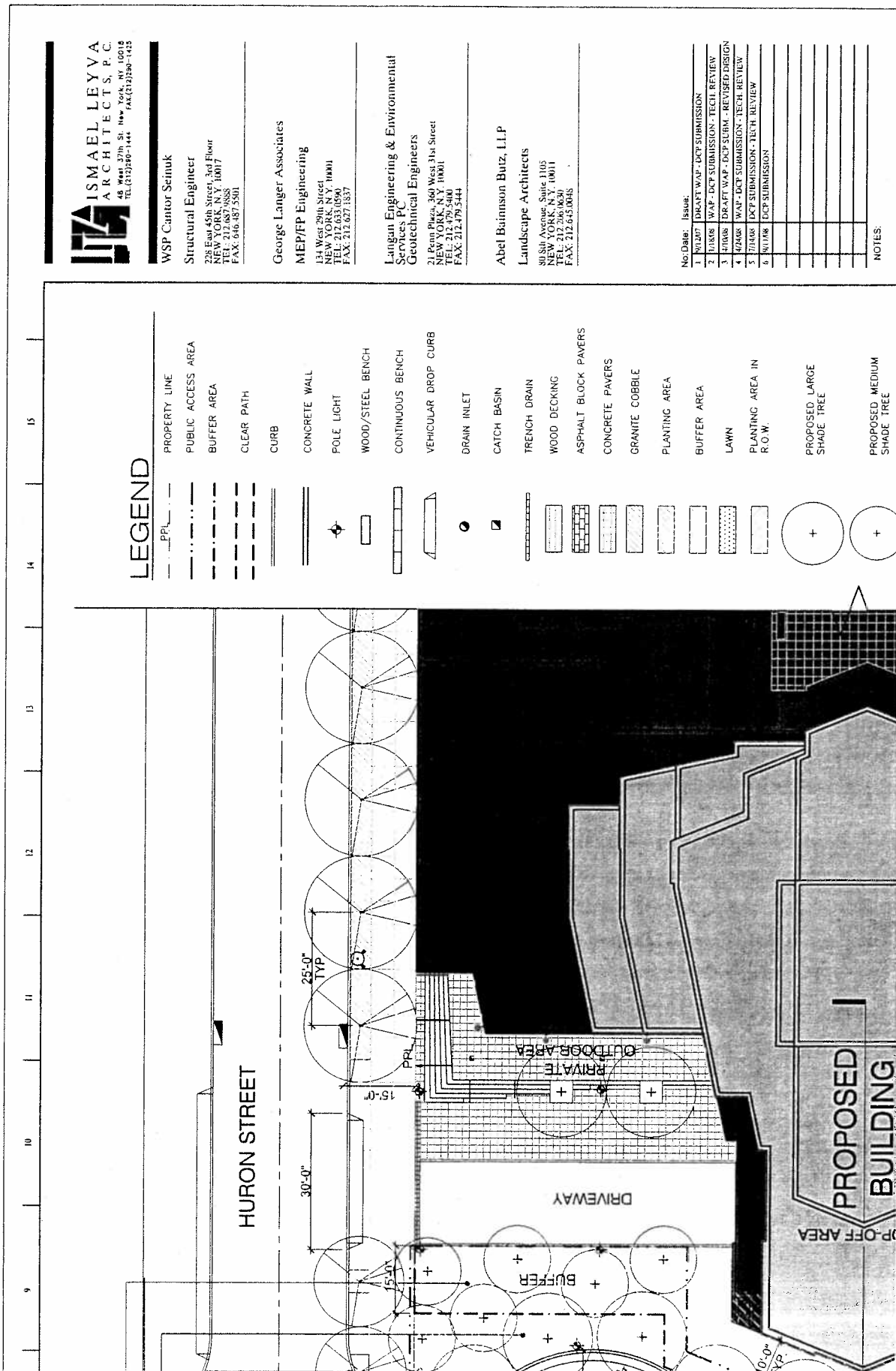
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DATE: 09-11-2008  
PROJECT No: 05.196

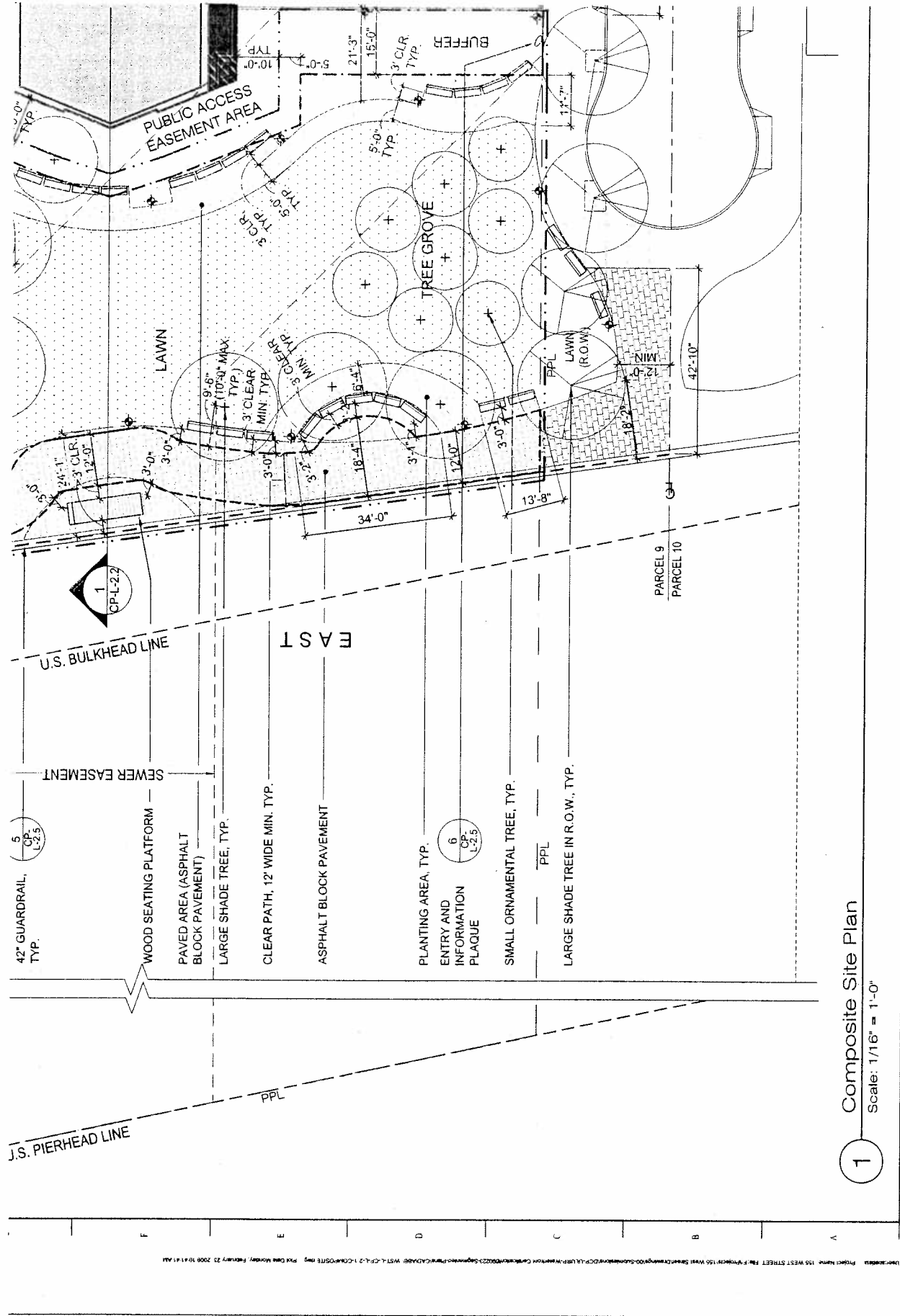


PAGE 1 OF 4



T G, DRAWING L-2.1  
PAGE 2 OF 4





1 Composite Site Plan

Scale: 1/16" = 1'-0"

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COMPOSITE SITE  
PLAN

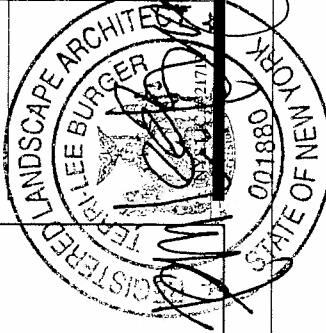
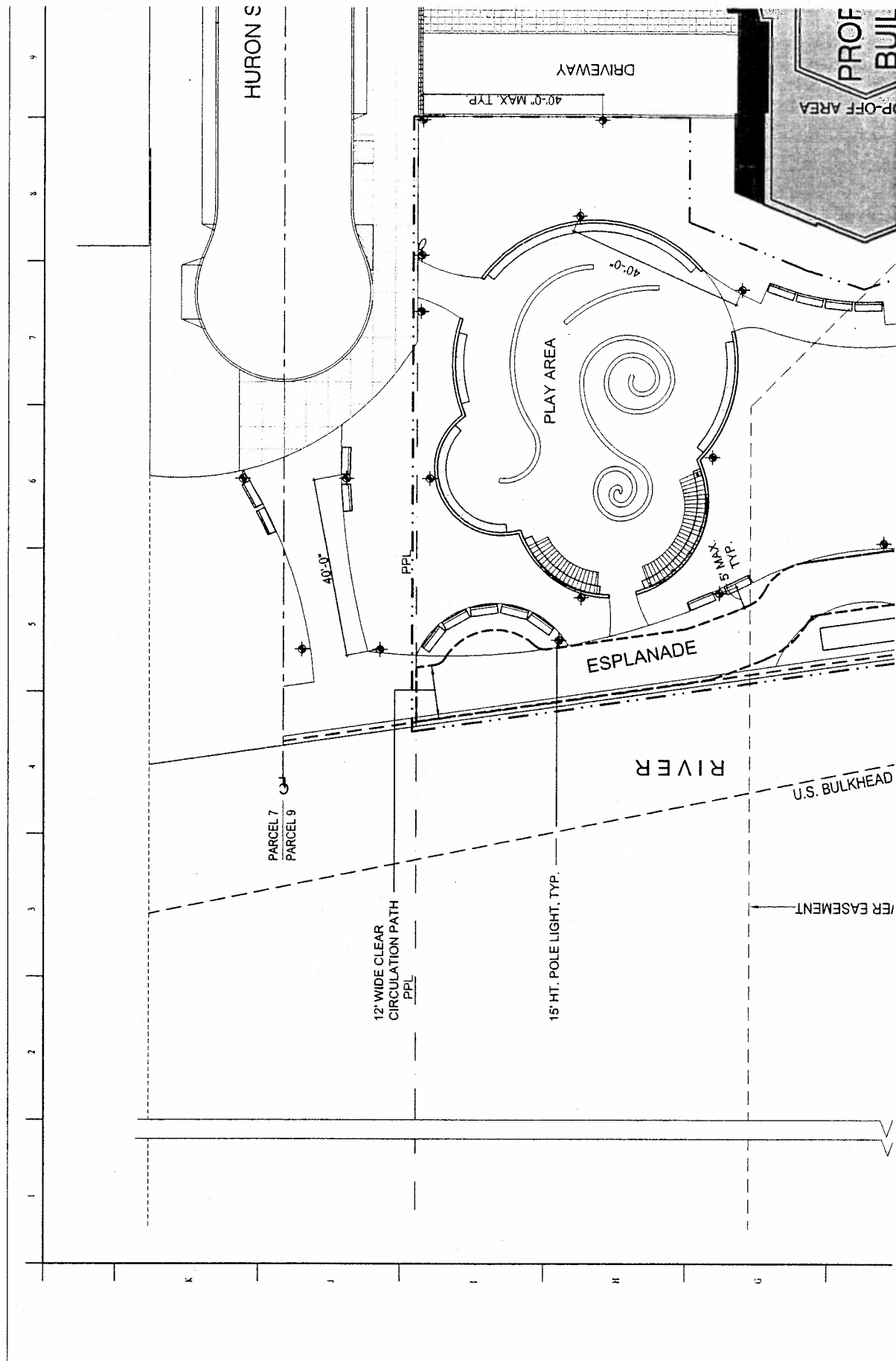
CP  
L-2.1

EXHIBIT G, DRAWING L-2.1  
PAGE 4 OF 4

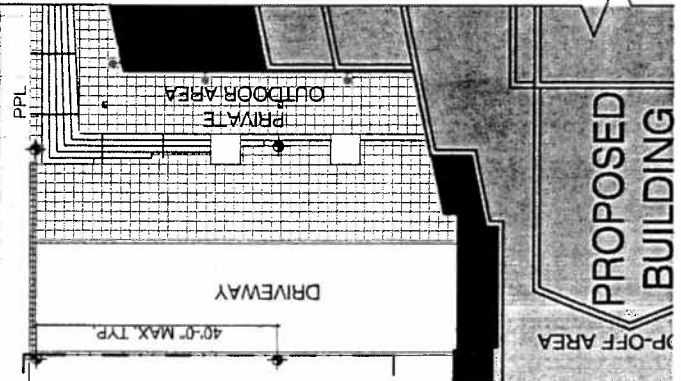
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PAGE 1 OF 4



LIGHTING LEGEND

- PPL --- PROPERTY LINE  
--- PUBLIC ACCESS AREA  
--- CLEAR PATH  
+ POLE LIGHT

HURON STREET



LIGHTING FIXTURE SCHEDULE

SYMBOL	DESCRIPTION	MOUNTING	LAMP	MANUFACTURER
+	Die cast aluminum construction w/ aluminum double wall cap. Fits 3" O.D. pole top and secured by four socket head SS set screws.	Pole Mounted 15' HT.	(1) 100 watt Metal Halide	Bega; 9183MH

Pole top luminaires  
with round symmetrical light distribution  
from a diffused light source

Housing: All die cast aluminum construction with heavy gauge .080" spun aluminum double wall cap with threaded device removable for relamping. Finished white trade. Integral filler slip fits 3" O.D. pole top and is secured by four (4) socket head stainless steel set screws threaded into stainless steel inserts.  
Enclosure: Moulded 1/2" translucent white high impact acrylic cone diffuser.  
Electrical: Lampholders are medium base porcelain with nickel plated

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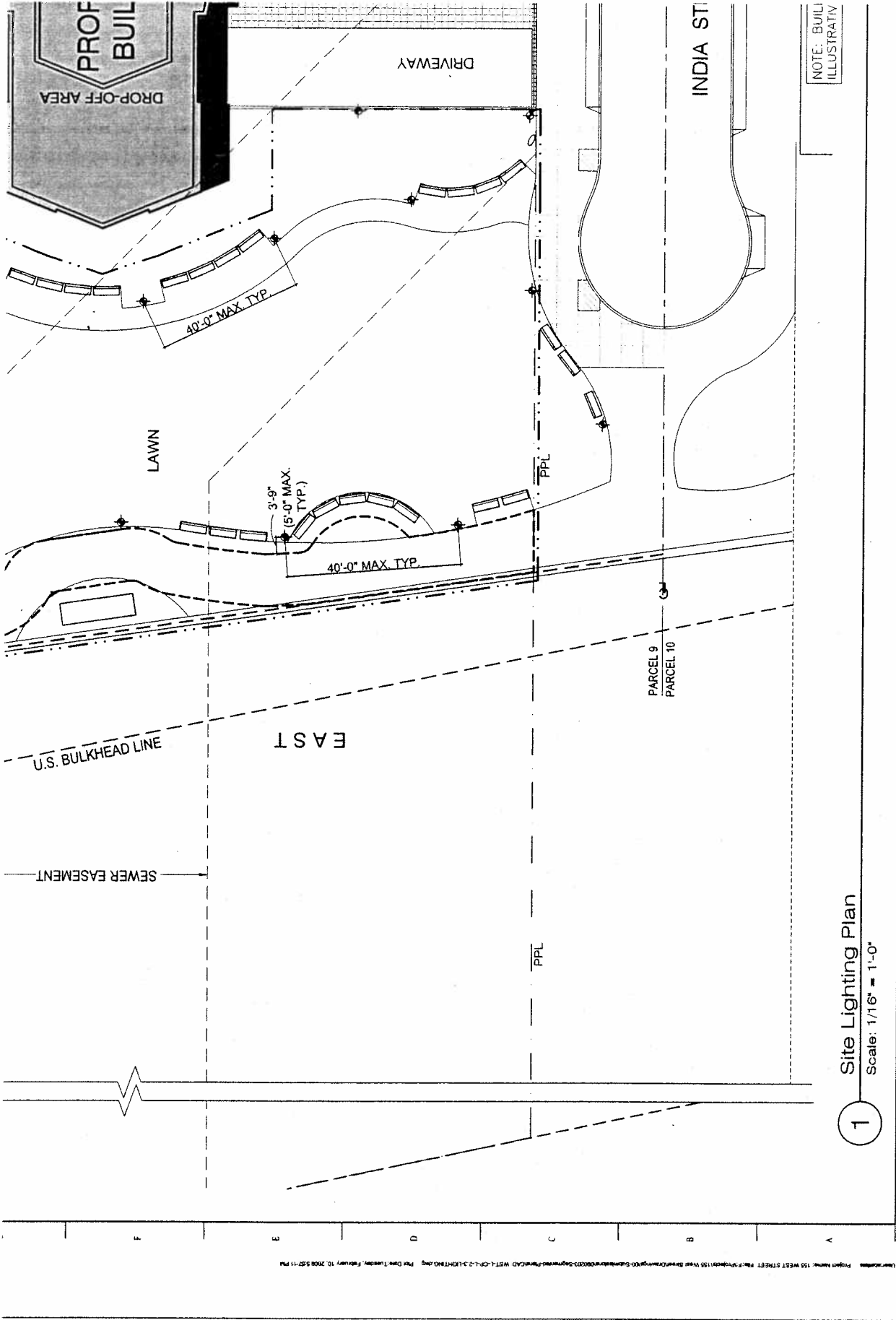
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No.	Date	Issue
1	7/2/97	DRAFT WAP - DCF SUBMISSION
2	7/18/98	WAP - DCF SUBMISSION - TECH REVIEW
3	8/10/98	DRAFT WAP - DCF SUBM - REVISED DESIGN
4	8/24/98	WAP - DCF SUBMISSION - TECH REVIEW
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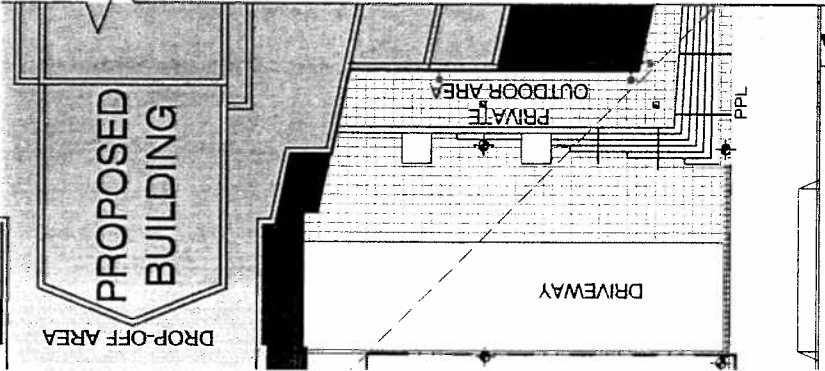
NOTES:



1 Site Lighting Plan

Scale: 1/16" = 1'-0"





INDIA STREET

NOTE: BUILDING SHOWN FOR ILLUSTRATIVE PURPOSES ONLY

from a diffused light source

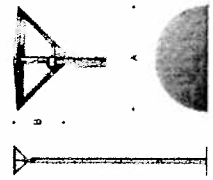
Housing: All die cast aluminum construction with heavy gauge (300) spun aluminum double wall cap with threaded device removable for reamping. Finished white inside. Height of fixture also fits 3" O.D. pole top and is secured by four (4) socket head stainless steel set screws. Threaded into stainless steel inserts.

Enclosure: Molded 3/4" translucent white high impact acrylic cone diffuser.

Electrical: Luminaires are medium base porcelain with nickel plated copper screw shell supplied with 200°C NPT temperature leads, rated 4KV. Ballasts are located in the base of the selected BEGA pole and are available in 120V or 277V, H.P.F. - specify.

Finish: These luminaires are available in five standard BEGA colors: Black (BK), White (WH), Bronze (BRZ), Silver (SLV), Eurocase (URO). To specify, add appropriate suffix to catalog number. For complete description of BEGA finishing process, refer to technical information section at end of catalog. Custom colors supplied on special order.

U.L. listed, suitable for wet locations. Protection class: IP 44.



Pole top luminaires with optional impact resistant diffuser. The cast aluminum housing and four tie copper slip fits a 3" O.D. pole top or flange. U.L. listed, suitable for wet locations. IP 44.

Color: Standard BEGA finishes

Lamp	Light	Lumen	A	B
9183MH	1100W ED-17 MH	8800	28 1/4"	14 1/4"

BEGALUX 1000 BEGA Way, Carpinteria, CA 93013 (P) 805 684 0533 (F) 805 684 6882

2 Pole Light


NOTES:

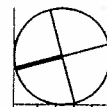

No Date: Revision:

CLIENT  
145 WEST STREET, LLC.  
235 Park Avenue South  
New York, NY

PROJECT  
155 WEST STREET  
155 WEST STREET  
BROOKLYN

LIGHTING PLAN

SCALE:	1/16" = 1'-0"
DATE:	09-11-2008
PROJECT No:	05196



CP  
L-2.3

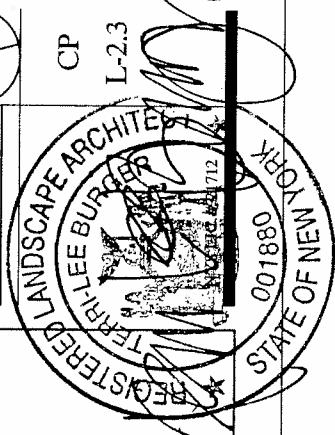
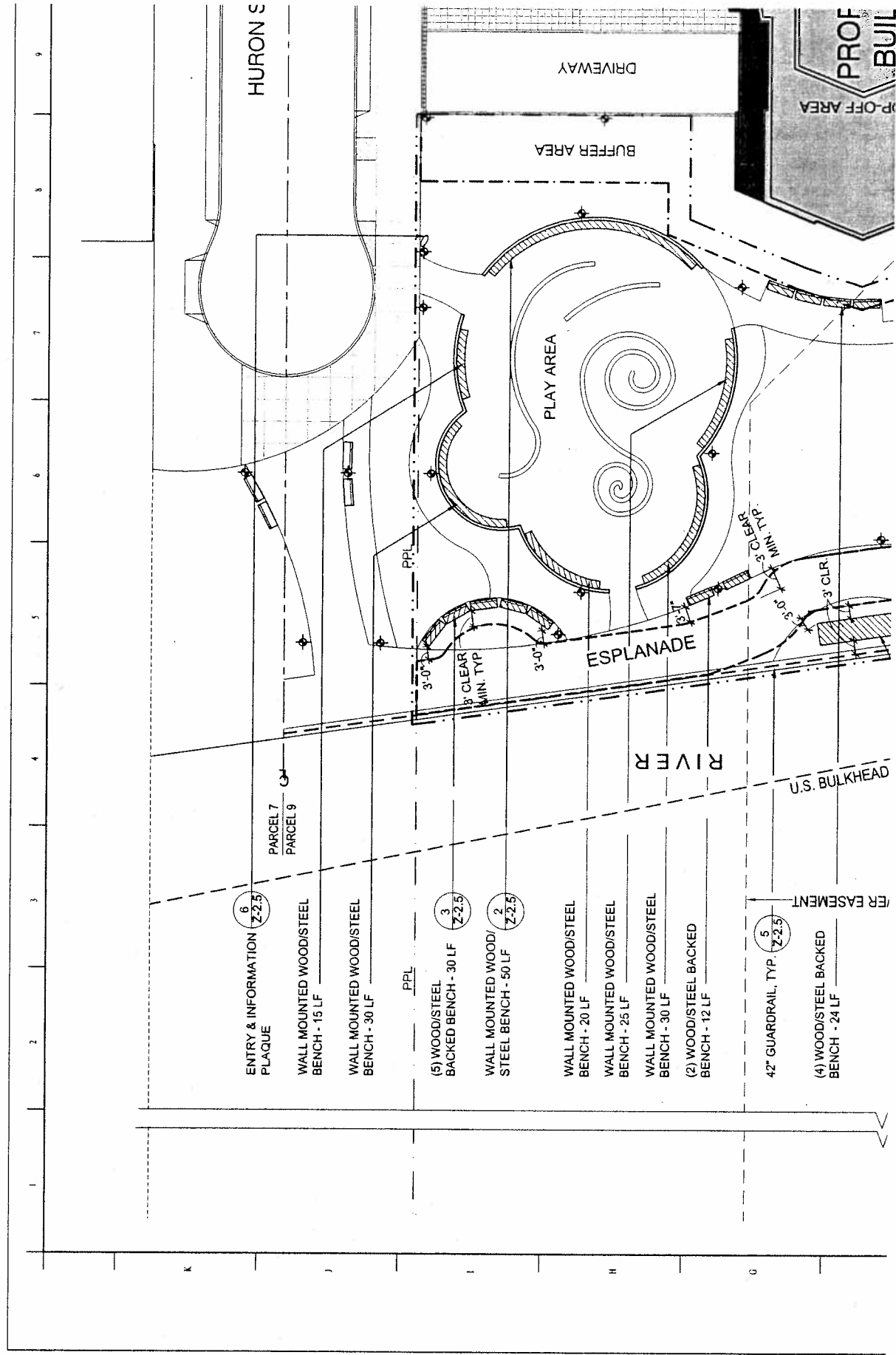
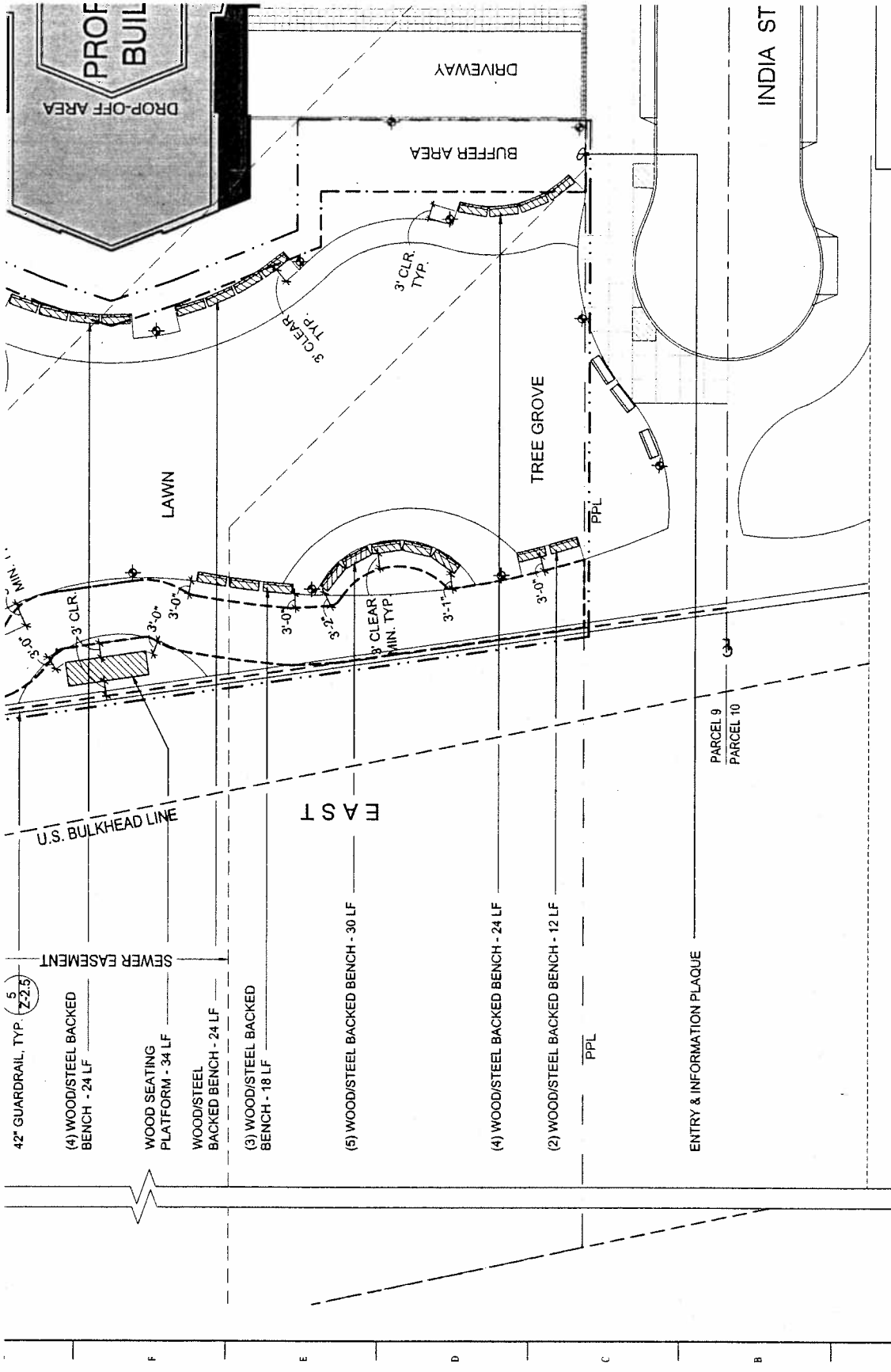


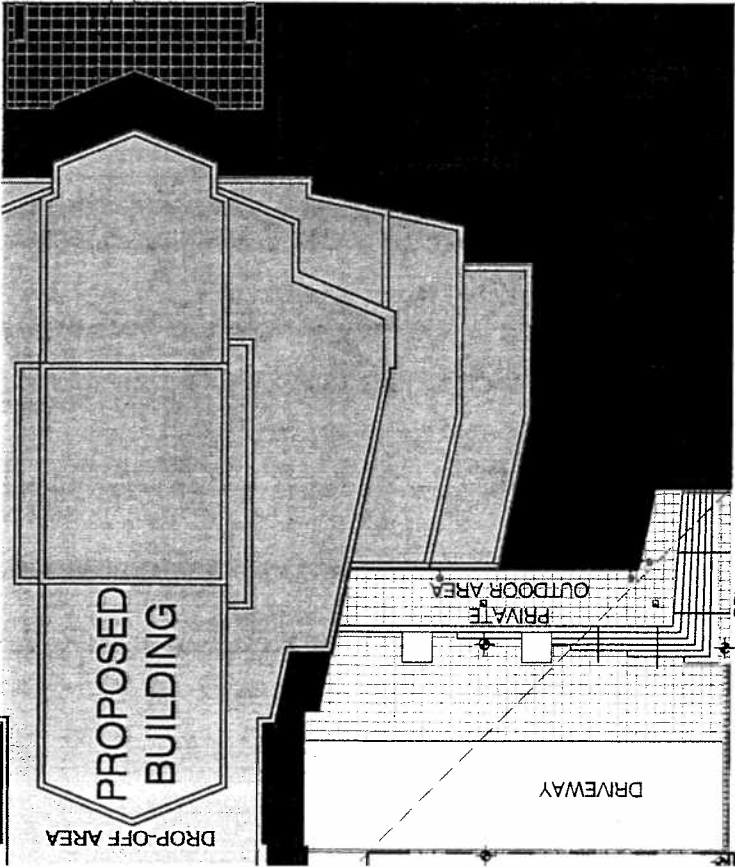
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PAGE 1 OF 4



NOTES:



1 Site Furniture  
Scale: 1/16" = 1'-0"



INDIA STREET

NOTE: BUILDING SHOWN FOR  
ILLUSTRATIVE PURPOSES ONLY



GRETCHEN BENCH

- Features:
- transitional styling works with any space
  - choose the warmth of wood or practicality of recycled plastic

Dimensions:

- Backless, 22"D x 17" seat ht. x 72"L (or 96"L)
- Backed, 25"D x 17" seat ht. x 32" to top of back x 72"L (or 96"L)

Details:

- 72" or 96" length
- wood or PolySite seat (PolySite, 72" only)
- 1) interior use only: *red wood*;
- 2) interior/exterior use: *jarrath or PolySite*
- 3) exterior use only: *redwood or ipe*
- backed or backless
- optional arms (backed only)
- 2 arm styles: loop or ornamental
- Support options: surface mount, freestanding, or wall mount
- Supports and armrests are finished with Panguard II powdercoat
- Coordinating picnic table, litter receptacle, and ash urn available

Sustainability and LEED:

- PolySite seat has 90% recycled material content and is 100% recyclable
- FSC certified ipe, redwood, maple and red oak are available upon request (call for a quote including lead time). FSC Chain of Custody registration code: SW-COC-1261
- Landscape Forms Panguard II powdercoat finish contains no heavy metals, is HAPS-free and has extremely low VOCs.


NOTES:

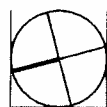

No Date: Revision:

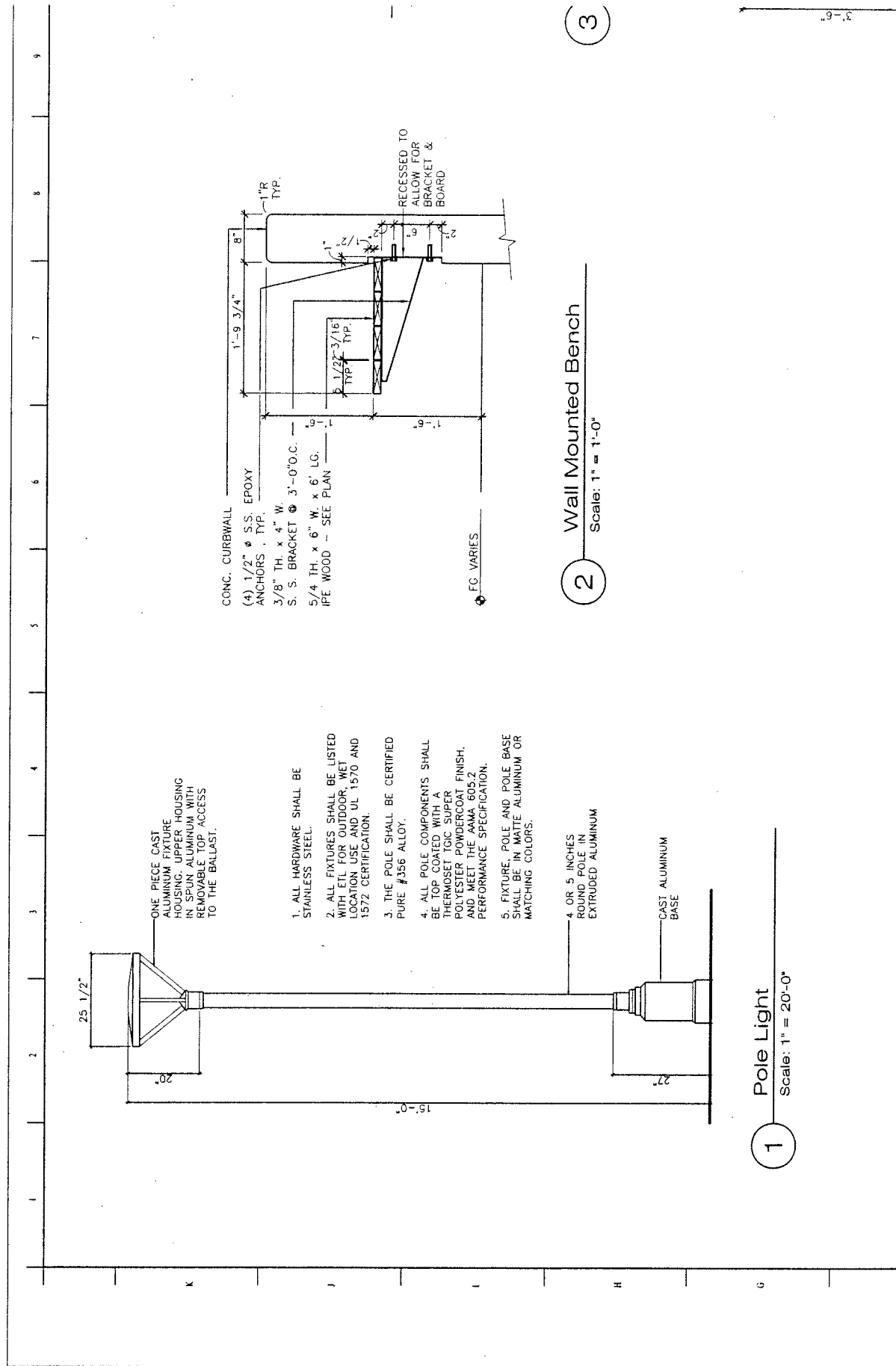
CLIENT  
145 WEST STREET, LLC.  
235 Park Avenue South  
New York, NY

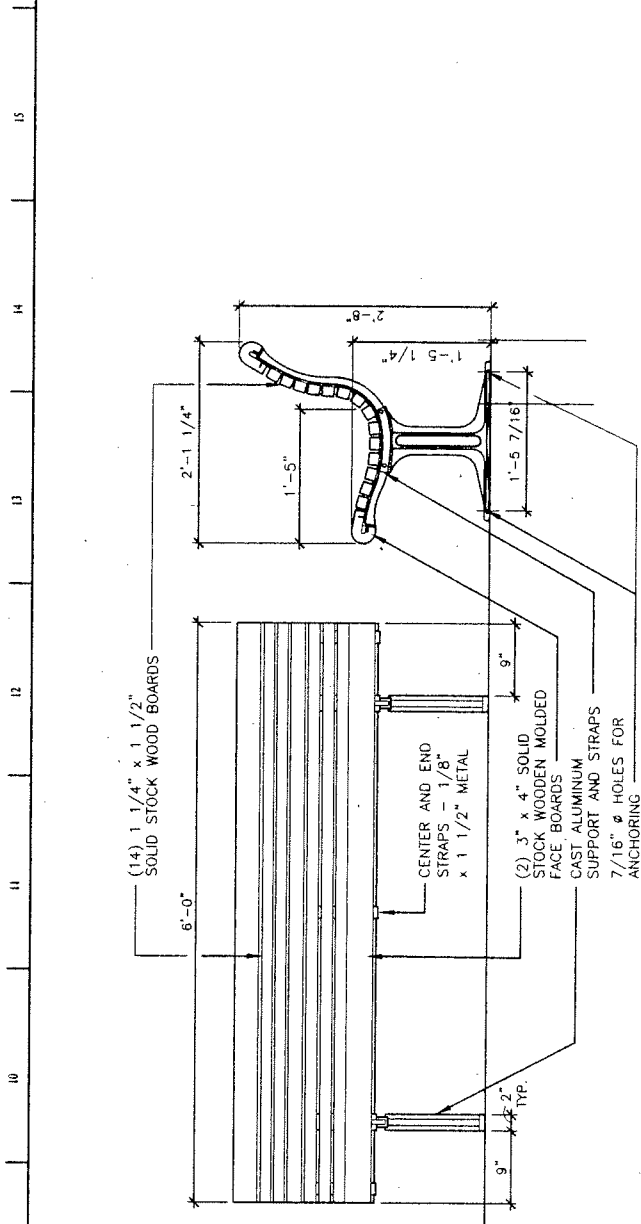
PROJECT  
155 WEST STREET  
155 WEST STREET  
BROOKLYN

SITE FURNITURE

SCALE:	1/16" = 1'-0"
DATE:	09-11-2008
PROJECT No:	05196

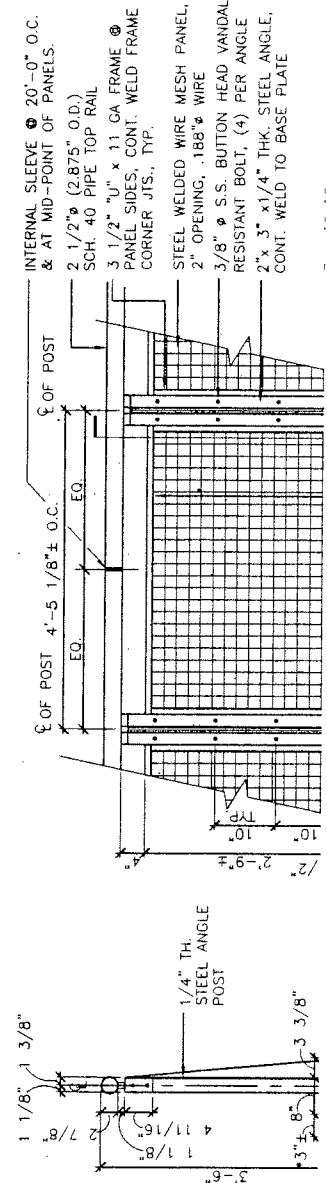






Wood/Steel Backed Bench

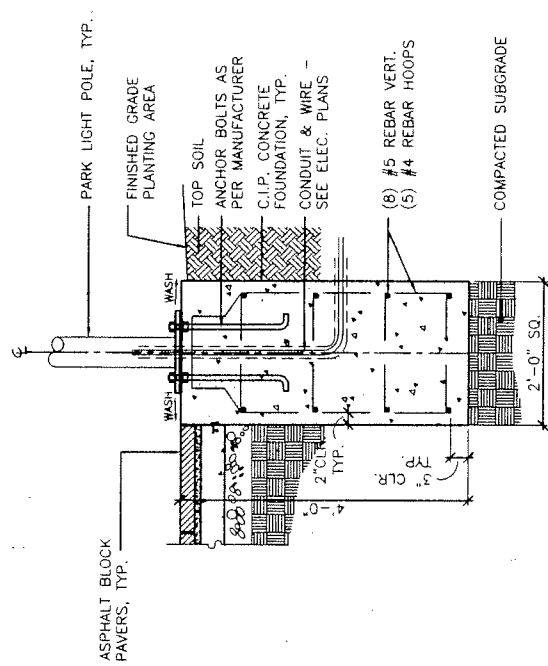
Scale: 1" = 1'-0"

[illegible]

NOTES:

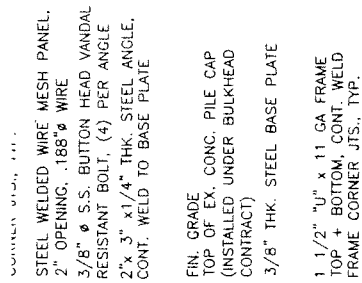
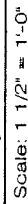
3'-9"

1 Scale: 1" = 20'-0"



4 Pole Light Foundation  
Scale: 3/4" = 1'-0"



Scale:  $3/4" = 1'-0"$ [illegible]

NOTES:

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No: \_\_\_\_\_ Date: \_\_\_\_\_ Revision: \_\_\_\_\_

**CLIENT**

145 WEST STREET, LLC.

235 Park Avenue South

New York, NY

## PROJECT

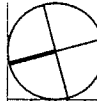
155 WEST STREET

155 WEST STREET

BROOKLYN

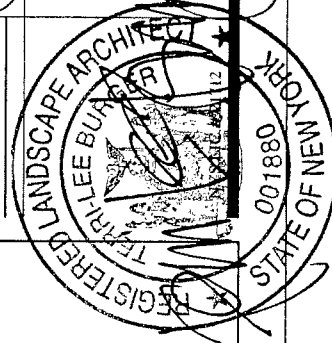
## SITE DETAILS

SCALE:	AS NOTED
DATE:	09-11-2008
PROJECT No:	05.196

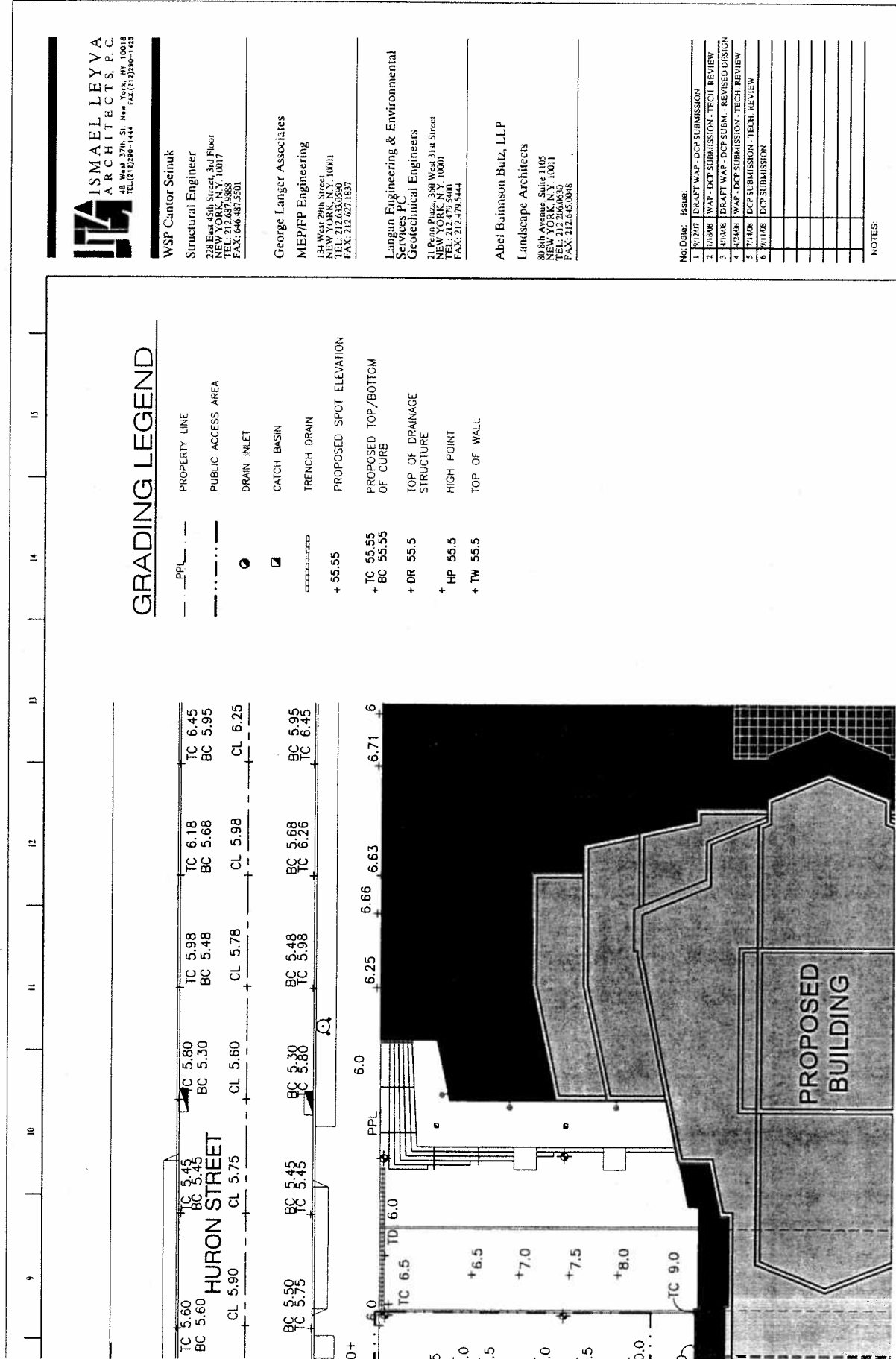


CP

L-2.5







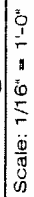
**ISMAEL LEYVA**  
ARCHITECTS, P.C.  
18 West 37th St., 4th Floor  
New York, NY 10018  
TEL: (212) 362-1444 FAX: (212) 370-7415

**WSP Cantor Seinuk**  
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New York, NY 10017  
TEL: 212-633-0990  
FAX: 646-387-5501

**George Langer Associates**  
MEP/FP Engineering  
134 West 29th Street  
New York, NY 10001  
TEL: 212-633-0990  
FAX: 212-627-1837

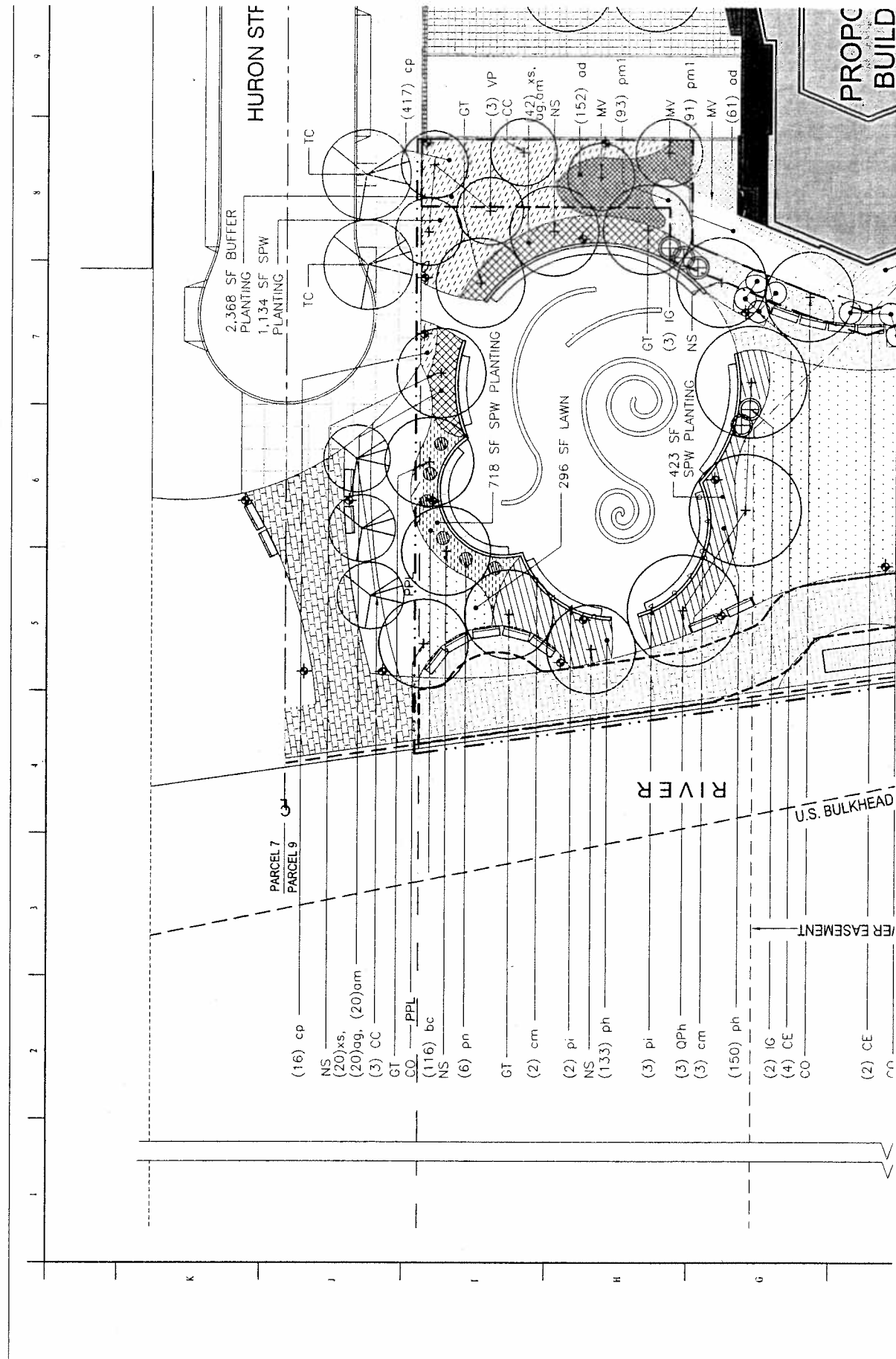
**Langan Engineering & Environmental Services PC**  
Geotechnical Engineers  
21 Penn Plaza, 34th West, 31st Street  
New York, NY 10001  
TEL: 212-479-5400  
FAX: 212-479-5444

**Abel Bainson Butz, LLP**  
Landscape Architects  
80 5th Avenue, Suite 1105  
New York, NY 10011  
TEL: 212-206-0630  
FAX: 212-645-0048





# EXHIBIT G, DRAWING L-4.1 PAGE 1 OF 4





ISMAEL LEYVA  
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14 West 37th St., 11th Floor, New York, NY 10018  
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228 East 45th Street, 3rd Floor  
New York, NY 10017  
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Langan Engineering & Environmental  
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Geotechnical Engineers  
21 Penn Plaza, 3rd West 31st Street  
New York, NY 10001  
TEL: 212-479-5000  
FAX: 212-479-5444

Abel Bainnson Buiz, LLP  
Landscape Architects  
80 8th Avenue, Suite 1105  
New York, NY 10011  
TEL: 212-306-1630  
FAX: 212-645-0048

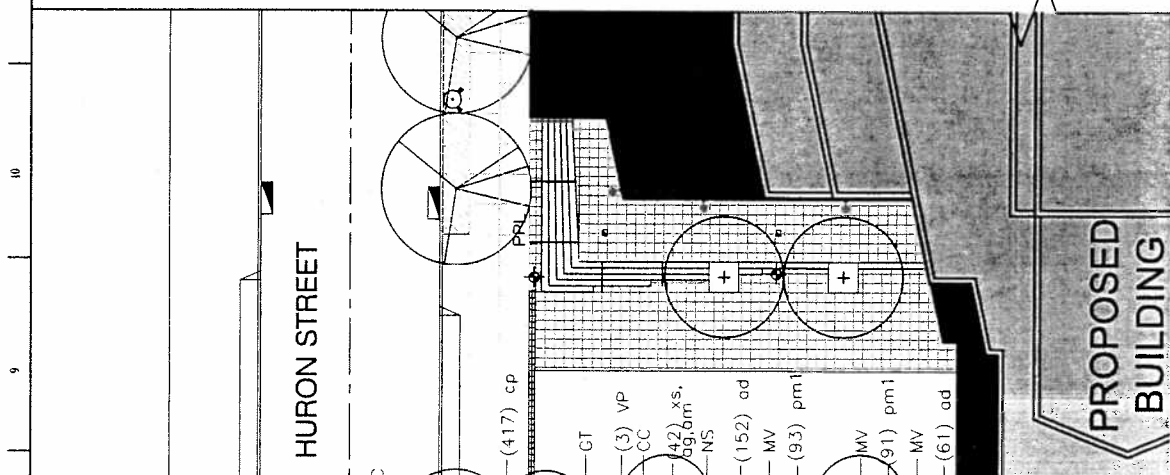
No. Date: Issue:  
1 1/1/2017 DRAFT WAP - DCP SUBMISSION  
2 1/11/2017 WAP - DCP SUBMISSION - TECH REVIEW  
3 1/10/2017 DRAFT WAP - DCP SUBM - REVISED DESIGN  
4 4/24/2017 WAP - DCP SUBMISSION - TECH REVIEW  
5 7/14/2017 DCP SUBMISSION - TECH REVIEW  
6 9/11/2017 DCP SUBMISSION

NOTES:

9 10 11 12 13 14 15

PLANT SCHEDULE					
QTY.	KEY	BOTANICAL NAME	COMMON NAME	SIZE AND ROOT	SPACING
LARGE SHADE TREES					
3	OP	QUERCUS PALUSTRIS	PIN OAK	3-3 1/2" CAL. B&B	AS SHOWN
3	OPh	QUERCUS PHELLOS	WILLOW OAK	3-3 1/2" CAL. B&B	AS SHOWN
MEDIUM SHADE TREES					
2	CO	CELTIS OCCIDENTALIS	HACKBERRY	3-3 1/2" CAL. B&B	AS SHOWN
4	GT	GLADISTIA TRIANCANTHOS	THORNLESS HONEY LOCUST	3-3 1/2" CAL. B&B	AS SHOWN
5	NS	NYSSA SYLVATICA	TUPELO	3-3 1/2" CAL. B&B	AS SHOWN
ORNAMENTAL TREES					
3	AC	AMELANCHIER CANADENSIS	SERVICEBERRY	3-3 1/2" CAL. B&B	AS SHOWN
6	CC	CERCIS CANADENSIS	REDBUD	3-3 1/2" CAL. B&B	AS SHOWN
3	CL	CLADASTRIS LUTEA	YELLOWWOOD	3-3 1/2" CAL. B&B	AS SHOWN
2	MV	MAGNOLIA VIRGINIANA	SWEETBAY MAGNOLIA	3-3 1/2" CAL. B&B	AS SHOWN
3	VP	VIBURNUM PRUNIFOLIUM	BLACKHAW VIBURNUM	3-3 1/2" CAL. B&B	AS SHOWN
SHRUBS					
16	CE	CEANOTHUS AMERICANUS	NEW JERSEY TEA	3-3 1/2" CAL. B&B	AS SHOWN
11	IG	ILEX GLABRA 'COMPACTA'	DWARF INK-BERRY HOLLY	48"-54", 5 GAL. CONT.	AS SHOWN
3	VA	VACCINIUM ANGUSTIFOLIUM	LOWBUSH BLUEBERRY	3-3 1/2" CAL. B&B	AS SHOWN
GROUNDCOVERS					
10	Jh	JUNIPERUS HORIZONTALIS	BAR HARBOR JUNIPER	2 GAL. CONT.	18" O.C.
62	xs	XANTHORRIZA SIMPLICISSIMA	YELLOWROOT	2 GAL. CONT.	18" O.C.
NATIVE GRASSES					
433	cp	CAREX PENNSYLVANICA	PENNSYLVANIA SEDGE	2 GAL. CONT.	18" O.C.
5	mc	MULLENBERGIA CAPILLARIS	HAIRAWN MUHLY	2 GAL. CONT.	18" O.C.
283	ph	PANICUM 'HAENSE HERMS'	HAENSE HERMS SWITCHGRASS	2 GAL. CONT.	18" O.C.
6	pn	PANICUM VIRGIDUM 'NORTHWIND'	NORTHWIND SWITCHGRASS	2 GAL. CONT.	18" O.C.
163	ss	SCHIZANTHYRUM 'SCOPARIUM'	LITTLE BLUESTEM	2 GAL. CONT.	18" O.C.
NATIVE PERENNIALS					
62	ag	ALLIUM GLADIATOR	GLADIATOR ALLIUM	2 GAL. CONT.	18" O.C.
62	am	ALLIUM MARS	ORNAMENTAL ONION	2 GAL. CONT.	18" O.C.
152	ad	ARUNCUS DIODICUS	GOAT'S BEARD	2 GAL. CONT.	18" O.C.
116	bc	BOULEDOUA CURTIPENDULA	SIDE OATS GRAMA	2 GAL. CONT.	18" O.C.
414	pm1	PERENNIAL SUN MIX	SUN TOLERANT SPECIES		18" O.C.
VINES					
5	cm	CLEMATIS	CLEMATIS	2 GAL. CONT.	18" O.C.
5	pl	PASSIFLORA INCARNATA	MAYPOP	2 GAL. CONT.	18" O.C.

PLANT SCHEDULE - STREET TREES				
KEY	BOTANICAL NAME	COMMON NAME	SIZE AND ROOT	SPACING
LARGE SHADE TREES				
OP	QUERCUS PALUSTRIS	PIN OAK	3-3 1/2" CAL. B&B	AS SHOWN







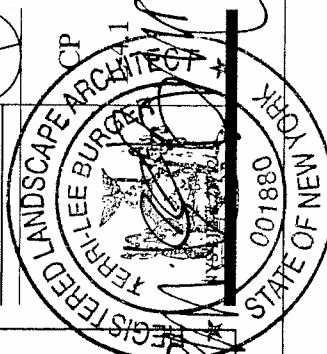
PROPOSED  
BUILDING

NOTES:[illegible]No: Date: Revision:

PROJECT  
155 WEST STREET  
155 WEST STREET  
BROOKLYN

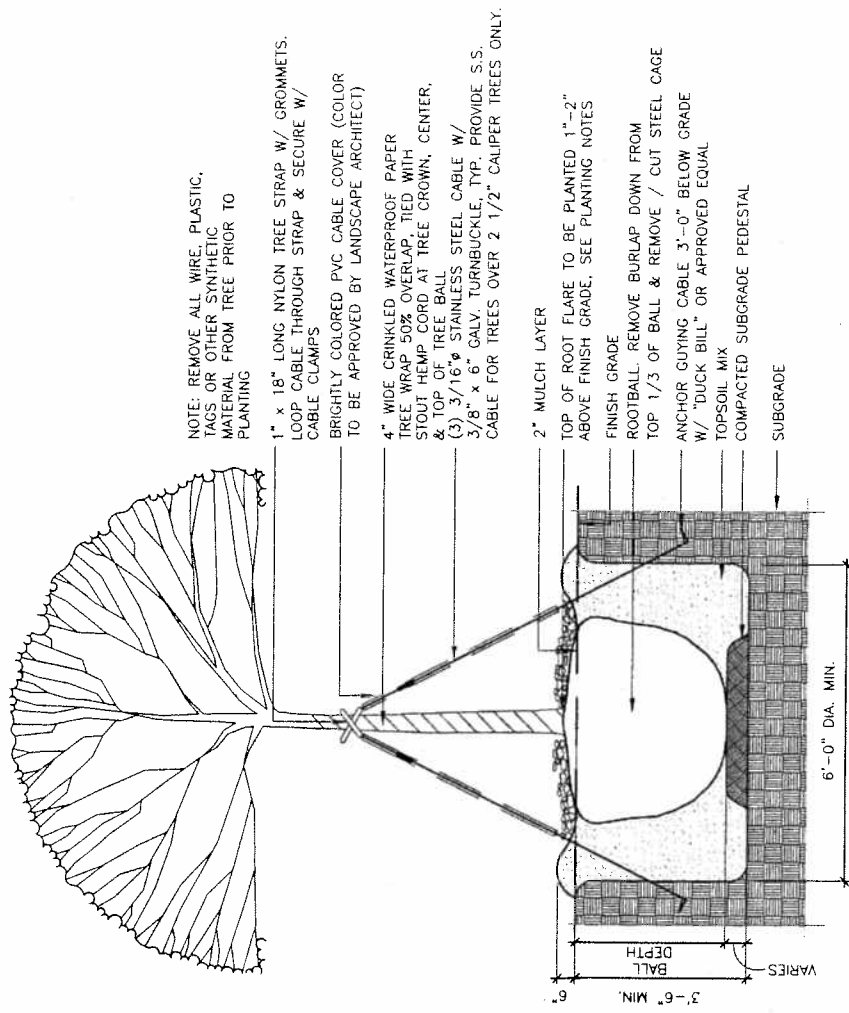
SCALE: 1/16" = 1'-0"  
DATE: 09-11-2008  
PROJECT No: 05.196

SCALE: 1/16" = 1'-0"  
DATE: 09-11-2008  
PROJECT No: 05.196



PROPERTY LINE	LARGE SHADE TREE, MIN. 3" CALIPER
PUBLIC ACCESS AREA	MEDIUM SHADE TREE, MIN. 3" CALIPER
BUFFER AREA	SMALL ORNAMENTAL TREE MIN. 2" CALIPER
CLEAR PATH	SHADE TREE IN STREET R.O.W. MIN. 3" CALIPER
CURB	SMALL ORNAMENTAL TREE IN STREET R.O.W. MIN. 2" CALIPER
CONCRETE WALL	CEANOETHUS AMERICANUS
LAWN	ILEX GLABRA 'COMPACTA'
GROUND COVER	JUNIPERUS HORIZONTALIS
NATIVE GRASSES	'BAR HARBOR'
PERENNIAL MIX	VACCINIUM ANGUSTIFOLIUM
	SINGLE CLUMP OF NATIVE GRASS

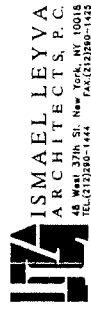
NOTE: BUILDING SHOWN FOR ILLUSTRATIVE PURPOSES ONLY



1 Deciduous Tree Planting

NTS

9 10 11 12 13 14 15



ISMAEL LEYVA  
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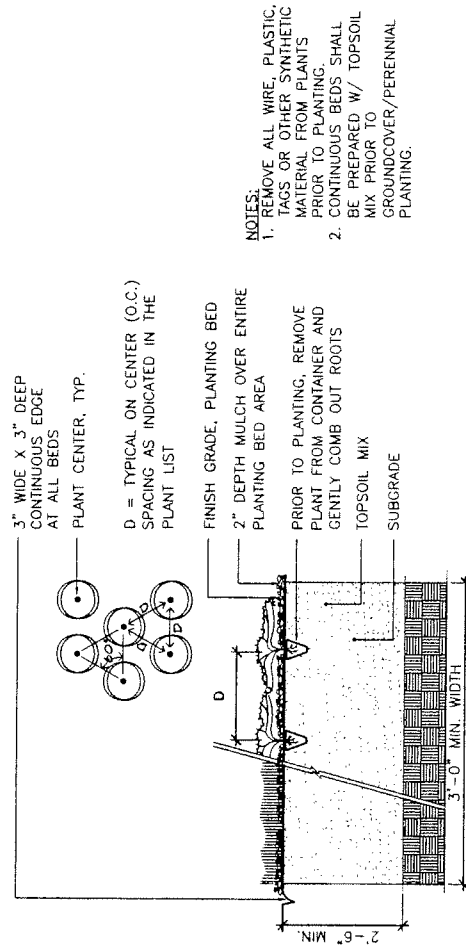
**Abel Baunson Butz, LLP**

**Landscape Architects**

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New York, NY 10011  
TEL: 212.206.0630  
FAX: 212.645.0048

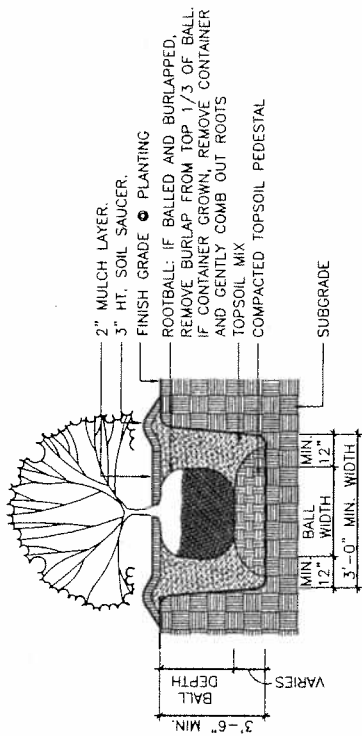
No.	Date	Issue
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2	1/13/08	WAP - DCP SUBMISSION - TECH REVIEW
3	3/10/08	DRAFT WAP - DCP SUBM - REVISED DESIGN
4	4/24/08	WAP - DCP SUBMISSION - TECH REVIEW
5	7/14/08	DCP SUBMISSION - TECH REVIEW
6	9/11/08	DCP SUBMISSION

NOTES:



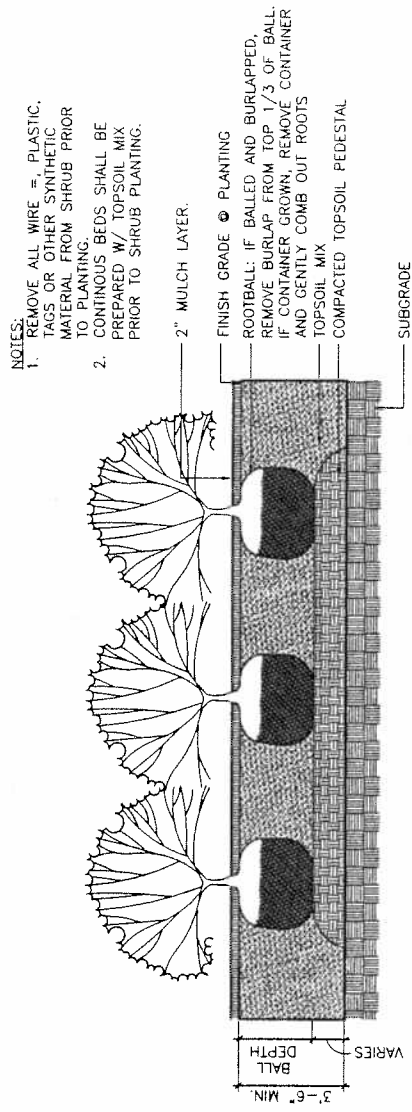
4 Turfgrass/ Ground Cover Planting

NTS



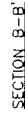
### Shrub Planting

NTS



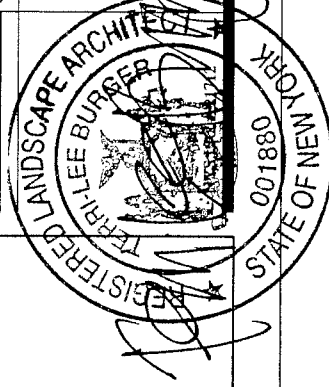
## Shrub Mass Planting

NTS

NOTES

## SIN

## L-4.2



## **EXHIBIT H**

### **FEE TRANSFERRED PAA**

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

BEGINNING at a point 470.87 feet west of the intersection of the northerly side of India Street and the westerly side of West Street, along India Street;

RUNNING THENCE westerly, parallel with India Street, 107.38 feet;

THENCE northerly, at a 98.19 degree angle, 202.06 feet;

THENCE easterly, at a 81.81 degree angle, 136.18 feet;

THENCE southerly, at a 90 degree angle, 60.75 feet;

THENCE westerly, at a 90 degree angle, 23.20 feet;

THENCE southwesterly at a 111.99 degree angle, 42.33 feet;

THENCE southerly at a 136.01 degree angle, 42.33 feet;

THENCE easterly, at a 111.99 degree angle, 23.20 feet;

THENCE southerly, at a 90 degree angle, 60.75 feet to the point or place of BEGINNING.

## **EXHIBIT I**

### **PERMITTED ENCUMBRANCES**

1. DEP easement along India Street, which stretches across the Subject Property.
2. Covenants, Conditions, Easements, Leases, Agreements of record, as follows:
  - a. Restriction against the erection of “certain nuisances” set forth in Final Decree entered March 2, 1837 in Court of Chancery action Mesarole and Mesarole and incorporated into Deed made by David Codwise, one of the Masters of the Court of Chancery, to Peter A. Mesarole, dated December 26, 1839 and recorded February 22, 1840 in Liber 88, cp. 99. Affects Parcel A.
  - b. Declaration dated as of April 11, 2008, made by 145 West Street LLC and recorded in the Office of the New York City Register, Kings County, on April 25, 2008 under CFRN 2008000167320. Affects Parcel A.
  - c. The PAA Maintenance Agreement in the form attached to this Declaration as Exhibit D.
  - d. The Drainage Easement in the form attached to this Declaration as Exhibit P.
3. Riparian Rights and Easements of the City of New York and others in and to the waters of the East River.
4. Rights of the United States Government to establish harbor, bulkhead, or pierhead lines or to change or alter any such existing lines, and to remove, or compel the removal of fill and improvements thereon (including buildings or other structures), from that part of the described premises lying beyond (i.e. west of) the U.S. Bulkhead Line approved by the Secretary of War on November 7, 1917 and by the Secretary of the Army on December 20, 1957, without compensation to the insured.
5. Rights of the United States Government, the State of New York and City of New York, or any of their departments or agencies to regulate and control the use of the piers, bulkheads, and land under water.

Exceptions 2a and 2b above shall be considered Permitted Encumbrances only if the title commitment includes affirmative insurance from the Title Company that (a) the covenants and restrictions set forth therein have not been violated and the future violations will not result in a forfeiture or reversion of title and (b) the covenants and restrictions will not interfere with the use and enjoyment of the premises.

**EXHIBIT J**  
**SCHEDULE**

<b>Action</b>	<b>Date</b>
1. Submit SPDES application to DEC	December 15, 2009
2. DEC review of application	December 2009 to February 2010
3. Submit 50% of dwgs to DPR	July 28, 2009
4. Submit 80% dwgs to DPR	September 10, 2009
5. Submit final dwgs/specs to DPR	November 1, 2009
6. Final Sign off from DPR	December 15, 2009
7. DEC Approval	February 15, 2010
8. Construction period	March 2010 through February 2013
9. TCO	February 2013
10. Final C of O	June 2013



**EXHIBIT K**

**FORM OF NOTICE OF SUBSTANTIAL COMPLETION**

[Letterhead of the Commissioner of Parks and Recreation]

[Date]

**NOTICE OF SUBSTANTIAL COMPLETION**

145 West Street LLC and 157-159 West Street LLC  
c/o Palin Enterprises  
235 Park Ave South, 8th Floor  
New York New York 10003-1405  
Attention: Dean Palin

Re: 145 West Street  
Block 2530, Lots 1, 55 & 56 (tentatively Lots 1 & 2),  
Brooklyn, New York

Dear Mr. Palin:

This letter constitutes the Notice of Substantial Completion of the \_\_\_\_\_  
pursuant to Section 5.2 of the Restrictive Declaration between 145 West Street LLC and 157-159  
West Street LLC dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Declaration").

Undefined capitalized terms shall have the meaning set forth in the Declaration.

Yours very truly,

\_\_\_\_\_  
Commissioner of Parks & Recreation

[THIS LETTER SHALL BE MODIFIED AS APPROPRIATE  
TO THE CERTIFICATION BEING ISSUED]

**EXHIBIT L**  
**PAA EASEMENT**

**RECORD AND RETURN TO:**

**New York City Law Department  
100 Church Street, 6-148  
New York, New York 10007-2601  
Attention: David Ford**

## PAA EASEMENT

This access easement (this "Easement" or "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_ 200\_, by and among 145 West Street LLC and 157-159 West Street LLC, each having an address c/o Palin Enterprises, 235 Park Ave South, 8th Floor, New York NY 10003-1405 (collectively, "Grantor") and the City Of New York ("Grantee or the City"), acting by and through the New York City Department of Parks & Recreation ("Parks"), having its headquarters at The Arsenal, Central Park, 830 Fifth Avenue, New York, NY 10065.

### WITNESSETH:

WHEREAS Grantor is the owner of certain real property located in the Borough of Brooklyn, Kings County, City and State of New York, which property is designated as Block 2530, Lots 1, 55 & 56 (tentatively Lots 1 & 2) on the tax map of the Borough of Brooklyn in the City of New York (the "Subject Property"), as more particularly described in Schedule A annexed hereto; and

WHEREAS, the Subject Property is located within a waterfront block, as that term is defined in Section 62-11 of the Zoning Resolution of the City of New York (the "Zoning Resolution") and is subject to the regulations of Article VI, Chapter 2 of the Zoning Resolution; and

WHEREAS, Grantor intends to develop the Subject Property by constructing two (2) predominantly residential buildings (the "Proposed Development"); and

WHEREAS, Grantor has submitted application No. N090055ZCK (the "Application") to the Department of City Planning requesting that the Chair certify that the drawings (the "Drawings") submitted with the Application comply with the requirements of Article VI, Chapter 2 of the Zoning Resolution; and

WHEREAS, in connection with the approval by the Chair of the City Planning Commission of the Application, Grantor has executed, delivered and recorded a restrictive declaration dated \_\_\_\_, \_\_\_\_, governing the development of the Subject Property (the "Declaration"); and

WHEREAS, Grantor intends to construct a Shore Public Walkway (the "Shore Public Walkway") and Supplemental Public Access Area ("Supplemental Public Access Area", which together with the Shore Public Walkway are collectively known as the "Waterfront Public Access Area"); and

WHEREAS, pursuant to the terms of the Declaration, Grantor desires to convey to the City a non-exclusive easement to that certain portion of the Subject Property as more particularly described on Schedule B (the "PAA Easement Area"); and

WHEREAS, simultaneously herewith, Grantor has conveyed fee simple title to Grantee to that certain portion of the Waterfront Public Access Area as more particularly described on Schedule C (the "**Fee Transferred PAA**") pursuant to a deed dated of even date herewith; and

WHEREAS, pursuant to the Declaration and the terms of that certain PAA Maintenance Agreement by and among Grantee and Grantor, dated as of \_\_\_\_\_, 20\_\_ (the "**PAA Maintenance Agreement**"), upon conveyance of the PAA Easement Area in accordance with this Easement, Grantee shall be responsible for the maintenance and capital repair of the PAA Easement Area; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Definitions. Any capitalized term herein which is defined in the Declaration shall have the meaning set forth therein.

**Grant of Easement.** Grantor hereby grants, conveys and releases to the City as of the date hereof a perpetual, nonexclusive easement, unobstructed from the ground to the sky, for ingress, egress and access to and from the Fee Transferred PAA, over, upon and across the PAA Easement Area, for the benefit of the City as owner of the Fee Transferred PAA and its contractors, employees, agents, invitees, customers and licensees and for use by the general public to the extent as in the Fee Transferred PAA in accordance with the terms and conditions of the Declaration and this Agreement. TO HAVE AND TO HOLD the above easement, together with all rights and privileges incidental thereto, unto the City, its successors and assigns forever.

**General Terms of Access Easement.** No barricades, fences, curbing or other dividers will be constructed along, on or within any portion of the PAA Easement Area without the prior written consent of Grantee, its successors or assigns. Grantor shall not prohibit the uninterrupted flow of pedestrian traffic within the PAA Easement Area, except as may be required from time to time to provide maintenance and repairs to the PAA Easement Area or to the Proposed Development. Grantor's right to use the total area of the PAA Easement Area for all purposes related to permitted floor area, floor area ratio, lot coverage (as defined under the Zoning Resolution) and other zoning calculations shall not be limited by this Agreement in any way.

**Indemnification.** Grantor shall be liable and hereby agrees to indemnify and hold harmless Parks and the City and each officer, agent or employee thereof (the "Indemnitees"), against any and all claims, suits, damages, judgments, liabilities, costs and expenses, including reasonable attorneys' fees, to which they may be subject to arising out of or caused by any error, omission, willful or negligent act of the Grantor or anyone employed by the Grantor, or any authorized agents, servants or subcontractors hired by Grantor, or any subcontractor hired by any of the foregoing in the performance of maintenance work or capital improvements on or to the Proposed Development in the PAA Easement Area or any work to the Proposed Development that affects the PAA, except if caused by the gross negligence or intentional misconduct of the Indemnitees or any of their officers, agents, or employees.

Maintenance Obligation. Grantor must first obtain a PAA Access Permit, as defined in Section 6.4 of the Declaration, which shall be substantially in the Form of Exhibit N annexed to the Declaration, before performing any work in the PAA Easement Area. Responsibilities for maintenance and capital repair of the PAA Easement Area shall be in accordance with the express terms and conditions of the Declaration and PAA Maintenance Agreement.

Covenants Run With the Land. Each covenant and undertaking as to the PAA Easement Area shall run with the land.

Successors. Assigns. This Agreement and the easements, covenants, benefits and obligations created hereby shall inure to the benefit of and be binding upon each party hereto and its assigns, grantees and successors in interest.

Injunctive Relief. In the event of any violation or threatened violation of any provision in this Agreement by either party, or any lessee or occupant of any portion of the PAA Easement Area the injured party shall have the right, in addition to any other remedies that may be available, at law or in equity, to enjoin such violation or threatened violation.

Modification. This Agreement may not be modified in any respect whatsoever or rescinded, in whole or in part, except with the written consent of all parties.

Breach Shall Not Permit Termination. No breach of this Agreement shall entitle either party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such party may have hereunder by reasons of any breach of this Agreement.

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 as follows:

If to Grantor:

145 West Street LLC and 157-159 West Street LLC  
c/o Palin Enterprises  
235 Park Ave South, 8th Floor  
New York New York 10003-1405  
Attention: Dean Palin

If to Grantee:

Department of Parks & Recreation  
The Arsenal, Central Park  
830 Fifth Avenue  
New York, NY 10065  
Attn: Office of the General Counsel

Either party may at any time change its address or add additional parties to receive a notice by mailing a notice to the other party. Each notice, demand, request, consent, approval or other

communication shall be either sent by registered or certified mail, postage prepaid, overnight courier 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.

Estoppel. Upon the prior written request of either party hereto, Grantor or Grantee, respectively, shall provide the other an estoppel certificate within ten (10) days stating that this agreement is in full force and effect and that there are no defaults hereunder (or if there are defaults, a statement identifying such defaults).

Captions. The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

Severability. In the event any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

Pronouns. When required by context, the singular shall include the plural and the neuter gender shall include a person, partnership, corporation, limited liability company, firm, association or other business arrangement.

Recording. Upon receipt of the recorded, original Agreement, the Law Department will notify Declarant's counsel via email of such receipt.

Counterparts. This Agreement may be executed in counterparts each of which deemed an original and all of which, together, shall constitute one agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

145 WEST STREET LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

157-159 West Street LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

NEW YORK CITY DEPARTMENT OF PARKS &  
RECREATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 200\_\_ before me, the undersigned, personally appeared Dean Palin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

COUNTY OF )

On the \_\_\_\_\_ day of \_\_\_\_\_, 200\_ before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public \_\_\_\_\_

COUNTY OF )

On the \_\_\_\_ day of \_\_\_\_\_, 200\_ , before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public



## **SCHEDULE A**

### **DESCRIPTION OF SUBJECT PROPERTY**

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

BEGINNING at the corner formed by the intersection of the southerly side of Huron Street with the westerly side of West Street;

RUNNING THENCE southerly along the said westerly side of West Street, 200 feet;

THENCE westerly along the northerly side of India Street and a line in continuation thereof westerly, 596 feet 7 1/2 inches to the exterior line of the established bulkhead along the East River approved by the Secretary of War on November 7, 1917 and by the Secretary of the Army on December 20, 1957;

THENCE northerly along the exterior line of said bulkhead, 204 feet 1/2 inch to the southerly side of Huron Street and a line in continuation thereof westerly;

THENCE easterly along said southerly side of Huron Street and a line in continuation thereof westerly, 637 feet to the intersection of the said southerly side of Huron Street with the said westerly side of West Street, the point or place of BEGINNING;

TOGETHER WITH the land lying under the waters of the East River adjoining the above described premises between said bulkhead line and the U.S. Pierhead line established by the Secretary of War on November 7, 1917 contained in the parcels described in Letters Patent granted by the People of the State of New York to Daypac Industries, Inc., dated December 10, 1969 and recorded in the Office of the New York City Register, Kings County, on January 2, 1970 in Reel 385 page 1936 (the "Letters Patent").

**SCHEDULE B**

**PAA EASEMENT AREA**

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

BEGINNING at a point 470.87 feet west of the intersection of the northerly side of India Street and the westerly side of West Street, along India Street and extending 60.75 feet north of such line on an angle parallel with West Street;

RUNNING THENCE westerly, parallel with India Street, 23.20 feet;

THENCE northerly, at a 111.89 degree angle, 42.33 feet;

THENCE northeasterly, at a 136.01 degree angle, 42.33 feet;

THENCE easterly, at a 111.99 degree angle, 23 feet;

THENCE southerly, at a 90 degree angle, 10 feet;

THENCE westerly at a 90 degree angle, 16.46 feet;

THENCE southwesterly at a 111.99 degree angle, 31.55 feet;

THENCE southerly, at a 136.01 degree angle, 31.55 feet;

THENCE westerly, at a 111.99 degree angle, 16.46 feet;

THENCE southerly, at a 90 degree angle, 10 feet to the point or place of BEGINNING.

## **SCHEDULE C**

### **FEE TRANSFERRED PAA**

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

BEGINNING at a point 470.87 feet west of the intersection of the northerly side of India Street and the westerly side of West Street, along India Street;

RUNNING THENCE westerly, parallel with India Street, 107.38 feet;

THENCE northerly, at a 98.19 degree angle, 202.06 feet;

THENCE easterly, at a 81.81 degree angle, 136.18 feet;

THENCE southerly, at a 90 degree angle, 60.75 feet;

THENCE westerly, at a 90 degree angle, 23.20 feet;

THENCE southwesterly at a 111.99 degree angle, 42.33 feet;

THENCE southerly at a 136.01 degree angle, 42.33 feet;

THENCE easterly, at a 111.99 degree angle, 23.20 feet;

THENCE southerly, at a 90 degree angle, 60.75 feet to the point or place of BEGINNING.

**EXHIBIT M**

**FORM OF NOTICE OF FINAL COMPLETION**

[Letterhead of the Commissioner of Parks and Recreation]

[Date]

**NOTICE OF FINAL COMPLETION**

145 West Street LLC and 157-159 West Street LLC  
c/o Palin Enterprises  
235 Park Ave South, 8th Floor  
New York New York 10003-1405  
Attention: Dean Palin

Re: 145 West Street  
Block 2530, Lots 1, 55 & 56 (tentatively Lots 1 & 2),  
Brooklyn, New York

Dear Mr. Palin:

This letter constitutes the Notice of Final Completion of the \_\_\_\_\_ pursuant to Section 5.2 of the Restrictive Declaration between 145 West Street LLC and 157-159 West Street LLC dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Declaration").

By this notice, the undersigned, for the Department of Park and Recreation, confirms that the Public Access Area has been Finally Completed (as defined in the Declaration) in accordance with all requirements of the Declaration. Undefined capitalized terms shall have the meaning set forth in the Declaration.

Yours very truly,

\_\_\_\_\_  
Commissioner of Parks & Recreation

[THIS LETTER SHALL BE MODIFIED AS APPROPRIATE  
TO THE CERTIFICATION BEING ISSUED]

**EXHIBIT N**  
**FORM PAA ACCESS PERMIT**

**THIS PERMIT IS  
NOT VALID UNLESS  
BOTH PARTIES  
HAVE SIGNED PAGE  
No. 7**

**PERMIT TO PERFORM WORK ON PUBLIC ACCESS AREA**

**Permit No:**

**Start:**

**Expiration:**

PERMISSION AS REQUESTED IS GRANTED TO YOU AND/OR YOUR ASSIGNEE AS PERMITTEE TO PERFORM WORK ON PUBLIC ACCESS AREA SUBJECT TO THE TERMS AND CONDITIONS AS SET FORTH HEREIN:

**LOCATION:**

**FOR THE PURPOSE OF:**

THIS PERMIT IS ISSUED SUBJECT TO THE FOLLOWING CONDITIONS AND TERMS:

1. The Chief of Operations of the Borough of Brooklyn, Charles Gili at, 718-965-8922, shall be notified by the **Permittee** at least forty-eight (48) hours before work is started under this permit.
2. The **“Parks Department”** as used herein shall mean the **Commissioner** of the Department of Parks and Recreation or designee.
3. The **Permitttee** agrees to assume all responsibility for injury to persons or damage to private and/or City property caused through the operations of the permit and to save and hold

harmless the **City of New York** and the **Parks Department** from all claims and suits which may arise there from.

4. **Permittee** is subject to strict adherence to all City, State and Federal laws and the Rules and Regulations of the **Parks Department** insofar as they apply.

5. The **Permittee** shall replace and restore all planted areas, trees, shrubs and other existing structures or substructures, utility lines, roads, walks and/or curbs damaged or destroyed during the term of this permit and such replacement and restoration during the term of this permit shall be in accordance with the standards and meet with the approval of the **Parks Department**. All temporary structures, equipment and material of the **Permittee** not required for incorporation in the work under this permit shall be removed from the site at the completion of the work.

6. No construction work other than necessary maintenance, emergencies or as required by the City of New York, or its appropriate agencies, is to be performed on Park Property on Saturdays, Sundays or Holidays, except by written permission from the **Parks Department**.

7. This permit is terminable at will by the **Parks Department** upon twenty-five (25) days notice to **Permittee** and the **Parks Department** reserves the right to amend this permit to cover new conditions and to cancel this permit at any time and for any reason.

8. Barricades, warning devices, signs, flags, lights, shall be provided and maintained as required for public safety. The **Permittee** is responsible for the adequacy of the safety devices. The **Parks Department** shall have the right to order the **Permittee** to vary and/or increase the safety devices installed on the permit site.

9. The existing drainage and utility systems within the limits of the operations shall be maintained during the period covered by this permit to the satisfaction of the **Parks Department**.

10. a). No tree removals are allowed under this permit.

b). Exception to this policy will be allowed after written requests are approved by the Commissioner.

c). Replacements are to be determined on a square inch for square inch basis; i.e the basal area calculated at a point 4'-6" above finished grade of the replacement trees must equal at least the basal surface area of the existing trees.

d). Replacement trees must be with 3"-3 1/2" trees acceptable to the **Parks Department**.

e). All trees killed or severely damaged shall be replaced as per the above.

11. Operations shall be performed in such manner so that the stability of the existing and adjacent areas are not disturbed. Adjacent park areas or appurtenances shall be the responsibility of the **Permittee** insofar as any damage caused by his/her operation.

12. All grass areas disturbed shall be restored with sod in strict accordance with **Parks Department** specifications.
13. All areas graded by **Permittee** shall have a minimum depth of 6 inches of topsoil prior to sodding. Sodding shall be according to Park Standards and shall be done at the proper time of season. Sod must be maintained by **Permittee** until the root system is established and verified by the **Parks Department**.
14. Plantings (trees, shrubs) shall be maintained and guaranteed by the **Permittee** for a period of one year after the final inspection and acceptance by the **Parks Department**. After the one year maintenance and guarantee period, any tree or shrub that requires replacement (as directed by the **Parks Department**) shall carry an additional six month maintenance guarantee. Each replacement planting must be in a satisfactory acceptable condition after the six month period or again be subject to replacement until accepted by the **Parks Department**. Where vandalism is agreed by the **Parks Department** as the cause for replacement, the **Permittee** shall not be responsible for replacement during the one year guarantee period after the final acceptance, and also during any subsequent six month guarantee period.
15. This permit does not grant the **Permittee** exclusive right to the site designated herein. The **Permittee** shall coordinate his work with other work being or to be performed in the area by the **Parks Department**, other contractors, or sub-contractors, utility companies or other city or state agencies.
16. This permit is issued for property under the jurisdiction of the **Parks Department**. **Permittee** shall be responsible for securing permits as required from other agencies having jurisdiction in the area or access to the area of operations.
17. All restoration items, subject to settlement, on Park Department Property shall be maintained and guaranteed by the **Permittee** for a period of one year after the final inspection and acceptance by the **Parks Department**.
18. **Permittee** is responsible to maintain qualified supervision during all phases of the restoration to make certain that all **Parks Department** specifications are being adhered to.
19. **Permittee** shall notify the **Parks Department** when the area is ready for final inspection to verify restoration completeness in accordance with the terms of this permit.
20. All articles of the **Parks Department** contract documents with respect to protection and restoration of park areas, shall apply for conditions not specifically covered by the provisions of this permit.
21. This permit unless previously terminated at the discretion of the **Parks Department** will expire as of \_\_\_\_\_. Extension requests must be made thirty (30) days prior to expiration.
22. **Insurance.**
- A. **Permittee**, unless it obtains the following insurance itself, agrees to cause any and all contractors used by **Permittee** under this permit, to procure and

maintain in effect, during the performance of this permit by such contractor, such commercial general liability insurance as will protect and defend Permittee and/or its agent, the City and the Parks Department from any claims by any person or entity for loss or damage to property and for personal injuries including death, which may arise out of the negligence of Permittee, its directors, officers, employees, agents and contractors directly or indirectly from the operation of this Permit.

B. All policies required by under this permit shall be issued by an insurance company or companies authorized to do business in the State of New York having a Best's rating of at least A-(7) or a Standard & Poors rating of at least AA and must specifically list the City of New York and the New York City Department of Parks & Recreation together with their officials and employees as Additional Insureds with coverage at least as broad as set forth in ISO Form CG 2010 and CG 0001 and must be in effect and continue so during the performance of the Work by such contractor:

Workers' Compensation Insurance . . . . . \$ Per Statute

Employer's Liability for any one occurrence not less than . . . . . \$ 1,000,000

Commercial Liability Insurance (with Broad Form Property Damage, Products/Completed Operations Liability, Contractual Liability, Independent Contractors, Fire/Legal Liability, Property Insurance Endorsements,

for any one occurrence not less than. . . . \$5,000,000.00

Any Auto, Hired Auto and Non-owned Auto Insurance

for any one occurrence not less than. . . . \$ 1,000,000

C. The insurance certificates for all policies required by this permit shall include the Permit No. and shall indicate the location of the work. Permittee shall provide copies of all such certificates of insurance to the Parks Department prior to the commencement of work at the Permitted Premises. This permit is not valid until the required insurance certificates have been received by the Parks Department's permit division.

D. Endorsement to Policies - The following endorsements shall be made part of the insurance policies described in this permit, as specified below:

i) This policy shall not be canceled, terminated, modified, or the coverage thereof reduced, until thirty (30) days after receipt of written notice thereof by certified mail addressed to the Commissioner.

ii) If and insofar as knowledge of an "occurrence", "claim", or "suit" is relevant to the City of New York as Additional Insured under this policy, such knowledge by an agent, servant, official or employee of the City of New York



will not be considered knowledge on the part of the City of New York of the "occurrence", "claim", or "suit" unless notice thereof is received by the: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department.

iii) Notice of accident shall be given to the Insurance Company within sixty (60) days after notice to the City of such accident, or notice of claim shall be given to the Insurance Company within sixty (60) days after such claim shall have been filed with the Comptroller of the City of New York. Notice to the Insurance Company by either party shall be deemed sufficient notice under the policy.

iv) Any notice demand or other writing by or on behalf of the Named Insured to the insurance company shall also be deemed to be a notice, demand or other writing on behalf of the City and the Parks Department as Additional Insureds. Any response by the Insurance Company to such notice, demand or other writing shall be addressed to the Named Insured and to the City at the following address: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department;

v) The presence of representatives of the City on the site of the work shall not invalidate this policy.

vi) Violation of any of the terms of any other policy issued by the Insurance Company to the Permittee shall not invalidate this policy.

23. **Payment and Performance Bonds.** Permittee, at its sole cost and expense, shall provide and maintain throughout the term of this permit if commercially available, a payment and performance bond in the amount of one million dollars (\$1,000,000). Four copies of the Payment and Performance Bonds shall be submitted prior to the commencement of work under this permit, a sample of which is attached hereto as Exhibit X.

24. **Permittee** shall take a complete and thorough set of photographs showing the existing condition of the site, and access areas and submit same to the **Parks Department**, Construction Permit division, prior to the start of operation. Photographs will be used as an aid in the establishment of restoration requirements.

25. For any questions regarding the permit area, **Permittee** shall contact the **Parks Department** Brooklyn Chief of Operations Office, per condition no. one (1).

26. Prior to any excavation, **Permittee** shall, contact "**One Call Users' Council, Inc.**", toll free at **1-800-272-4480**, to obtain information on underground utilities.

27. Access to the Permit Site shall be on \_\_\_\_\_.

28. The **Permittee** shall maintain all areas used for access to the Permit Site in a condition acceptable to this Agency.

29. All work shall be done in the area shown on the attached sketch.

30. **Permittee** shall not use access areas or start work until the required permits and approvals have been obtained from all the appropriate agencies.
31. For any information regarding trees in the permit area, **Permittee** shall call the Brooklyn Director of Forestry, Andrew Raab at, 718-965-7737.
32. **Permittee shall not stockpile any material within the dripline of the trees.**
33. **Permittee** shall perform compensatory pruning of trees **adversely** affected by his work. Pruning shall be done by a **Parks Department** approved licensed arborist when and where directed by the **Parks Department**.
34. **Permittee** shall not permit construction debris to accumulate on site and shall clean up permit site on a regular basis.
35. **Permittee** shall erect warning/danger signs and barricades, and take any other measures necessary for the preservation of public safety. **Permittee** shall maintain same in good condition throughout the duration of the permit.
36. **Permittee** shall circumvent trees by trenching outside the dripline of the trees.
37. **Permittee** shall not park private vehicles on **Parks Department** property without obtaining permits from the Borough Commissioner's Office.
38. **Intentionally left blank.**
39. **Permittee** shall seed all grassy areas disturbed by his work and maintain (water) the area until a stand of grass is accepted by the **Parks Department's** Maintenance & Operations Division.
40. Where provision is made for notice to be given, the same shall be given by one side to the other by sending notice by (a) Certified Mail, (b) hand delivery, (c) Federal Express, Express Mail or UPS Overnight, or (d) facsimile, with the confirmation notice constituting evidence of delivery. Notice shall be sent by mail or hand to **Permittee** at the following address \_\_\_\_\_; notice shall be sent by mail or hand to the **Parks Department** at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10021, Attention: General Counsel or by facsimile to (212) 360-1373.
41. **Permittee** is aware emergency vehicles must always have access through the area.
42. **Permittee** is aware that existing drainage, electrical and sewer lines are in working condition and shall be tested again before the **Parks Department** accepts the restoration work required under this permit.
43. **Permittee** shall submit complete as-built record drawings showing portions of the project pertaining to **Parks Department** property, to the **Parks Department** upon completion or work. Submittals shall be delivered to:

New York City, Parks and Recreation  
Permit Section, Olmsted Center  
Flushing Meadows - Corona Park  
Flushing, New York 11368

Acceptable submittals of "As-Built" Record Drawings shall be either drafting ink or plastic film pencil on minimum 3 mil. mylar 30" x 42" in size. In lieu of original ink or pencil drawings, the contractor may submit camera-photo wash-off mylars (Dupont-Crovex or equal). The Agency will not accept electrostatic (i.e. zerox) or diazo (i.e. sepia) type reproductions as equivalent original drawings.

The final "As-Built" Record Drawings shall include the following: Permittee's company name, address and telephone number. Project's title, DPR Permit No., Drawing date, the word "As-Built", Permittee's signature and a statement certifying that the "As-Built" drawings are accurate and correct.

44. **Permittee** shall restore all surfaces disturbed by his work to match existing materials.
45. Regardless of the prior existing conditions, all restoration work must be performed at a level consistent with the **Parks Department's** Standard construction procedures for new work.

Very truly yours,

John J. Natoli, P.E.

Chief of Construction

Cc: FILE  
R. Dimond

D. Shanks-Brown,

A. Oliveri, Commissioner,

J. Spiegel

C. Gili

P.C. Dyrenforth

L. Neglia

A. Raab

D. Grulich

D. Howe

**Contact Information:**

NYCDPR, Charles Gili, 718-965-8922

**Permit No.: / For the purpose of:**

**ACCEPTED AND AGREED RE:**

\_\_\_\_\_  
Agency/Company Name

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

## EXHIBIT O

### ECB PENALTY SCHEDULE

Penalty	\$2,500
Mitigated Penalty	\$1,250
Maximum Penalty	\$2,500
2nd Offense Penalty	\$10,000
Maximum Default Penalty	\$10,000

## EXHIBIT P

### FORM OF DECLARATION OF EASEMENTS

#### (Drainage Facilities)

**DECLARATION** made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "**Declaration**"), by 145 West Street LLC and 157-159 West Street LLC, each having an address c/o Palin Enterprises, 235 Park Ave South, 8th Floor, New York New York 10003-1405 (collectively, the "**Declarant**").

#### WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in the Borough of Brooklyn, Kings County, City and State of New York, which property is designated as Block 2530, Lots 1, 55 & 56 (tentatively Lots 1 & 2) on the tax map of the Borough of Brooklyn in the City of New York (the "**Subject Property**"), as more particularly described in Schedule A annexed hereto; and

WHEREAS, in accordance with that certain Restrictive Declaration made by Declarant, dated \_\_\_\_\_, 2009 (the "**Restrictive Declaration**"), recorded in the Office of the New York City Register, Kings County at CRFN \_\_\_\_\_, Declarant intends to develop the Subject Property (the "**Proposed Development**") by constructing (i) two predominantly residential buildings, including accessory parking garages and retail space, and (ii) certain public access areas as further defined in the Restrictive Declaration (the "**Public Access Area**"), which Public Access Area shall be located in part on property (the "**Fee Transferred PAA**") more particularly described in Schedule B annexed hereto; and

WHEREAS, Declarant intends to convey the Fee Transferred PAA to the City of New York (the "**City**") following substantial completion of the Public Access Area; and

WHEREAS, in connection with the construction of the Proposed Development, Declarant intends to install a storm water drainage pipe (the "**Drainage Pipe**") on the Fee Transferred PAA which shall serve that portion of the Subject Property more particularly described on Schedule C (the "**Development Property**"); and

WHEREAS, Declarant desires to impose easements over portions of the Fee Transferred PAA for the purpose of installing, maintaining, repairing and replacing the Drainage Pipe.

NOW, THEREFORE, Declarant, intending to be legally bound, hereby agrees that the Fee Transferred PAA is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, easements and agreements hereinafter set forth:

1. Drainage Easements. Declarant does hereby declare and impose over those portions of the Fee Transferred PAA more particularly described by metes and bounds on Schedule D attached hereto (collectively referred to as the "Easement Areas"), (a) a non-exclusive perpetual easement to place, install, construct, replace, repair and maintain the

Drainage Pipe and appurtenances thereto as required by Declarant or as deemed necessary by any governmental authority, and (b) an exclusive perpetual easement to use the Drainage Pipe for the transportation of stormwater through the Easement Areas.

2. Maintenance Obligation. Declarant shall be responsible for the repair and replacement of the Drainage Pipe installed in the Easement Areas pursuant to the easements granted in this Declaration.

3. Access to Easement Areas. The owners, from time to time, of the Fee Transferred PAA shall permit the Declarant or its successors and assigns, and its agents, employees and contractors, and any owners' association created in accordance with the Restrictive Declaration (the "Association") such reasonable access over the Fee Transferred PAA as is necessary or appropriate to access the Easement Areas in connection with the installation, maintenance, inspection or repair of the Drainage Pipe in the Easement Areas pursuant to the easement granted in this Declaration. For any such maintenance that shall disturb the surface of the Easement Areas, Declarant shall execute a form of permit provided by the City's Department of Parks and Recreation which contains the City's standard provisions relating to a permit agreement, including, without limitation, insurance requirements and indemnification (the "Easement Areas Access Permit"). The Easement Areas Access Permit shall be substantially in the Form of Schedule E annexed hereto.

4. Provisions Run With the Land. The covenants and easements provided for in this Declaration burdening the Fee Transferred PAA are intended to run with the land and to bind the Fee Transferred PAA and the owner or owners of the Fee Transferred PAA. The covenants and easements benefitting the Development Property are also intended to run with the land and to benefit the Development Property.

5. No Obstruction. The owners, from time to time, of the Fee Transferred PAA shall have the right to cultivate (but not re-grade) or otherwise use and enjoy the surface of the Easement Areas but the owners, from time to time, of the Fee Transferred PAA shall not construct or permit to be constructed any building, structure or obstructions on or over any portion of said Easement Areas, nor shall the owners of the Fee Transferred PAA interfere in any way with the operation of the Drainage Pipe installed in the Easement Areas; provided, however, that the restrictions imposed by this Section 5 shall not apply to any improvements located on the Fee Transferred PAA constructed by Declarant in connection with the Proposed Development as contemplated by the Restrictive Declaration (the "Existing PAA Improvements"), and Declarant shall restore the Existing PAA Improvements to the extent Declarant's rights of access contemplated by this Declaration cause damage to such Existing PAA Improvements.

6. Cooperation. The owners, from time to time, of the Fee Transferred PAA hereby agree to cooperate with the Declarant in assigning this Declaration of Easements and/or dedicating the Drainage Pipe to the Association including but not limited to, executing any documents required by the Association.

7. Captions. The captions preceding the various paragraphs of this Declaration have been inserted for convenience of reference and shall not be used in construing this Declaration.

8. Invalidity. If any provision of this Declaration or the application thereof to any person or circumstances, shall be held invalid or unenforceable, the remainder of this Declaration of Easements, or the application of such provision to any other persons or circumstances, shall not be affected thereby.

IN WITNESS WHEREOF, this Declaration has been duly executed by the Declarant as of the date first written above.

145 WEST STREET LLC

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

Name: Dean Palin

Title:

157-159 West Street LLC

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

Name: Dean Palin

Title:



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

On the \_\_\_\_ day of \_\_\_\_\_, 200\_ before me, the undersigned, personally appeared Dean Palin, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

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

On the \_\_\_\_ day of \_\_\_\_\_, 200\_ before me, the undersigned, personally appeared \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

## SCHEDULE A

### DESCRIPTION OF THE SUBJECT PROPERTY

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

BEGINNING at the corner formed by the intersection of the southerly side of Huron Street with the westerly side of West Street;

RUNNING THENCE southerly along the said westerly side of West Street, 200 feet;

THENCE westerly along the northerly side of India Street and a line in continuation thereof westerly, 596 feet 7 1/2 inches to the exterior line of the established bulkhead along the East River approved by the Secretary of War on November 7, 1917 and by the Secretary of the Army on December 20, 1957;

THENCE northerly along the exterior line of said bulkhead, 204 feet 1/2 inch to the southerly side of Huron Street and a line in continuation thereof westerly;

THENCE easterly along said southerly side of Huron Street and a line in continuation thereof westerly, 637 feet to the intersection of the said southerly side of Huron Street with the said westerly side of West Street, the point or place of BEGINNING;

TOGETHER WITH the land lying under the waters of the East River adjoining the above described premises between said bulkhead line and the U.S. Pierhead line established by the Secretary of War on November 7, 1917 contained in the parcels described in Letters Patent granted by the People of the State of New York to Daypac Industries, Inc., dated December 10, 1969 and recorded in the Office of the New York City Register, Kings County, on January 2, 1970 in Reel 385 page 1936 (the "Letters Patent").

## **SCHEDULE B**

### **DESCRIPTION OF FEE TRANSFERRED PAA**

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

BEGINNING at a point 470.87 feet west of the intersection of the northerly side of India Street and the westerly side of West Street, along India Street;

RUNNING THENCE westerly, parallel with India Street, 107.38 feet;

THENCE northerly, at a 98.19 degree angle, 202.06 feet;

THENCE easterly, at a 81.81 degree angle, 136.18 feet;

THENCE southerly, at a 90 degree angle, 60.75 feet;

THENCE westerly, at a 90 degree angle, 23.20 feet;

THENCE southwesterly at a 111.99 degree angle, 42.33 feet;

THENCE southerly at a 136.01 degree angle, 42.33 feet;

THENCE easterly, at a 111.99 degree angle, 23.20 feet;

THENCE southerly, at a 90 degree angle, 60.75 feet to the point or place of BEGINNING.

## SCHEDULE C

### DESCRIPTION OF DEVELOPMENT PROPERTY

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

BEGINNING at the corner formed by the intersection of the southerly side of Huron Street with the westerly side of West Street;

RUNNING THENCE southerly along the said westerly side of West Street, 200 feet;

THENCE westerly along the northerly side of India Street and a line in continuation thereof westerly, 596 feet 7 1/2 inches to the exterior line of the established bulkhead along the East River approved by the Secretary of War on November 7, 1917 and by the Secretary of the Army on December 20, 1957;

THENCE northerly along the exterior line of said bulkhead, 204 feet 1/2 inch to the southerly side of Huron Street and a line in continuation thereof westerly;

THENCE easterly along said southerly side of Huron Street and a line in continuation thereof westerly, 637 feet to the intersection of the said southerly side of Huron Street with the said westerly side of West Street, the point or place of BEGINNING;

TOGETHER WITH the land lying under the waters of the East River adjoining the above described premises between said bulkhead line and the U.S. Pierhead line established by the Secretary of War on November 7, 1917 contained in the parcels described in Letters Patent granted by the People of the State of New York to Daypac Industries, Inc., dated December 10, 1969 and recorded in the Office of the New York City Register, Kings County, on January 2, 1970 in Reel 385 page 1936 (the "Letters Patent").

EXCEPTING THEREFROM, all that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point 470.87 feet west of the intersection of the northerly side of India Street and the westerly side of West Street, along India Street;

RUNNING THENCE westerly, parallel with India Street, 107.38 feet;

THENCE northerly, at a 98.19 degree angle, 202.06 feet;

THENCE easterly, at a 81.81 degree angle, 136.18 feet;

THENCE southerly, at a 90 degree angle, 60.75 feet;

THENCE westerly, at a 90 degree angle, 23.20 feet;

THENCE southwesterly at a 111.99 degree angle, 42.33 feet;

THENCE southerly at a 136.01 degree angle, 42.33 feet;

THENCE easterly, at a 111.99 degree angle, 23.20 feet;

THENCE southerly, at a 90 degree angle, 60.75 feet to the point or place of BEGINNING.

## **SCHEDULE D**

### **DESCRIPTION OF EASEMENT AREAS**

Commencing at the intersection of the southerly line of Huron Street (60 feet wide) and the westerly line of West Street (60 feet wide), thence running the following two courses and distances to the Point of Beginning;

a. Along the southerly line of Huron Street, N90°00'00"W, a distance of 469.21 feet to a point; thence

b. S00°00'02"E, a distance of 22.51 feet to the Point of Beginning; thence

1. South 00°00'02" East, a distance of 20.00 feet; thence

2. North 90°00'00" West, a distance of 159.21 feet; thence

3. North 11°24'47" West, a distance of 20.40 feet; thence

4. South 90°00'00" East, a distance of 163.25 feet to the Point of Beginning.

Encompassing an area of 3,225 square feet or 0.074 acres, more or less.

**SCHEDULE E**

**PERMIT TO PERFORM WORK ON PUBLIC ACCESS AREA**

**THIS PERMIT IS  
NOT VALID UNLESS  
BOTH PARTIES  
HAVE SIGNED PAGE  
No. 7**

**Permit No:**

**Start:**

**Expiration:**

PERMISSION AS REQUESTED IS GRANTED TO YOU AND/OR YOUR ASSIGNEE AS PERMITTEE TO PERFORM WORK ON PUBLIC ACCESS AREA SUBJECT TO THE TERMS AND CONDITIONS AS SET FORTH HEREIN:

**LOCATION:**

**FOR THE PURPOSE OF:**

THIS PERMIT IS ISSUED SUBJECT TO THE FOLLOWING CONDITIONS AND TERMS:

1. The Chief of Operations of the Borough of Brooklyn, Charles Gili at, 718-965-8922, shall be notified by the **Permittee** at least forty-eight (48) hours before work is started under this permit.

2. The “**Parks Department**” as used herein shall mean the **Commissioner** of the Department of Parks and Recreation or designee.
3. The **Permitttee** agrees to assume all responsibility for injury to persons or damage to private and/or City property caused through the operations of the permit and to save and hold harmless the **City of New York** and the **Parks Department** from all claims and suits which may arise there from.
4. **Permitttee** is subject to strict adherence to all City, State and Federal laws and the Rules and Regulations of the **Parks Department** insofar as they apply.
5. The **Permitttee** shall replace and restore all planted areas, trees, shrubs and other existing structures or substructures, utility lines, roads, walks and/or curbs damaged or destroyed during the term of this permit and such replacement and restoration during the term of this permit shall be in accordance with the standards and meet with the approval of the **Parks Department**. All temporary structures, equipment and material of the **Permitttee** not required for incorporation in the work under this permit shall be removed from the site at the completion of the work.
6. No construction work other than necessary maintenance, emergencies or as required by the City of New York, or its appropriate agencies, is to be performed on Park Property on Saturdays, Sundays or Holidays, except by written permission from the **Parks Department**.
7. This permit is terminable at will by the **Parks Department** upon twenty-five (25) days notice to **Permitttee** and the **Parks Department** reserves the right to amend this permit to cover new conditions and to cancel this permit at any time and for any reason.
8. Barricades, warning devices, signs, flags, lights, shall be provided and maintained as required for public safety. The **Permitttee** is responsible for the adequacy of the safety devices. The **Parks Department** shall have the right to order the **Permitttee** to vary and/or increase the safety devices installed on the permit site.
9. The existing drainage and utility systems within the limits of the operations shall be maintained during the period covered by this permit to the satisfaction of the **Parks Department**.
10.
  - a). No tree removals are allowed under this permit.
  - b). Exception to this policy will be allowed after written requests are approved by the Commissioner.
  - c). Replacements are to be determined on a square inch for square inch basis; i.e the basal area calculated at a point 4'-6" above finished grade of the replacement trees must equal at least the basal surface area of the existing trees.
  - d). Replacement trees must be with 3"-3 1/2" trees acceptable to the **Parks Department**.
  - e). All trees killed or severely damaged shall be replaced as per the above.



11. Operations shall be performed in such manner so that the stability of the existing and adjacent areas are not disturbed. Adjacent park areas or appurtenances shall be the responsibility of the **Permittee** insofar as any damage caused by his/her operation.
12. All grass areas disturbed shall be restored with sod in strict accordance with **Parks Department** specifications.
13. All areas graded by **Permittee** shall have a minimum depth of 6 inches of topsoil prior to sodding. Sodding shall be according to Park Standards and shall be done at the proper time of season. Sod must be maintained by **Permittee** until the root system is established and verified by the **Parks Department**.
14. Plantings (trees, shrubs) shall be maintained and guaranteed by the **Permittee** for a period of one year after the final inspection and acceptance by the **Parks Department**. After the one year maintenance and guarantee period, any tree or shrub that requires replacement (as directed by the **Parks Department**) shall carry an additional six month maintenance guarantee. Each replacement planting must be in a satisfactory acceptable condition after the six month period or again be subject to replacement until accepted by the **Parks Department**. Where vandalism is agreed by the **Parks Department** as the cause for replacement, the **Permittee** shall not be responsible for replacement during the one year guarantee period after the final acceptance, and also during any subsequent six month guarantee period.
15. This permit does not grant the **Permittee** exclusive right to the site designated herein. The **Permittee** shall coordinate his work with other work being or to be performed in the area by the **Parks Department**, other contractors, or sub-contractors, utility companies or other city or state agencies.
16. This permit is issued for property under the jurisdiction of the **Parks Department**. **Permittee** shall be responsible for securing permits as required from other agencies having jurisdiction in the area or access to the area of operations.
17. All restoration items, subject to settlement, on Park Department Property shall be maintained and guaranteed by the **Permittee** for a period of one year after the final inspection and acceptance by the **Parks Department**.
18. **Permittee** is responsible to maintain qualified supervision during all phases of the restoration to make certain that all **Parks Department** specifications are being adhered to.
19. **Permittee** shall notify the **Parks Department** when the area is ready for final inspection to verify restoration completeness in accordance with the terms of this permit.
20. All articles of the **Parks Department** contract documents with respect to protection and restoration of park areas, shall apply for conditions not specifically covered by the provisions of this permit.
21. This permit unless previously terminated at the discretion of the **Parks Department** will expire as of-----. Extension requests must be made thirty (30) days prior to expiration.

22. **Insurance.**

A. **Permittee**, unless it obtains the following insurance itself, agrees to cause any and all contractors used by **Permittee** under this permit, to procure and maintain in effect, during the performance of this permit by such contractor, such commercial general liability insurance as will protect and defend **Permittee** and/or its agent, the City and the **Parks Department** from any claims by any person or entity for loss or damage to property and for personal injuries including death, which may arise out of the negligence of **Permittee**, its directors, officers, employees, agents and contractors directly or indirectly from the operation of this Permit.

B. All policies required by under this permit shall be issued by an insurance company or companies authorized to do business in the State of New York having a Best's rating of at least A-(7) or a Standard & Poors rating of at least AA and must specifically list the City of New York and the New York City Department of Parks & Recreation together with their officials and employees as Additional Insureds with coverage at least as broad as set forth in ISO Form CG 2010 and CG 0001 and must be in effect and continue so during the performance of the Work by such contractor:

Workers' Compensation Insurance . . . . . \$ Per Statute

Employer's Liability for any

one occurrence not less than . . . . . \$ 1,000,000

Commercial Liability Insurance (with Broad Form Property Damage, Products/Completed Operations Liability, Contractual Liability, Independent Contractors, Fire/Legal Liability, Property Insurance Endorsements,

for any one occurrence not less than. . . . \$5,000,000.00

Any Auto, Hired Auto and Non-owned Auto Insurance

for any one occurrence not less than. . . . \$ 1,000,000

C. The insurance certificates for all policies required by this permit shall include the Permit No. and shall indicate the location of the work. **Permittee** shall provide copies of all such certificates of insurance to the **Parks Department** prior to the commencement of work at the Permitted Premises. This permit is not valid until the required insurance certificates have been received by the **Parks Department's** permit division.

D. Endorsement to Policies - The following endorsements shall be made part of the insurance policies described in this permit, as specified below:

i) This policy shall not be canceled, terminated, modified, or the coverage thereof reduced, until thirty (30) days after receipt of written notice thereof by certified mail addressed to the Commissioner.

ii) If and insofar as knowledge of an "occurrence", "claim", or "suit" is relevant to the City of New York as Additional Insured under this policy, such knowledge by an agent, servant, official or employee of the City of New York will not be considered knowledge on the part of the City of New York of the "occurrence", "claim", or "suit" unless notice thereof is received by the: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department.

iii) Notice of accident shall be given to the Insurance Company within sixty (60) days after notice to the City of such accident, or notice of claim shall be given to the Insurance Company within sixty (60) days after such claim shall have been filed with the Comptroller of the City of New York. Notice to the Insurance Company by either party shall be deemed sufficient notice under the policy.

iv) Any notice demand or other writing by or on behalf of the Named Insured to the insurance company shall also be deemed to be a notice, demand or other writing on behalf of the City and the **Parks Department** as Additional Insureds. Any response by the Insurance Company to such notice, demand or other writing shall be addressed to the Named Insured and to the City at the following address: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department;

v) The presence of representatives of the City on the site of the work shall not invalidate this policy.

vi) Violation of any of the terms of any other policy issued by the Insurance Company to the Permittee shall not invalidate this policy.

**23. Payment and Performance Bonds.** Permittee, at its sole cost and expense, shall provide and maintain throughout the term of this permit if commercially available, a payment and performance bond in the amount of one million dollars (\$1,000,000). Four copies of the Payment and Performance Bonds shall be submitted prior to the commencement of work under this permit, a sample of which is attached hereto as Exhibit X.

**24. Permittee** shall take a complete and thorough set of photographs showing the existing condition of the site, and access areas and submit same to the **Parks Department**, Construction Permit division, prior to the start of operation. Photographs will be used as an aid in the establishment of restoration requirements.

**25.** For any questions regarding the permit area, **Permittee** shall contact the **Parks Department** Brooklyn Chief of Operations Office, per condition no. one (1).

**26.** Prior to any excavation, **Permittee** shall, contact "**One Call Users' Council, Inc.**", toll free at **1-800-272-4480**, to obtain information on underground utilities.

27. Access to the Permit Site shall be on \_\_\_\_\_.
28. The **Permittee** shall maintain all areas used for access to the Permit Site in a condition acceptable to this Agency.
29. All work shall be done in the area shown on the **attached** sketch.
30. **Permittee** shall not use access areas or start work until the required permits and approvals have been obtained from all the appropriate agencies.
31. For any information regarding trees in the permit area, **Permittee** shall call the Brooklyn Director of Forestry, Andrew Raab at, 718-965-7737.
32. **Permittee shall not stockpile any material within the dripline of the trees.**
33. **Permittee** shall perform compensatory pruning of trees **adversely** affected by his work. Pruning shall be done by a **Parks Department** approved licensed arborist when and where directed by the **Parks Department**.
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41. **Permittee** is aware emergency vehicles must **always** have access through the area.

42. **Permittee** is aware that existing drainage, electrical and sewer lines are in working condition and shall be tested again before the **Parks Department** accepts the restoration work required under this permit.

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Flushing, New York 11368

Acceptable submittals of "As-Built" Record Drawings shall be either drafting ink or plastic film pencil on minimum 3 mil. mylar 30" x 42" in size. In lieu of original ink or pencil drawings, the contractor may submit camera-photo wash-off mylars (Dupont-Crovex or equal). The Agency will not accept electrostatic (i.e. zerox) or diazo (i.e. sepia) type reproductions as equivalent original drawings.

The final "As-Built" Record Drawings shall include the following: **Permittee's** company name, address and telephone number. Project's title, DPR Permit No., Drawing date, the word "As-Built", **Permittee's** signature and a statement certifying that the "As-Built" drawings are accurate and correct.

44. **Permittee** shall restore all surfaces disturbed by his work to match existing materials.

45. Regardless of the prior existing conditions, all restoration work must be performed at a level consistent with the **Parks Department's** Standard construction procedures for new work.

Very truly yours,

John J. Natoli, P.E., Chief of Construction

Cc: FILE

R. Dimond

D. Shanks-Brown

A. Oliveri, Commissioner

J. Spiegel

C. Gili

P.C. Dyrenforth

L. Neglia

A. Raab

D. Grulich

D. Howe

**Contact Information:**

NYCDPR, Charles Gili, 718-965-8922

**Permit No.: / For the purpose of:**

**ACCEPTED AND AGREED RE:**

\_\_\_\_\_  
Agency/Company Name

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_