

HOWARD GOLDMAN

July 30, 2015

By Email and By Hand

Hon. Margery Perlmutter, Chair
NYC Board of Standards and Appeals
250 Broadway, 29th Floor
New York, NY 10007

**Re: 134-141 Orchard Street, New York, NY
BSA No. 58-15-A**

Dear Chair Perlmutter:

I am replacing my colleague Mitch Korbey as land use counsel in the captioned application for common law vesting. My client is Orchard Hotel LLC ("Orchard"), the secured creditor of this partially completed hotel development. The full sixteen stories of superstructure have been constructed but remain unenclosed.

This project has been the subject of two prior 2-year extensions of time to complete construction (following completion of foundations) under Section 11-332(a) of the Zoning Resolution. Rather than seek additional one-year extensions under Section 11-332(b), this Application seeks a determination of common law vesting and a four-year extension to permit the completion of the development.

The owner of the property, D.A.B. Group LLC, has commenced a Chapter 11 proceeding in the United States Bankruptcy Court for the Southern District of New York. Orchard is the secured creditor. The Court has ordered Orchard to complete the BSA process as quickly as possible.

Submitted herewith are a revised Appeals form, Revised Statement of Facts and Findings, new Owner's Authorization, and response to the Board's May 1 Notice of Comments. In prior extensions granted under Section 11-332(a) of the Zoning Resolution, the Board found that substantial construction had been completed and substantial expenditures were made as of the applicable date.

If the building is required to comply with current zoning regulations, the developer would be forced to remove eight out of 16 stories, reconstruct the remaining stories, reduce the FAR by 33%, and reduce the building height by 58%. The reduced building would

have fewer hotel units and would generate less revenue. These changes would severely impact the marketability of the project.

Very truly yours,

A handwritten signature in black ink, appearing to read "H Goldman". The signature is fluid and cursive, with the first name "H" being particularly prominent.

Howard Goldman

cc: Mitchell A. Korbey, Esq.
Hon. Gale Brewer, Manhattan Borough President;
Hon. Margaret Chin, Council Member, District 1;
Ms. Susan Stetze, District Manager, Manhattan Community Board 3;
Ms. Edith Hsu-Chen, Director, Department of City Planning Manhattan Bor. Office;
Mr. Christopher Holme, Zoning Division, Department of City Planning.



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 New York, NY 10007
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 www.nyc.gov/bsa

APPEALS (A) CALENDAR
Application Form

BSA APPLICATION NO. 58-15-A

Section A

**Applicant/
Owner**

GoldmanHarris LLC			D.A.B. Group LLC		
NAME OF APPLICANT			OWNER OF RECORD		
475 Park Avenue South			154 Orchard Street		
ADDRESS			ADDRESS		
New York	NY	10016	New York	NY	10002
CITY	STATE	ZIP	CITY	STATE	ZIP
212	935-1622		Orchard Hotel LLC		
AREA CODE TELEPHONE			LESSEE / CONTRACT VENDEE		
212	935-2651		110 East 25th Street		
AREA CODE FAX			ADDRESS		
hgoldman@goldmanharris.com			New York	NY	10010
EMAIL			CITY	STATE	ZIP

Section B

Site Data

139-141 Orchard Street, 77-81 Rivington Street 10002
 STREET ADDRESS (INCLUDE ANY A/K/A) ZIP CODE

Through-lot with frontage on Orchard Street, Rivington Street and Allen Street
 DESCRIPTION OF PROPERTY BY BOUNDING OR CROSS STREETS

415	61, 62, 63, 66, 67	Manhattan	3	N/A
BLOCK	LOT (S)	BOROUGH	COMMUNITY BOARD NO.	LANDMARK/ HISTORIC DISTRICT
Margaret Chin		C4-4A	12c	
CITY COUNCILMEMBER (include		EXISTING ZONING DISTRICT special zoning district, if any)		ZONING MAP NUMBER

Section C

**Application
Type**

Dept. of Building or other Agency Appeals Variance to Building, MDL or Other Code
 Certificate of Occupancy Modification Waivers to GCL 35/36 Vested Rights

Date of Final Determination _____ Acting on Application No. _____

Section D

Description

Legalization Yes No In part

Application for the approval of vested rights under common-law doctrine to complete construction pursuant to lawfully issued Department of buildings permit based on prior zoning designation.

Section E

**BSA History
and Related
Actions**


If "YES" to any of the below questions, please explain in the STATEMENT OF FACTS

	YES	NO
1. Has the premises been the subject of any previous BSA application(s)..... If yes, Prior BSA No <u>311-08-BZ, 220-10-BZY, 220-10-BZY</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Are there any applications concerning the premises pending before any other government agency?.....	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Is the property the subject of any court action?.....	<input checked="" type="checkbox"/>	<input type="checkbox"/>

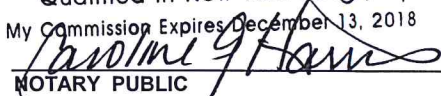
Section G

Signature

I HEREBY AFFIRM THAT BASED ON INFORMATION AND BELIEF, THE ABOVE STATEMENTS AND THE STATEMENTS CONTAINED IN THE PAPERS ARE TRUE.


 Signature of Applicant, Corporate Officer or Other Authorized Representative

Howard Goldman Partner
 Print Name Title

CAROLINE G. HARRIS
 NOTARY PUBLIC-STATE OF NEW YORK
 SWORN TO ME THIS 26 DAY OF July, 2015
 NO. 021463282
 Qualified in New York County
 My Commission Expires December 13, 2018

 NOTARY PUBLIC

July 30, 2015

REVISED STATEMENT OF FACTS AND FINDINGS

**BSA Cal. No. 58-15-A
134-141 Orchard Street
New York, NY 10002
Block 415, Lots 61- 63, 66-67**

I. FACTS

Application

This application (“Application”) for a determination of common law vested rights was filed on March 16, 2015 by Mitchell A. Korbey, Esq. (“Applicant”) on behalf of D.A.B. Group LLC, owner of record (“DAB”). The Application seeks to preserve DAB’s right to complete a partially constructed hotel on the captioned zoning lot (“Zoning Lot”) under the zoning district regulations in effect prior to the 2008 Lower East Side rezoning.

Parties

DAB is owner and debtor in possession under Chapter 11 of the Bankruptcy Code. Orchard Hotel, LLC (“Orchard”) is a secured creditor in the bankruptcy proceeding.

Premises

The Zoning Lot includes Lots 61, 62, 63, 66, 67, with frontages on the west side of Orchard Street, the east side of Allen Street, and the south side of Rivington Street.

Proposed Development

The proposed development is a partially constructed 16-story transient hotel (Use Group 5) (the “Building”) on Lots 61, 66 and 67, utilizing transferred development rights from Lots 62 and 63, with the existing building on Lot 62 to remain. When completed, the Building will have a total floor area of approximately 39,064 square feet and a height of 191’-0”. Construction commenced in October 2008.

Rezoning

On November 19, 2008, the East Village/Lower East Side Rezoning (“Rezoning”) was approved pursuant to CPC No. C 080397(A) ZMM and a related zoning text amendment, CPC No. N 080398(A) ZRM. See Exhibits “A” and “B”. The Rezoning changed the zoning district from C6-1 (6.0 FAR commercial) to C4-4A (4.0 FAR commercial) and modified the applicable bulk

regulations. See Exhibit “C” for a comparison of the C6-1 and the C4-4A bulk regulations. Because of the rezoning, the Building became non-complying.

DOB Permits

On September 29, 2008, the Department of Buildings (“DOB” issued Permit No. 110251361-EW-OT (the “Foundation Permit”) permitting excavation and construction of the foundation of the Building. Work commenced on October 14, 2008 and on November 19, 2008, New Building Permit No. 104870392-01-NB was issued permitting the construction of the Building. The same day, the zoning district was changed to C4-4A. See Exhibit “D”.

2009 BSA Extension

On June 16, 2009, the Board granted a renewal of permits necessary to complete construction of foundations (Cal. No. 311-08-BZY) pursuant to ZR § 11-331. The foundation was thereafter completed within six months and construction proceeded until November 19, 2010, when the permits lapsed. See Exhibit “E”.

2011 BSA Extension

On March 15, 2011, under Cal. No. 220-10-BZY, the Board granted a two-year extension to complete construction and obtain a Certificate of Occupancy. See Exhibit “F”.

2011 Foreclosure

Orchard commenced a foreclosure proceeding against DAB in New York State Supreme Court in July 2011.

2013 BSA Extension

No work to complete construction was undertaken following the March 15, 2011 extension. On August 20, 2013, under Cal. No. 220-10-BZY, the Board granted a second two-year extension, to expire on August 20, 2015, to complete construction and obtain a Certificate of Occupancy. See Exhibit “G”.

2014 Bankruptcy

In July 2014, DAB filed a petition for relief under Chapter 11 of the Bankruptcy Code (Case No. 14-12057, U.S. Bankruptcy Court for the Southern District of New York).

2015 Application

On March 16, 2015, DAB, represented by the law firm Herrick, filed an application with the Board (58-15-A) to extend the time to complete construction and obtain a Certificate of Occupancy for a period of four additional years under the doctrine of common law vesting. At the time of filing, the sale of the Building to a specific contract vendee was anticipated.

Revised Application

The sale to the contract vendee did not close and is no longer contemplated. Pursuant to order of the Bankruptcy Court, Orchard is being substituted as contract vendee and Goldman Harris LLC is being substituted as Applicant in Cal. No. 58-15-A. The Bankruptcy Court order provides for Orchard to sell the Building for completion by a new purchaser. In order for this to occur, the Board's approval of the Revised Application is required. Copies of the DOB violations are attached as Exhibit "H". All violations will be cured upon re-commencement of construction.

II. FINDINGS

Rather than request a one-year extension pursuant to ZR § 11-332(b), which would trigger the need for additional extensions after expiration of the year, the Applicant seeks a determination of vested rights pursuant to the common law and a four year extension of time to allow the sale and completion of the Building.

Under New York law, an owner may be considered to have established a vested right where "substantial construction had been undertaken and substantial expenditure made prior to the effective date of the [change in zoning]." *Matter of Putnam Armonk v. Town of Southeast*, 52 A.D.2d 10. See Exhibit "I". As found by the Board in 220-10-BZ (March 15, 2011), "only the work performed as of November 19, 2010" (the expiration of the first extension of time) may be considered in this analysis. The third prong of the New York legal standard requires that "serious loss to the owner" would result under the new zoning. All three of these tests are met in the case, as follows:

1) Substantial construction has been completed.

In 220-10-BZY, the Board found that as of November 19, 2010, 100% of the foundation, 7 floors of the superstructure, and partial construction of the eighth floor of the superstructure had been completed. Based on these facts, the Board determined that substantial construction had been completed.

2) Substantial expenditures were made.

In 220-10-BZY, the Board found that substantial expenditures had been made as of November 19, 2010, consisting of \$4,826,511 out of \$15,249,467 to complete construction. This finding was based on financial records, construction contracts, copies of cancelled checks, copies of lien waivers, and photographs of the site. See Exhibits "J" and "K".

3) Serious loss will be incurred.

Serious loss will be sustained if the Building has to be reconstructed in compliance with the C4-4A regulations. As previously noted, the Building is currently in an advanced state of

construction, with foundations complete and 16 stories of superstructure in place along with mechanical risers and framing.

Compliance with the current C4-4A zoning regulations would result in a one-third reduction in FAR, a loss of approximately 12,891 square feet of floor area out of a permitted total of 39,376 square feet, a reduction in height of 111', from 191' to 80', and reconstruction of the lower floor slabs to comply with the C4-4A street wall regulations. In order to bring the Building into compliance with the C4-4A zoning, the following work items would be required:

- Demolition of eight stories (nine slabs);
- Extension/construction of lower floor slabs one through five to the property line, to comply with street wall requirements;
- Redesign of interior floor layouts and reduction in room count; and
- Reconstruction of building roof, bulkhead and rooftop mechanical space.

These changes would result in substantial new demolition, construction and material costs, as well as a reduction in income and a loss of time. An almost 13,000 square foot loss of floor area, a loss of eight stories and 111' in height, reconstruction of the lower floor slabs, redesign of the interior, loss of hotel units, reconstruction of the roof, and an extended time period for completion would render the Building "essentially valueless." See *Town of Orangetown v. Magee*, 89 N.Y.2d 41 (1996). See Exhibit "I". However, the condition of the construction work completed to date has not been compromised and can be utilized to complete the construction of the Building if a vested right is established and the requested extension is granted. See affidavit of architect Jeffrey Cole at Exhibit "L".

Conclusion

In 220-10-BZY, the Board found that substantial construction was completed and substantial expenditures were made in connection with the completion of the foundation and approximately half of the superstructure. With respect to the finding of serious loss, it is self-evident that the changes set forth above would constitute "serious" loss, by any measurement.

Exhibits

- A – East Village/Lower East Side Rezoning approved pursuant to CPC No. C 080397(A)
ZMM
- B – Related zoning text amendment, CPC No. N 080398(A) ZRM
- C – Zoning Comparison Table
- D – Foundation Permit
- E – Renewal of permits necessary to complete construction of foundations (311-08-BZY)
- F – Extension to complete construction and obtain a Certificate of Occupancy (220-10-BZY)
- G – Second two-year extension, to expire on August 20, 2015 (220-10-BZY)
- H – Copies of the DOB violations
- I – *Matter of Putnam Armonk v. Town of Southeast*, 52 A.D.2d 10 and *Town of Orangetown v. Magee*, 89 N.Y.2d 41 (1996).
- J – Financial records, construction contracts, copies of cancelled checks, copies of lien waivers, and photographs of the site
- K – Construction Costs Table
- L – Architect’s Affidavit – Jeffrey Cole

CITY PLANNING COMMISSION

October 7, 2008 / Calendar No. 22

C 080397(A) ZMM

58-15-A-

IN THE MATTER OF an application submitted by the Department of City Planning pursuant to Sections 197-c and 201 of the New York City Charter and proposed for modification pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure, for an amendment of the Zoning Map, Section No. 12c:

- 1) changing from an R7-2 District to an R7A District property bounded by:
 - a) East 13th Street, a line 100 feet easterly of Second Avenue, East 7th Street, and a line 100 feet westerly of Second Avenue;
 - b) East 13th Street, a line 100 feet easterly of First Avenue, East 6th Street, First Avenue, East 2nd Street, a line 100 feet easterly of First Avenue, East Houston Street, and a line 100 feet westerly of First Avenue;
 - c) East 13th Street, a line 100 feet easterly of Avenue A, the northerly, westerly and southerly boundary line of Tompkins Square Park, a line 100 feet easterly of Avenue A, a line 100 feet southerly of East 2nd Street, a line 100 feet westerly of Avenue A, East 4th Street, Avenue A, the westerly centerline prolongation of East 5th Street, and a line 100 feet westerly of Avenue A;
 - d) East 13th Street, a line 100 feet easterly of Avenue B, East 2nd Street, Avenue B, a line 100 feet southerly of East 2nd Street, a line 100 feet westerly of Avenue B, the southerly, easterly and northerly boundary line of Tompkins Square Park, and a line 100 feet westerly of Avenue B;
 - e) East 12th Street, Avenue C – Loisaída Avenue, East 10th Street, a line 100 feet easterly of Avenue C – Loisaída Avenue, a line midway between East 2nd Street and East 3rd Street, Avenue C – Loisaída Avenue, East 2nd Street, and a line 100 feet westerly of Avenue C – Loisaída Avenue; and
 - f) a line 100 feet southerly of East Houston Street, Pitt Street, Rivington Street, a line 100 feet westerly of Pitt Street, a line 100 feet northerly of Delancey Street, a line midway between Essex Street and Norfolk Street, the southerly boundary line of a playground and its easterly prolongation, and Norfolk Street;
- 2) changing from an C6-1 District to a R7A District property bounded by East 7th Street, a line 100 feet easterly of Second Avenue, East 3rd Street, and a line 100 feet westerly of Second Avenue;
- 3) changing from an R7-2 District to a R7B District property bounded by the southerly

boundary line of Tompkins Square Park, a line 100 feet westerly of Avenue B, East 4th Street, and a line 100 feet easterly of Avenue A;

4) changing from an R7-2 District to a R8A District property bounded by:

- a) East 10th Street, Avenue D, East Houston Street, Pitt Street, a line 100 feet southerly of East Houston Street, Norfolk Street, the southerly boundary line of a playground and its easterly and westerly prolongation, Essex Street, East Houston Street, a line 100 feet easterly of First Avenue, a line midway between East 2nd Street and East 1st Street, Avenue A, a line 100 feet southerly of East 2nd Street, Avenue B, East 2nd Street, Avenue C – Loisaida Avenue, a line midway between East 2nd Street and East 3rd Street, and a line 100 feet westerly of Avenue D; and
- b) Rivington Street, Pitt Street, Delancey Street and its westerly centerline prolongation (at Clinton Street), a line midway between Suffolk Street and Clinton Street, a line 100 feet northerly of Delancey Street, and a line 100 feet westerly of Pitt Street;

5) changing from an R7-2 District to a R8B District property bounded by:

- a) East 13th Street, a line 100 feet westerly of Second Avenue, East 1st Street, a line 100 feet easterly of Bowery, and a line 100 feet easterly of Third Avenue;
- b) East 13th Street, a line 100 feet westerly of First Avenue, East Houston Street, and a line 100 feet easterly of Second Avenue;
- c) East 13th Street, a line 100 feet westerly of Avenue A, East 6th Street, and a line 100 feet easterly of First Avenue;
- d) East 4th Street, a line 100 feet westerly of Avenue A, a line midway between East 1st Street and East 2nd Street, a line 100 feet easterly of First Avenue, East 2nd Street, and a line 150 feet easterly of First Avenue;
- e) East 13th Street, a line 100 feet westerly of Avenue B, the northerly boundary line of Tompkins Square Park, and a line 100 feet easterly of Avenue A;
- f) East 4th Street, a line 100 feet westerly of Avenue B, a line 100 feet southerly of East 2nd Street, and a line 100 feet easterly of Avenue A;
- g) East 12th Street, a line 100 feet westerly of Avenue C – Loisaida Avenue, East 2nd Street, and a line 100 feet Easterly of Avenue B; and
- h) East 10th Street, a line 100 feet westerly of Avenue D, a line midway between East 2nd street and East 3rd Street, and a line 100 feet easterly of Avenue C – Loisaida Avenue;

6) changing from a C6-1 District to a C4-4A District property bounded by:

- a) a line 100 feet southerly of East Houston Street, Essex Street, the southerly boundary

line of a playground and its westerly prolongation, a line midway between Essex Street and Norfolk Street, a line 100 feet northerly of Delancey Street, and Chrystie Street; and

- b) a line 100 feet southerly of Delancey Street, Ludlow Street, Grand Street, and Chrystie Street;
- 7) changing from a C6-1 District to a C6-2A District property bounded by:
- a) East 3rd Street, a line 100 feet easterly of Second Avenue, East Houston Street, Essex Street, a line 100 feet southerly of East Houston Street, Chrystie Street, East Houston Street, a line 65 feet westerly of Second Avenue, East 1st Street, and a line 100 feet westerly of Second Avenue; and
 - b) a line 100 feet northerly of Delancey Street, a line midway between Suffolk Street and Clinton Street, the westerly centerline prolongation of Delancey Street (at Clinton Street), Ludlow Street, a line 100 feet southerly of Delancey Street and Chrystie Street,
- 8) changing from a C6-1 District to a C6-3A District property bounded by Stanton Street, Chrystie Street, Grand Street, a line midway between Bowery and Chrystie Street, a line 100 feet southerly of Delancey Street, and a line 100 feet westerly of Chrystie Street; and
- 9) establishing within a proposed R7A District a C2-5 District bounded by East 7th Street, a line 100 feet easterly of Second Avenue, East 3rd Street, and a line 100 feet westerly of Second Avenue;

Borough of Manhattan, Community District 3, as shown on a diagram (for illustrative purposes only) dated July 3, 2008 and subject to CEQR Declaration E-216.

The original application for an amendment of the Zoning Map was filed by the Department of City Planning on May 2, 2008. The requested action, in conjunction with a related zoning text amendment, would facilitate the department's East Village/Lower East Side rezoning. On July 3, 2008, pursuant to Section 2-06(c)(1) of the ULURP rules, the Department filed an application to modify the proposed amendment to the Zoning Map (C 080397(A) ZMM), for public hearing and consideration by the City Planning Commission. The modified application, C 080397(A) ZMM, is the subject of this report.

RELATED ACTIONS

In addition to the amendment of the Zoning Map which is the subject of this report (C 080397(A) ZMM), implementation of the proposal also requires action by the City Planning Commission on the following application, being considered concurrently:

N 080398(A) ZRM: An Amendment to Article 2, Chapter 3 of the Zoning Resolution of the City of New York, to apply the Inclusionary Housing Program to the proposed R7A districts on Second Avenue, First Avenue, Avenue A and Avenue C, to the proposed R8A districts on East Houston Street, Delancey Street, Avenue D, Second Avenue and Pitt Street, and to the proposed R9A districts on Chrystie Street in Manhattan, Community District 3.

BACKGROUND

The Department of City Planning proposes a comprehensive zoning strategy for the East Village and Lower East Side neighborhoods. The requested actions include zoning map and text amendments that would affect 111 blocks within an area generally bounded by East 13th Street, Avenue D, East Houston Street, Pitt Street, Ludlow Street, Grand Street, the Bowery and Third Avenue in Community District 3, Manhattan.

The specific goals of the rezoning proposal are to:

- Foster new development that reflects the existing built character of the area, and
- Create new opportunities for affordable housing along identified streets, where appropriate.

The proposed zoning districts would promote development patterns that reflect the area's existing built character, including the differentiation in context between wide avenues and narrow side streets. In addition, the proposed R7A districts along Second Avenue, First Avenue, Avenue A and Avenue C; the proposed R8A zoning districts along East Houston

Street, Delancey Street, Avenue D, Second Avenue and Pitt Street; and the proposed R9A zoning districts along Chrystie Street, in conjunction with the proposed zoning text amendment, would establish incentives for the development of affordable housing.

The proposal is the result of a collaborative effort with Community Board 3 and its 197-a Zoning Task Force, local neighborhood civic groups, local elected officials and the Department of Housing Preservation and Development, to respond to strong community concerns relating to recent and ongoing out-of-scale development. The establishment of maximum allowable building heights and required street walls, similar to the established built forms throughout the rezoning area was of particular concern to the community.

Modified Zoning Map and Text Amendment Applications

On July 3, 2008, the Department filed land use applications to modify the proposed actions, by expanding the applicable Inclusionary Housing Program areas and eliminating a proposed text amendment relating to certain non-conforming, ground-floor uses. The modified applications (C 080397(A) ZMM and N 080398(A) ZRM) include the R7A/C6-3A Inclusionary Housing Alternative, which was fully analyzed in the Final Environmental Impact Statement (FEIS); by making the Inclusionary Housing Program applicable to additional wide streets in the rezoning area, this modification increases the amount of estimated affordable housing that could be developed under the proposal. The modified application for the related zoning text amendment (N 080398(A) ZRM) eliminates a proposed change to Section 52-61 of the Zoning Resolution that was included in the original application, which would have allowed the re-activation of non-conforming uses in certain locations beyond the two-year vacancy period generally permitted. By eliminating the proposed amendment, the general two-year limit on discontinued non-

conforming uses would apply to the midblock areas north of East Houston Street that are proposed to be mapped as R8B districts.

The original application for the zoning map amendment had proposed a C6-2A zoning district on the west side of Chrystie Street. During Community Board 3's review of the original application, it was suggested that Chrystie Street was a candidate for higher density given the width of the street, its location adjacent to Sara D. Roosevelt Park and its access to public transit. Upon re-evaluation based on the Community Board's suggestion and an analysis of potential housing opportunities, the Department modified the application to propose a C6-3A zoning district for the west side of Chrystie Street. The modified application proposes applying the Inclusionary Housing Program to this C6-3A zoning district, consistent with the goals and requested actions of the original application.

The original application for the related zoning text amendment had proposed application of the Inclusionary Housing Program to the proposed R8A and C6-2A zoning districts. During the public review of the original application, it was suggested that the proposed text amendment could be expanded to apply to a wider geographic area, specifically to the wide streets north of East Houston Street. Upon re-evaluation based on widespread community concern, and an analysis of potential housing opportunities, the Department modified the proposed text amendment in order to expand the applicability of the Inclusionary Housing Program to the R7A districts on wide streets north of East Houston Street.

The original application for the related zoning text amendment had additionally proposed extending the "Discontinuance" provisions for non-conforming uses set forth in Section 52-61

to the R8B districts proposed through the zoning map amendment. During Community Board 3's review of the original application, it was suggested that the proposed text amendment was contrary to the community's goals with regard to the support of certain commercial uses in residential areas. Upon re-evaluation based on the Community Board's concern, the Department removed the proposed amendment to that section.

Built Context and Existing Zoning

The East Village and Lower East Side neighborhoods have been known for generations as a gateway for untold numbers of immigrants. At one point during its history it was reported to house the world's densest concentration of people. Many of the area's 19th- and early 20th-century tenement-style buildings remain intact today, and it is this particular building type and scale, along with other low- to mid-rise, multiple-dwelling apartments and row houses, all built to the street line, that remain so strongly associated with these neighborhoods.

The widely prevalent four- to seven-story building heights, the wide range of active, ground-floor commercial uses and the area's access to subway and bus service all foster the vibrant street life that has made these neighborhoods such desirable destinations for both visitors and residents.

In contrast, the area's existing R7-2 and C6-1 zoning, which has remained in place since 1961, encourages building forms and land uses that are inconsistent with the area's established character. Both of these districts permit height factor, or non-contextual, buildings, and they allow residential uses at a maximum floor area ratio (FAR) of 3.44, community facility uses at 6.5 FAR, and commercial uses (in the C6-1 districts) at 6.0 FAR. They allow the development of

tall, slender buildings surrounded by open space. They do not require that buildings be built to the street line, and they place no fixed limit on building heights. The rezoning area does not include the residential development known as Village View, located between East 2nd Street and East 6th Street, and between First Avenue and Avenue A. This building complex is comprised of 16- and 21-story residential towers and is a clear example of the kind of development permitted by the existing R7-2 zoning.

In recent years an increasing number of new, as-of-right buildings have been constructed at heights significantly above existing buildings in the East Village and Lower East Side. It is this mismatch between what is permitted under the existing zoning and the predominant neighborhood character that this proposal seeks to remedy.

Within the rezoning area boundaries, R7-2 districts are mapped both north of (excluding Second Avenue blockfronts up to East 7th Street) and south of (east of and including Norfolk Street) East Houston Street. Residential uses are allowed up to a maximum 3.44 FAR and community facility uses up to a maximum 6.5 FAR. Street wall and overall building heights are not regulated in these districts. Building envelopes are regulated by the sky exposure plane.

The remainder of the rezoning area is mapped with C6-1 zoning districts, which permit a wide range of commercial uses. C6-1 districts are the equivalent of R7-2 districts with regard to residential and community facility FAR; they additionally permit commercial uses up to a maximum 6.0 FAR. As in the R7-2 districts, street wall and overall building heights are not regulated in these districts, and building envelopes are regulated by the sky exposure plane.

Local retail activity is enabled by C1-5 and C2-5 commercial overlays mapped over the existing R7-2 district. As local service districts, these overlays permit commercial uses up to 2.0 FAR; in mixed-use residential/community-facility and commercial buildings, commercial uses are limited to the ground floor. Overlays are generally mapped (excluding the blockfronts which face the eastern edge of Tompkins Square Park on Avenue B and the blockfront on the west side of Second Avenue within the St. Mark's Historic District) to depths of 100 feet along the north-south avenues north of East Houston Street, as well as on both sides of Clinton Street between East Houston Street and Delancey Street. Except where an existing C6-1 district on Second Avenue is proposed to be re-mapped as an R7A/C2-5 district, the proposed zoning map amendment does not include any additional changes to the overlay districts.

The existing Special Transit Area District is mapped along portions of Second Avenue, in the vicinity of the proposed Second Avenue subway line to provide easements to facilitate pedestrian access to the proposed subway and the access of light and air to the stations.

REQUESTED ACTIONS

Zoning Map Amendment C 080397(A) ZMM

The Department of City Planning proposes a zoning map amendment for 111 blocks in the East Village and Lower East Side neighborhoods in Manhattan, Community District 3. The proposal would replace the existing R7-2 and C6-1 zoning districts with new contextual zoning districts, including R7A, R7B, R8A, R8B, C4-4A, C6-2A and C6-3A. A small area from East 2nd Street to East 6th Street, between First Avenue and Avenue A would retain the existing R7-2 district.

Contextual zoning districts limit building heights; require buildings to have continuous street walls, with setbacks above a certain height; and require residential developments to comply with the Quality Housing Program.

The different densities and building forms permitted by the proposed contextual zoning districts would reflect the variation in existing built conditions throughout the rezoning area. Throughout most of the rezoning area, a mix of lower-density contextual districts is proposed, including R7A (and the commercial equivalent C4-4A), R7B and R8B, which have more restrictive height limits and lower allowable densities. Higher-density districts, such as R8A, C6-2A and C6-3A, are proposed along wide streets where public transportation is readily accessible.

R7-2 to R7A

Approximately 90 blockfronts along the avenues north of East Houston Street, as well as portions of 17 blocks south of East Houston Street (approximately 26% of the rezoning area) would be rezoned from R7-2 zoning districts to contextual R7A zoning districts, to reflect the prevailing mid-rise character of these areas. As part of the proposal (and as described in more detail below; see “Zoning Text Amendment”), portions of the proposed R7A districts would, through the Inclusionary Housing Program, permit a maximum 4.6 FAR for residential uses, provided that 20% of residential floor area is used for affordable housing units. Sites not providing or preserving any affordable housing would be permitted a maximum 3.45 FAR for residential uses. In proposed R7A districts where the IHP would not be applicable, a 4.0 FAR would be permitted for residential and community facility uses. R7A districts limit overall building heights to 80 feet and street wall heights to 65 feet; base heights are required to be a minimum of 40 feet. New construction within proposed R7A districts would be required to line

up with adjacent structures to maintain existing street wall characteristics. Because the rezoning area is located within the Manhattan Core, off-street parking spaces for sites in proposed R7A districts would not be required.

R7-2 to R7B

Beginning at points 100 feet from each avenue, the midblock portions of three blocks south of Tompkins Square Park (approximately 3% of the rezoning area) would be rezoned from R7-2 zoning districts to contextual R7B zoning districts, to reflect the prevailing low-scale character of these areas. R7B districts permit 3.0 FAR for residential and community facility uses and limit overall building height to 75 feet and street wall heights to 60 feet; base heights are required to be a minimum of 40 feet. New construction within proposed R7B districts would be required to line up with adjacent structures to maintain existing street wall characteristics. Because the rezoning area is located within the Manhattan Core, off-street parking spaces for sites in proposed R7B districts would not be required.

R7-2 to R8B

The midblock portions of approximately 59 blocks (approximately 48% of the rezoning area) would be rezoned from R7-2 zoning districts to contextual R8B zoning districts, to reflect the prevailing mid-rise character of these areas. R8B districts permit 4.0 FAR for residential and community facility uses and limit overall building height to 75 feet and street wall heights to 60 feet; base heights are required to be a minimum of 55 feet. New construction within proposed R8B districts would be required to line up with adjacent structures to maintain existing street wall characteristics. Because the rezoning area is located within the Manhattan Core, off-street parking spaces for sites in proposed R8B districts would not be required.

C6-1 to R7A/C2-5

Eight blockfronts along Second Avenue (approximately 1.5% of the rezoning area) would be rezoned from C6-1 zoning districts to a contextual R7A district with a C2-5 commercial overlay, to reflect the prevailing mid-rise character and established land use patterns of these areas. As part of the proposal (and as described in more detail below; see “Zoning Text Amendment”), the proposed R7A districts would permit a maximum 4.6 FAR for residential uses, provided that 20% of residential floor area is used for affordable housing units. Sites not providing or preserving any affordable housing would be permitted a maximum 3.45 FAR for residential uses. Community facility uses would be permitted a maximum of 4.0 FAR. The overall building heights would be limited to 80 feet and street wall heights limited to 65 feet; base heights would be required to be a minimum of 40 feet. New construction within proposed R7A districts would be required to line up with adjacent structures to maintain existing street wall characteristics. While the wide streets within the existing C6-1 area are generally proposed to be rezoned to C6-2A and C6-3A districts as described below, the proposed R7A/C2-5 districts here and their associated bulk and use regulations are more consistent with these areas' established character and land use patterns. In the proposed R7A/C2-5 districts, commercial use would be prohibited above the first floor of mixed buildings and above the second floor in other buildings, and Use Groups 10, 11 and 12 would no longer be permitted as of right. All other commercial use groups currently permitted would continue to be permitted. Because the rezoning area is located within the Manhattan Core, off-street parking spaces for sites in the proposed R7A districts would not be required.

C6-1 to C4-4A

Portions of approximately 26 blocks south of East Houston Street (approximately 12% of the rezoning area) would be rezoned from C6-1 zoning districts to contextual C4-4A zoning districts, to reflect the prevailing mid-rise character of these areas. C4-4A districts permit 4.0 FAR for residential, commercial and community facility uses and limit overall building height to 80 feet and street wall heights to 65 feet; base heights are required to be a minimum of 40 feet. New construction within the proposed C4-4A district would be required to line up with adjacent structures to maintain existing street wall characteristics. While portions of the existing C6-1 area are proposed to be rezoned to C6-2A and C6-3A districts, the proposed C4-4A districts here and their associated bulk and use regulations are consistent with these areas' established land use patterns. In the proposed C4-4A districts, commercial Use Groups 7 and 11 would no longer be permitted as of right; all other commercial use groups currently permitted would continue to be permitted. Because the rezoning area is located within the Manhattan Core, off-street parking spaces for sites in the proposed C4-4A districts would not be required.

R7-2 to R8A

Portions of approximately 23 blockfronts, primarily along wide streets such as East Houston Street, Delancey Street, Avenue D and Pitt Street (approximately 5% of the rezoning area) would be rezoned from R7-2 zoning districts to contextual R8A zoning districts. As part of the proposal (and as described in more detail below; see "Zoning Text Amendment"), the proposed R8A districts would permit a maximum 7.2 FAR for residential uses, provided that 20% of residential floor area is used for affordable housing units. Sites not providing or preserving any affordable housing would be permitted a maximum 5.4 FAR for residential uses. Community

facility uses would be permitted a maximum of 6.5 FAR. The overall building heights would be limited to 120 feet and street wall heights limited to 85 feet; base heights would be required to be a minimum of 60 feet. New construction within proposed R8A districts would be required to line up with adjacent structures to maintain existing street wall characteristics. Because the rezoning area is located within the Manhattan Core, off-street parking spaces for sites in the proposed R8A districts would not be required.

C6-1 to C6-2A

Portions of approximately 23 blockfronts primarily along wide streets such as East Houston Street, Delancey Street and Second Avenue (approximately 3.6% of the rezoning area) would be rezoned from C6-1 zoning districts to contextual C6-2A zoning districts. As part of the proposal (and as described in more detail below; see “Zoning Text Amendment”), the proposed C6-2A districts would permit a maximum 7.2 FAR for residential uses, provided that 20% of residential floor area is used for affordable housing units. Sites not providing or preserving any affordable housing would be permitted a maximum 5.4 FAR for residential uses. Community facility uses would be permitted a maximum of 6.5 FAR, and commercial uses would be permitted a maximum of 6.0 FAR. Overall building heights would be limited to 120 feet and street wall heights limited to 85 feet; base heights would be required to be a minimum of 60 feet. New construction within proposed C6-2A districts would be required to line up with adjacent structures to maintain existing street wall characteristics. Because the rezoning area is located within the Manhattan Core, off-street parking spaces for sites in the proposed C6-2A districts would not be required.

C6-1 to C6-3A

Portions of four blockfronts along the west side of Chrystie Street between Stanton and Grand Streets (approximately 1.4% of the rezoning area) would be rezoned from C6-1 zoning districts to contextual C6-3A zoning districts. As part of the proposal (and as described in more detail below; see “Zoning Text Amendment”), the proposed C6-3A districts would permit a maximum 8.5 FAR for residential uses, provided that 20% of residential floor area is used for affordable housing units. Sites not providing or preserving any affordable housing would be permitted a maximum 6.5 FAR for residential uses. Community facility uses would be permitted a maximum of 7.5 FAR, and commercial uses would be permitted a maximum of 6.0 FAR. Overall building heights along wide streets are limited to 145 feet and street wall heights limited to 102 feet; base heights would be required to be a minimum of 60 feet (on narrow streets the overall building height limit is 135 feet, with a street wall between a minimum 60 and maximum 95 feet). New construction within proposed C6-3A districts would be required to line up with adjacent structures to maintain existing street wall characteristics. Because the rezoning area is located within the Manhattan Core, off-street parking spaces for sites in the proposed C6-3A districts would not be required.

Zoning Text Amendment (N 080398(A) ZRM)

As part of the East Village/Lower East Side rezoning proposal and as described in the application for the related action (N 080398(A) ZRM), the Department of City Planning is proposing to amend Sections 23-144 and 23-922 of the Zoning Resolution in order to make the Inclusionary Housing Program (IHP), as administered by the Department of Housing Preservation and Development (HPD), applicable to the proposed R7A districts on Second

Avenue, First Avenue, Avenue A and Avenue C; the proposed R8A districts on East Houston Street, Delancey Street, Avenue D, Second Avenue and Pitt Street; and the proposed R9A districts on Chrystie Street. The proposed text amendment, together with the zoning map amendment, would establish incentives for the creation and preservation of affordable housing in conjunction with new development on the selected streets. The proposed floor area bonus associated with the proposed R7A, R8A and R9A zoning districts would be consistent with bonuses established for recently adopted rezoning proposals, including Fort Greene/Clinton Hill and South Park Slope in Brooklyn, and the Upper West Side in Manhattan.

Under the IHP, developments would be allowed to increase the allowable FAR, above an established base, with the maximum bonus achieved when an amount of affordable housing is provided equal to 20 percent of a new development's floor area. As administered by HPD, such housing must remain permanently affordable to households earning up to 80% of the Area Median Income (AMI). For R7A districts along Second Avenue, First Avenue, Avenue A and Avenue C, the IHP would permit a base FAR of 3.45, up to a maximum of 4.6, depending on how much residential floor area is used for affordable units. For R8A districts along East Houston Street, Delancey Street, Avenue D, Second Avenue and Pitt Street, the base FAR of 5.4 could be increased to a maximum of 7.2; and in R9A districts along Chrystie Street, the base FAR of 6.5 could be increased to a maximum of 8.5. For all of these districts, the height and setback requirements would remain unchanged from the underlying contextual district provisions; additional floor area developed through the IHP must be located within the established envelope requirements. The affordable units created through this program must be permanently affordable rental units and can be provided on the site of the new development or

off-site within the same community district or within a half-mile from the site in an adjacent community district. The off-site units may be new construction or rehabilitation or permanent preservation of existing affordable units. Developers may utilize City or other subsidy programs to build the affordable units.

ENVIRONMENTAL REVIEW

The original and modified applications (C 080397 ZMM, C 080397(A) ZMM), in conjunction with the original and modified applications for the related action (N 080398 ZRM, N 080398(A) ZRM), were 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 07DCP078M. The lead agency is the City Planning Commission (CPC).

It was determined that the proposed actions may have a significant effect on the environment. A Positive Declaration was issued on May 25, 2007, and distributed, published and filed. Together with the Positive Declaration, a Draft Scope of Work for the Draft Environmental Impact Statement (DEIS) was issued on May 25, 2007. A public scoping meeting was held on the DEIS on June 25, 2007. A Final Scope of Work, reflecting the comments made during the scoping, was issued on February 15, 2008.

The applicant prepared a DEIS and issued a Notice of Completion on May 2, 2008. Pursuant to the SEQRA regulations and the CEQR procedures and other relevant statutes, a joint public hearing was held on the DEIS on August 13, 2008, in conjunction with the public hearings on

the related ULURP items (C 080397 ZMM, C 080397(A) ZMM). A Final Environmental Impact Statement (FEIS) was completed and a Notice of Completion of the FEIS was issued on September 26, 2008. The Notice of Completion for the FEIS identified significant impacts and proposed mitigation measures, as summarized in the following:

SHADOWS

Development as a result of both the proposed actions and the Inclusionary Alternative would cast new shadows at times throughout the year on some of the existing open spaces in the study area. These shadows could increase somewhat in the afternoons due to the allowable increased height of buildings along the west side of Chrystie Street and the potential shadows on Sara D. Roosevelt Park to the east. However, these incremental shadows (*i.e.*, the additional shadow beyond what would occur under the current zoning) would have significant adverse impacts on only one publicly accessible open space: Orchard Alley Garden between East 3rd and 4th Streets and Avenues C and D. Potential mitigation for this significant adverse impact could include locating sun-sensitive features in areas where they would be least affected by shadows, choosing shade tolerant species for vegetation to be planted in areas that would be in shadow, and realignment of benches and seating areas. The remaining open spaces and historic resources in the study area would not be significantly affected or affected at all.

Subsequent to the publication of the DEIS, DCP consulted with the New York City Department of Parks and Recreation (DPR) regarding the potential mitigation measures. DPR confirmed that these mitigation measures would be sufficient to fully offset the potential significant adverse shadow impacts to this open space resource. Furthermore, the implementation of these mitigation measures is practicable and feasible. However, funding to implement these mitigation measures has not been programmed although both DCP and DCP are committed to pursue funding opportunities.

In the absence of the implementation of the mitigation measures, unmitigated conditions would remain for the shadow impacts of the proposed actions as modified.

HISTORIC RESOURCES

ARCHAEOLOGICAL RESOURCES

Development as a result of the proposed actions is expected to occur on twenty-one potential development sites (plus parts of two more) where there is a potential for disturbance of archaeological resources. Although there would also be development on additional sites under the Inclusionary Alternative, only one

would experience incremental ground disturbance. However, LPC determined that this additional development site would not be sensitive for archaeological resources.

Resources within portions of the project sites where new construction could occur, absent prior disturbance, would be adversely impacted by new construction. This would constitute a significant adverse impact. Common mitigation measures (*e.g.*, redesigning a project so that it does not disturb the resource, fieldwork/field-testing, data recovery, curating artifacts, *etc.*) are not applicable or practical here, because the affected lots are privately owned. As such, impacts at these potential development sites are considered to be unmitigated and unavoidable adverse impacts of the actions.

ARCHITECTURAL RESOURCES

Similar to the proposed actions, the Inclusionary Alternative would result in the potential for significant adverse direct impacts on up to fifteen known architectural resources, on up to twenty-three potential architectural resources, and on up to seven LPC-identified resources. Of the additional Inclusionary Alternative-only sites, one is located within the potential Tompkins Square Park Historic District and one is located on the blockfront of tenements at 164-180 First Avenue. Overall, under the Inclusionary Alternative, similar direct impacts could occur to architectural resources as under the proposed actions.

It is not anticipated that development under the Inclusionary Alternative or the proposed actions would have adverse visual or contextual impacts on the majority of architectural resources. New development under either scenario would not eliminate or screen public views of a resource, introduce an incompatible visual, audible, or atmospheric element to a resource's setting, or result have any shadow impacts on a historic resource with sun-sensitive features. However, under both the proposed actions and the Inclusionary Alternative, there could be significant adverse visual and contextual impacts to a number of row houses at six discrete locations within the rezoning area where there are potential enlargement sites. In addition, enlargements within the potential Tompkins Square Park, East 6th Street, and Clinton, Rivington, and Stanton Street Historic Districts could have adverse visual and contextual impacts on the historic districts.

Possible mitigation for these adverse architectural resources impacts could include redesign, protective measures, and, as a last resort, relocation or documentation to Historic American Building Survey (HABS) standards. HABS documentation typically involves photographic and written documentation. Further, significant architectural features could be salvaged and donated to a museum or other cultural facility. However, because future private development on these sites would occur as-of-right under the proposed rezoning, there are no mechanisms for developing and implementing mitigation measures. Therefore,

these architectural resources impacts would be considered unmitigated and unavoidable adverse impacts.

The FEIS also identified E-Designation sites for hazardous materials, air quality and noise (CEQR Declaration E-216), the full list of which is copied from Appendix H of the FEIS and attached as Exhibit A hereto.

UNIFORM LAND USE REVIEW

On May 5, 2008, the original application (C 080397 ZMM) was certified as complete by the Department of City Planning and was duly referred to Community Board 3 and the Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b) along with the related non-ULURP text change application (N 080398 ZRM), which was referred for information and review.

On July 7, 2008, the modified applications (C 080397(A) ZMM, N 080398(A) ZRM) were duly referred to Community Board 3, and the Borough President, pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure (ULURP) rules.

Community Board Public Hearing

Community Board 3 (“CB3”) held a public hearing on the original application (C 080397 ZMM) and the related non-ULURP text change application (N 080398 ZRM) on May 12, 2008, and, on May 27, 2008, by a vote of 40 in favor, 0 opposed, and 0 abstaining, adopted a resolution recommending approval with the following comments:

“THEREFORE BE IT RESOLVED, that Community Board #3, Manhattan votes support [*sic*] on the Map Change ULURP 080397ZMM and Text Change N080398ZRM with the following modifications:

1. Removal of the proposed text change, which would allow the resurrection of long-defunct commercial uses of ground floor spaces in residential buildings in areas to be

zoned R8B. CB3 is currently overrun with nightlife establishments in ground floor storefronts and even former residences. CB3 passed a text change resolution the opposite of this in 2006.

2. CB3 believes that grandfathered Use Group 6 commercial establishments in residential areas that are not eating/drinking establishments should not be allowed to become eating/drinking establishments.
3. Inclusion of the Anti-Harassment and Anti-Demolition Provisions governing the Special Clinton District. To wit, that the demolition of existing buildings containing residential uses (as defined terms in the New York City Zoning Resolution) shall be prohibited and or limited in manner similar to the requirements of 96-108 and 96-23 of the Clinton Special District text. Furthermore, a Certification of No Harassment shall be required for buildings for the purpose of obtaining a permit for alterations, enlargements or new construction. (Ref: 96-108 and 96-109 of the Clinton Special Zoning District text. The companion Cure for Harassment provision as outlined in 96-110 shall also apply to such buildings.
4. Inclusion of IZ on the wide avenues north of Houston.St., as shown in the alternative proposal described in the DEIS; and IZ be considered for wide avenues south of Houston.
5. The City of New York provides a commitment that 30% of all the housing built in the rezoned area shall be permanently affordable to individuals and families making below 80% AMI. This commitment should be met by the identification of sufficient publicly owned sites in the immediate community where at least 700 units of housing will be built with government subsidies necessary to provide this housing. The units produced shall be scaled in the following manner:
 - 30% of the affordable units shall be available to residents with incomes up to 30% of the AMI
 - 50% of the affordable units shall be available to residents with incomes between 30% and 60% AMI
 - 20% of the affordable units shall be available to residents with incomes between 60% and 80% AMI
 - Units should have 100% community preference
6. Zone R7B [not commercial equivalent] on all narrow streets (less than 75' width) north and south of East Houston Street
7. Energy efficient and green building (LEED compliant) requirements when Government financing or tax abatement used.
8. In order to make enforcement of these provisions possible, the City of New York must create a legal services fund so that low-income tenants in any building facing the prospect of demolition have access to free legal counsel in order to adequately defend themselves from the threat of eviction. The funding can be made available through a variety of funding methods to ensure long-term support for the most

vulnerable residents in our community. The zoning text amendment must establish such a legal services fund.

9. The C4-4A zoning is not supported by the documentation in the DEIS for midblocks on these streets. We should zone R7A or R8B for Eldridge, Forsyth Street 100 feet away from Rivington Street, Stanton, Delancey and Houston Streets.

In 2005, CB3 asked DCP to work with us and use the city's resources to create a new zoning plan. Although we still have different plans, we are pleased at the collegial relationship the two have enjoyed and with the exchange of ideas that have formed this zoning plan.

Today we ratify our relationship to preserve our community with the support of this ULURP.

Our desire for the future is that DCP and CB3 must agree to immediately begin a process to review the zoning of parts of our district not included in this plan, and in consultation with the residents, civic leaders, community organizations, business and other stakeholders of those areas and CB3 develop locally appropriate planning initiatives to 1) prevent overdevelopment, speculation and displacement, 2) encourage affordable housing and 3) preserve the building character in those areas.

Borough President Recommendation

The original and modified applications for changes to the Zoning Map and the Zoning Resolution (C 080397 ZMM, C 080397(A) ZMM, N 080398 ZRM, N 080398(A) ZRM) were considered by the Borough President, who issued a recommendation for conditional approval on August 11, 2008. The Borough President provided comments with the recommendations. The excerpt below summarizes the chief comments which are fully described in the attached recommendation.

“Therefore, the Manhattan Borough President recommends conditional approval of ULURP Application No. C 080397 ZMM, N 080398 ZRY, C 080397(A) ZMM, and N 080398 ZRY(A) [*sic*], provided that:

1. DCP makes changes to the proposed zoning map and text changes to:
 - promote a more even and greater distribution of affordable housing by extending the Inclusionary Housing Program to the R7A districts north of Houston Street; and

- protect the mid-block residential area from incompatible non-conforming grandfathered uses by eliminating the proposed text amendment to ZR § 52-61.
2. The City pairs the rezoning with a community-wide planning strategy, which would include:
- adopting zoning provisions for anti-harassment and demolition restrictions;
 - providing funding for multi-lingual tenants' rights education and legal services to stabilize households and prevent illegal evictions;
 - creating a strategy to retain and aid local businesses;
 - creating a construction mitigation plan for areas that have a concentration of on-going construction;
 - developing publicly-owned properties to increase the number of affordable housing units at the community's income-targeted needs, evaluating the specific locations suggested in this recommendation;
 - prohibiting the conversion of legal, complying non-eating/drinking establishments to eating/drinking establishments;
 - creating a traffic mitigation/pedestrian enhancement plan for major thoroughfares; and
 - committing financial and technical support for the development of strategic community-based planning interventions with an implementation plan for the next year.

City Planning Commission Public Hearing

On July 23, 2008 (Calendar No. 1), the City Planning Commission scheduled August 13, 2008, for a public hearing on the original application (C 080397 ZMM) and the modified application (N 080397(A) ZMM), and the applications for the related non-ULURP text change actions (N 080398 ZRM, N080398(A) ZRM). The hearing was duly held on August 13, 2008 (Calendar Nos. 1-4), in conjunction with the public hearing on the applications for the related actions.

There were 47 speakers in favor of the application and related actions and 24 speakers in opposition.

Those who spoke in support included the New York City Council members from the 1st and 2nd Districts; the representative from the U.S. 12th Congressional District; the Manhattan Borough

President; a representative from the office of the New York State Assembly Member for the 64th District; a representative from the office of the New York State Senate for the 29th District; the Chair, former Chair and the District Manager of Community Board 3; representatives from various civic groups including Good Old Lower East Side, the East Village Community Coalition, the Cooper Square Committee, Asian Americans for Equality, Lower East Side People's Mutual Housing Association, the Lower East Side Business Improvement District, the Lower East Side Tenement Museum, the Greenwich Village Society for Historic Preservation; and local business owners and residents.

Those who spoke in opposition included representatives from the Bowery Alliance of Neighbors, Lower East Side Residents for Responsible Development, the Coalition to Protect Chinatown and the Lower East Side, the Chinese Staff & Workers Association, the New York Mission, the Judson Memorial Church and the Asian American Legal Defense and Education Fund and local business owners and residents.

Speakers in favor of the proposal strongly supported the proposal's fundamental goals, including the requirement of new development to reflect the established built character of the affected neighborhoods, as well as the application of the IHP along selected streets as a way to help retain the community's social and economic diversity. Speakers noted the special physical and social character that has long characterized the East Village and Lower East Side neighborhoods and their concern over recent and ongoing trends toward as-of-right and out-of-scale buildings rising throughout the community. Speakers supported the proposal for its establishment of building height limits and for the fine-grained re-mapping with contextual zoning districts. Many speakers also noted their strong support for the collaborative, transparent and

community-based planning process that had evolved over the previous three years and acknowledged the work and participation of those involved, noting the broad-based consensus achieved by the community in support of the rezoning proposal.

Among the speakers who testified in support of the proposal, many raised issues and recommendations meant to improve upon the project, particularly with regard to community-wide affordable housing goals. While acknowledging that inclusionary zoning is a key component of the proposed rezoning plan, many speakers, including the leadership of Community Board 3, elected officials and neighborhood civic organizations, expressed concerns that any new affordable units developed through the program should be guaranteed to low-income area residents, that affordable units should be made a mandatory requirement through the rezoning, that higher percentages of future projected development be set aside for affordable units, and that certain modifications be made to the proposed inclusionary districts with regard to bulk, height and setback allowances. Along the same general themes, many speakers also requested that anti-harassment and anti-demolition provisions be considered as part of the proposal, in order to protect existing tenants in the context of community-wide concerns over voluntary and involuntary displacement. Finally, speakers also requested that the establishment of a citywide legal services fund be incorporated into the rezoning, to aid tenants who may come under the threat of harassment by landlords.

Another recurring topic raised by speakers supporting the proposal focused on widespread community concern over certain commercial use group categories in residential districts, especially those that are not permitted as-of-right in areas without commercial overlays. Many speakers noted that the rezoning area was already populated by a large number of eating &

drinking establishments, to the detriment of more locally-oriented retail and service establishments and requested that the proposed rezoning plan reflect the community's broad consensus against any zoning text change that would maintain or extend the current regulations.

A third topic of general concern raised by speakers in support of the proposal was adjacent areas not included in the proposed rezoning plan. Some speakers expressed a concern for specific sub-areas between Third and Fourth Avenues as well as along the east side of the Bowery. Many speakers, including the leadership of CB3 and the Manhattan Borough President, also emphasized a need for City involvement in a community-based planning study to assess the conditions, issues and needs of adjacent areas, including Chinatown, which would necessarily include the involvement and input of Community Districts 1 and 2, which overlap with Chinatown. While acknowledging that the rezoning proposal currently under review was conceived specifically in response to development and zoning issues relevant to the affected area, and that any planning strategy for the Chinatown areas would necessarily be reflective of the issues unique to those areas, many CB3 members, including the Chair, joined with the Manhattan Borough President and the leadership of prominent community organizations in expressing a desire and willingness to work with the Department of City Planning and local constituents to begin a comprehensive review of key land use, socioeconomic and planning issues. As a part of a discussion simultaneously involving the issues of boundaries and affordable housing, the Commission also heard testimony suggesting that, while CB3 had previously recommended a higher-density district for Chrystie Street than DCP had previously proposed, that particular street merited further analysis, including its possible removal from the rezoning area.

Speakers representing the Lower East Side Business Improvement District (“BID”), including the BID President, Executive Director and member merchants, while generally supporting the goals of the proposal, spoke about the use and bulk impacts in the proposed C4-4A districts; the need to maintain higher densities in certain areas in conjunction with incentive mechanisms or through Special District permissions; and a recommendation for commercial overlays in the proposed R7A areas east of Essex Street.

Speakers also raised concerns regarding energy efficient construction and design and made requests for the implementation of "green" building requirements when government financing or tax abatement programs are used.

Echoing the testimony of speakers in support of the proposal, those speaking in opposition had concerns about affordable housing and potential gentrification, the rezoning plan’s impacts on local businesses, the delineation of the proposal boundaries and the scale of development along certain streets.

Many speakers who appeared in opposition to the proposal raised similar issues and recommendations as those who appeared in favor, particularly with regard to the general subject of affordable housing. Opposition speakers echoed supporting speakers in their emphasis on the necessity of inclusionary zoning as a key component of the proposal, while focusing their concerns on the levels of affordability as provided through the Inclusionary Housing Program (“IHP”), the voluntary as opposed to mandatory nature of the affordability component, the need for an expanded affordable housing supply, and the potential for certain modifications to the underlying bulk, height and setback allowances. Opposition speakers also repeated

supportive speakers on the subject of anti-harassment and anti-demolition provisions as well as widespread concerns over voluntary and involuntary displacement and the related need for a citywide legal services fund, to aid vulnerable tenants facing the threat of harassment by landlords.

A number of opposition speakers raised concerns over the rezoning area boundaries and requested specific areas to be included as a part of the analysis and rezoning. Specific areas requested for inclusion were the east side of the Bowery along the rezoning area's western and southwestern edges; the area between Third Avenue and Fourth Avenue along the rezoning area's northwestern edge; and portions of the adjacent Chinatown neighborhood, along the rezoning area's southern edge.

Concerns were also raised about the appropriateness of the proposed areas where the IHP would be applicable, particularly in terms of bulk. Many speakers stated that the increases in density proposed for certain streets would encourage taller, bulkier buildings that would be developed with luxury housing. Speakers noted that such development would create a "wall" of unwanted luxury residential buildings that would tower over the adjacent lower-rise communities. They proposed new zoning districts with both lower height limits and lower incentivized FARs than those put forth in the proposed R8A and R9A districts.

Several speakers opposed to the application expressed concern about the potential destruction of the existing neighborhood fabric, and urged preserving architecturally and culturally significant buildings in the proposed rezoning area through landmark designation or a similar preservation mechanism. A few speakers also expressed concerns that the height and scale of

proposed new buildings would be too high, from the mid-block R8B districts north of Houston Street to the Inclusionary Housing R8A and R9A districts along Houston, Delancey and Chrystie Streets.

Some speakers who testified in opposition were concerned with the potential impacts that the rezoning would have on the area's infrastructure and services, including open space, traffic, transportation, parking, infrastructure, health and safety.

A number of speakers expressed concerns that the proposed rezoning plan would result in an ethnic shift within the rezoning area boundaries as well as in adjacent Chinatown areas. Other speakers expressed concerns that the proposed plan offered neighborhood protections to certain population groups for reasons unrelated to land use.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the proposed zoning map amendment to rezone existing R7-2 and C6-1 zoning districts to R7A, R7B, R8A, R8B, C4-4A, C6-2A and C6-3A zoning districts affecting 111 blocks in the East Village and Lower East Side neighborhoods (C 080397(A) ZRM), in conjunction with the proposed zoning text amendment (N 080398(A) ZMM), is appropriate. The Commission believes that the proposed actions balance the objectives of neighborhood preservation and housing production by introducing contextual zoning designations that would institute height, setback and floor area controls which would result in development that closely matches existing built conditions throughout a majority of the rezoning area; and that would also increase FARs in selected areas, where appropriate. The

Commission further believes that the modified applications are appropriate because the affected areas would still benefit from contextual zoning designations, but with additional floor area bonuses made allowable through use of the IHP.

The Commission shares the belief, broadly held by CB3, local Council Members, local residents, business owners, and the Manhattan Borough President, that the East Village and Lower East Side neighborhoods are good candidates for a contextual rezoning and is pleased to support this comprehensive proposal. Replacing the existing, half-century-old R7-2 and C6-1 zoning with a more finely-drawn map of contextual districts would prevent the continuation of out-of-scale development that has recently accelerated in those neighborhoods and would encourage more orderly patterns of predictable and appropriately-scaled buildings for the future.

The Commission notes that the concentration of intact tenement buildings alongside low- and mid-rise residential structures from the late 19th and early 20th centuries is an essential component of the area's character; although increasingly threatened by new development, the built character and scale of the East Village and Lower East Side has widely persisted through decades under the existing zoning. The Commission notes, however, that several sites in the rezoning area have construction permits on file with the Department of Buildings for buildings taller and bulkier than would be permitted under the proposed contextual regulations and which threaten to further alter the character of the neighborhood. The Commission believes that these proposed buildings highlight the need for this rezoning, to immediately protect the existing low- and mid-rise neighborhood character. This comprehensive proposal builds on the existing strengths of these vibrant and successful neighborhoods while also accommodating potential future housing opportunities along selected wide streets in conjunction with the IHP.

The Commission notes that the rezoning proposal was developed in response to the advocacy of Manhattan Community Board 3 and the East Village Community Coalition, and with the support of the elected representative of City Council District 2; a much broader array of civic groups subsequently joined in that advocacy. The Commission further notes that the proposal was developed and refined over the last three years by the Department of City Planning, in consultation with the Department of Housing Preservation and Development (HPD), through a fully participatory public process and close collaboration with the Community Board 3 leadership, and that the local Council Members of the 1st and 2nd Districts served a critical role in establishing broad-based support.

Like other neighborhoods citywide that have been the subject of recent contextual rezonings, the East Village and Lower East Side have maintained a low- to mid-rise character typified by uniform street walls and consistent building heights, since the early 20th century. However, as in many areas in Manhattan and throughout the City as a whole, the area from East 13th Street to Grand Street between Second Avenue and Avenue D in Community District 3 has experienced a surge in development pressure in recent years, resulting in the construction of buildings that differ dramatically from the prevailing built character. The Commission notes that several such buildings, located on mid-block sites as well as sites fronting on major streets, far exceed the heights of existing buildings in the area and disrupt the otherwise consistent street wall character exemplary of these neighborhoods. The Commission recognizes that these types of buildings, if allowed to proliferate, could negatively impact the unique scale and character that has contributed to the neighborhoods' success.

Zoning Map Amendment

The Commission recognizes that the existing R7-2 and C6-1 zoning districts do not limit building heights and do not require new development to align with adjacent buildings at the street line. In addition, these zoning districts were broadly applied to large portions of the area and do not reflect the varied character found on individual blocks. The Commission notes that the proposed zoning map amendments would address two principal concerns widely shared across the community by prescribing contextual building heights, street walls and densities that would require future development to more closely reflect the character within this portion of Community District 3, and by eliminating the FAR disparity between residential and community facility uses in the existing R7-2 and C6-1 districts (wherein both allow 3.44 FAR for residential and 6.5 FAR for community facility).

North of East Houston Street, the existing R7-2 district would be largely remapped with a mix of R7A districts along the north-south Avenues; R8B districts in the mid-block areas; and R7B districts in a small three-block stretch south of Tompkins Square Park. South of East Houston Street, the existing R7-2 district would be remapped with R7A districts, and the existing C6-1 district would generally be remapped with C4-4A districts.

The Commission believes that this combination of contextual districts and their associated height, setback and bulk controls, is appropriate and would help to preserve and strengthen the existing character of the prevailing low- to mid-rise tenement and rowhouse scale throughout these areas. A clear majority of buildings in these areas have overall building heights of between four and six stories, and many of the blockfronts present a consistent and uniform street wall presence at the street line within this same range. The Commission believes that the distinction

the proposal makes between R7A districts along the north-south Avenues north of Houston Street and the R8B districts in midblock areas along the east-west streets is appropriate based on the width of the streets as well as the prevailing built character.

With regard to the proposed R7A districts from East 3rd Street to East 7th Street along Second Avenue, the Commission notes that existing land use patterns as well as the established built character on those blockfronts are consistent with the patterns and character evident along the other wide avenues north of East Houston Street, also proposed as R7A. The Commission further notes that a new C2-5 commercial overlay district on these blockfronts would allow for development that reflects and reinforces the established land use patterns typical of those streets.

With regard to the small area of R7B districts south of Tompkins Square Park, and the testimony heard in advocacy of more widespread mapping of such R7B districts, the Commission notes that the subject blocks have lower densities than in other midblock portions of the rezoning area. Given the existing conditions, the Commission believes that the blocks south of Tompkins Square Park are appropriately proposed as R7B districts, and that the remainder of the midblock sites is appropriately proposed as R8B districts.

With regard to the proposed C4-4A districts south of East Houston Street and the testimony heard in support of residential as opposed to commercial districts there, the Commission notes that the proposal's primary goals are the preservation of neighborhood character and the identification of potential housing opportunities in conjunction with the IHP. The Commission further notes that the proposal generally does not contemplate the changing of zoning districts

with regard to allowable uses. Given the existing land use conditions within the area, the Commission believes that the proposed C4-4A district designation is appropriate. The Commission notes that the blocks in question have historically remained a commercial district since 1961, that the future restriction of commercial uses would bring many sites into non-conformance and that the area's easy access to transit options make it an appropriate and feasible location for continued commercial use.

The R8A, C6-2A (along East Houston Street, Avenue D, portions of Second Avenue, Delancey Street and portions of Pitt Street) and C6-3A (along Chrystie Street) zoning districts would allow for modest growth, given their location along wide streets with access to public transportation, within specific height and street wall limits to ensure that new development strengthens these corridors. With regard to the specific testimony and discussion about Chrystie Street, the Commission believes that this area's proposed rezoning to a C6-3A district in conjunction with affordable housing incentives is appropriate. The Commission notes that Chrystie Street is over 100 feet wide, that it fronts Sara D. Roosevelt Park, that it is well-served by public transit and that the increased affordable housing opportunities targeted for the street were identified originally by CB3.

The Commission heard testimony advocating for expansion of the rezoning area boundaries to capture adjacent areas, including portions of the Chinatown neighborhood, along the east side of the Bowery, as well as between Third and Fourth Avenues. Any such expansion of the rezoning boundaries is beyond the scope of this application. The Commission notes that the proposal boundaries, as agreed upon by the Department of City Planning and CB3, were formulated at the start of the rezoning process and were designed to cover the large and consistently uniform

areas of tenement, rowhouse and other low- and mid-rise residential development prevalent in the area. The Commission also notes that along the eastern and southeastern edges of the rezoning area, a clear distinction between built characteristics and streetscape exists across the boundaries and that the buildings and sites outside the boundaries do not reflect the underlying issues and goals at the core of this contextual rezoning. The Commission also notes that the northern and southern edges of the rezoning area were addressed by earlier zoning map amendments—to C1-6A and C1-7A districts (1994) to the north, and to C6-1G and C6-2G districts (1984) to the south. With regard to the southern edges in particular, the Commission notes that subsequent to the City Planning Commission's public hearing, the Mayor's Community Assistance Unit (CAU) has initiated a series of community-based meetings intended to bring together various Chinatown organizations for ongoing discussion of specific development issues for that area. The Commission additionally notes that the areas along the western edges of the rezoning area, including blocks between Third Avenue and Fourth Avenue as well as the eastern frontage of the Bowery, reflect a character different from the rezoning area and raise different types of general planning issues.

The Commission heard testimony from some speakers advocating for the establishment of different maximum FAR allowances for different but unspecified community facility uses, attempting to make a distinction between uses and entities based on their stated missions, histories and standing in the community. The Commission notes that changes to the FARs within the community facility use category, based on the nature of the type of use on a given site, would be inconsistent with established citywide policy and are beyond the scope of the proposed actions. The Commission believes that the proposed zoning map amendment, which

would reduce or eliminate the differential in maximum allowable FAR between community facility and residential uses that exists under the current zoning is appropriate.

The Commission received testimony requesting a reconsideration of the height and bulk controls in some of the proposed R8A and C6-2A zoning districts. Testimony along these lines sought a reduction in height limit from 120 feet to 100 feet in these areas, along with lower FAR levels. The Commission notes that such modifications to the underlying zoning district regulations are beyond the scope of this proposal. The Commission believes that the maximum building height of 120 feet is appropriate. The Commission notes that the streets identified as IHP areas, including East Houston Street, Delancey Street, Pitt Street, Second Avenue, First Avenue, Chrystie Street, Avenue C and Avenue D, are all wide streets, and that new buildings in these locations would be subject to the underlying contextual regulations with regard to street wall and building heights. The Commission notes that the existing street wall and building scale along these streets offer greater variation and less uniformity than in other areas proposed for lower contextual regulations. The Commission notes that the allowable maximum height of 120 feet is modestly higher than the requested amended height and would allow slightly increased flexibility for architectural expression. The Commission further notes that existing structures, on East Houston Street, Delancey Street, the east side of Pitt Street and the east side of Avenue D, are substantially taller than 120 feet. The Commission believes that the proposed R8A and C6-2A zoning districts, along with the standard 60- to 85-foot high street walls and 120 feet maximum building heights, reflect an appropriate regulatory framework for these areas.

Zoning Text Amendment

The proposed zoning text amendment (N 080398(A) ZRM) seeks to promote new housing opportunities and also demonstrates a commitment to affordable housing by applying the Inclusionary Housing Program to selected areas that can support greater densities. The proposed R7A districts on Second Avenue, First Avenue, Avenue A and Avenue C; the proposed R8A and C6-2A zoning districts on Avenue D, East Houston Street, Second Avenue, Pitt Street and Delancey Street; and the proposed C6-3A zoning district on Chrystie Street are all proposed for wide streets that are well served by transit and are intended to facilitate residential development. The Commission believes that the proposed text amendment will support the proposal's goals with respect to capturing expanded opportunities for affordable housing development.

The proposed zoning framework includes zoning text changes that would allow the IHP provisions of Section 23-90 to apply to new developments in the R7A districts along the wide avenues north of Houston Street as well as along the R8A, C6-2A and C6-3A corridors. Consistent with recently adopted programs for other areas throughout the City, the program maintains the height and setback limits of the underlying contextual district designation while allowing a floor area bonus for developments providing affordable housing. The Commission believes this program is an effective tool for promoting the development and preservation of affordable housing in conjunction with private development of market-rate housing.

With regard to the testimony heard by the Commission relating to the IHP, its structure and the amount of affordable housing it generates, the Commission notes that the IHP proposed for the area utilizes the same bonus mechanism recently adopted after extensive analysis and public

debate in several rezoning actions throughout the City, including Hudson Yards, Greenpoint-Williamsburg, South Park Slope, the Upper West Side, Downtown Jamaica and Fort Greene-Clinton Hill. This IHP represents a pioneering strategy for the creation and preservation of affordable housing on privately owned land, in the absence of a large inventory of City-owned land for affordable housing development.

The Commission received testimony requesting the application of the IHP along the wide streets throughout the rezoning area, specifically to selectively apply the inclusionary housing bonus along wide streets in R7A districts and their commercial equivalent C4-4A districts. The Commission notes that the modified proposal does apply the IHP to the wide avenues north of Houston Street, in response to consistent feedback from the community, at the public hearing and previous meetings. The Commission notes that the specified streets are all wide streets well served by transit, where the moderate bulk increases available through the IHP would be appropriate; and that the underlying height and setback controls of the R7A district would not be affected by this modification. In its consideration of the IHP's applicability to selected wide streets south of Houston Street in the proposed C4-4A district, the Commission notes that the proposal does not seek to encourage residential development in areas appropriately zoned for commercial use.

The Commission received testimony that affordability eligibility levels, which are related to Area Median Income (AMI) levels, are beyond the reach of many within the affected communities, and, further, that any affordable units generated through the program should be distributed based on community-specified income ranges. The Commission notes that the IHP is a citywide program with a consistent set of well-established rules for efficient administration by

HPD. The Commission further notes that the program is designed to maximize the ability and potential for the provision of affordable housing to low-, moderate- and middle-income residents. The Commission further notes that the program requires eligibility to households earning up to 80 percent of the AMI; and that changes to the underlying rules and mechanisms of the program would be inconsistent with established citywide policy and are beyond the scope of the proposed actions. The Commission also notes that for affordable units generated by a combination of the IHP and HPD-administered programs, there is a community preference for 50 percent of the units. The Commission notes that the IHP bonus can also be achieved by preserving existing units as permanently affordable, and that use of this option would also address the housing needs of existing community residents.

The Commission received testimony advocating for the institution of anti-harassment provisions within the rezoning area. The Commission notes that harassment of tenants is illegal; that Local Law 7 of 2008, adopted by the City Council in March 2008, allows tenants facing harassment to seek injunctive relief against and civil penalties from their landlords in Housing Court; and that such Local Law would appear to substantially address the issues raised by this testimony, eliminating the need for the specified provisions as part of the proposed actions. Possible additional methods of preventing tenant harassment are outside of the scope of the East Village/Lower East Side Rezoning.

The Commission also received testimony calling for the institution of anti-demolition provisions within the rezoning area. This is also beyond the scope of this application. The Commission notes that one of the proposal's fundamental goals, as agreed upon by DCP and CB3, is the encouragement of additional housing, and specifically the promotion of affordable housing

through application of the IHP. Regulations or provisions discouraging the partial or complete demolition of existing buildings would be counter to the rezoning's housing and affordable housing goals and could have adverse consequences for future housing production.

The Commission heard testimony requesting the establishment, via zoning text amendment, of a legal services fund to provide free counsel to low-income tenants vulnerable to or facing the prospect of demolition. This is beyond the scope of this application.

The Commission heard a variety of concerns relating to the recent proliferation of eating and drinking establishments throughout the area, and the enforcement of the "Discontinuance" rule, as set forth in Section 52-61 of the Zoning Resolution, particularly in areas where such uses are not currently permitted as-of-right. In its recommendation, Community Board 3 requested removal of the originally proposed zoning text amendment that would have extended certain exception provisions to non-conforming uses in the midblock R8B districts. Consistent with that recommendation, the Commission heard repeated testimony at the public hearing advocating for the elimination of the proposed zoning text change. The Commission notes that in the modified application for the zoning text amendment, this change is eliminated, and the Commission believes this elimination to be appropriate.

Additionally, the Commission received testimony concerning a possible change to the Discontinuance rule as it pertains to existing Use Group 6 definitions. The Commission notes that that the suggested text changes would require a citywide analysis of the implications of such changes and are beyond the scope of this application.

With respect to requirements related to “green” development, the Commission notes that sustainable building measures such as those requested are addressed as part of PlaNYC 2030, a design for the sustainability of New York City introduced by the Mayor in 2007, and outside the scope of this application. The Commission further notes that the proposed rezoning fosters essential and citywide sustainable planning goals by promoting the preservation of neighborhoods with special character while also providing opportunities for modest growth and affordable housing along wide corridors well-served by mass transit.

The Commission heard testimony regarding commercial zoning issues in the areas south of East Houston Street, including the advocacy for the mapping of commercial overlay districts in the proposed R7A districts, as well as the maintaining of C6 regulations with regard to allowable commercial uses in the proposed C4-4A districts. The Commission notes that these requests are beyond the scope of this application. The Commission further notes that such issues were not among the goals of the proposal. With regard to the proposed R7A districts in the eastern portion of that area, the Commission notes that the existing C1-5 overlays appropriately reflect established neighborhood land use patterns. With regard to the proposed C4-4A districts in the western portion of that area, the Commission notes that the proposed building envelope requirements closely match the existing conditions and built character while maintaining the existing general use patterns.

The Commission believes that the modified applications reflect a comprehensive, balanced rezoning framework intended to maintain the successful and vibrant neighborhood character of the East Village and Lower East Side. The Commission notes that the R7A/C6-3A with Inclusionary Alternative, incorporating modifications to the zoning text to allow for increased

opportunities for affordable housing, responds directly to a community-driven consensus that calls for greater affordable housing opportunities and the protection of the neighborhood character in the affected areas. The Commission additionally notes the high level of community participation that took place during the development of the proposal and throughout the public review process and believes that the East Village/Lower East Side rezoning proposal has been improved as a result.

RESOLUTION

RESOLVED, that having considered the Final Environmental Impact Statement (FEIS), for which Notice of Completion was issued on September 26, 2008, with respect to this application and the related application (N 080398(A) ZRM), the City Planning Commission finds that the requirements of the New York State Environmental Quality Review Act and Regulations have been met and that:

1. Consistent with social, economic and other essential considerations, from among the reasonable alternatives thereto, the action under the R7A/C6-3A with Inclusionary Alternative, is the one which minimizes or avoids adverse environmental impacts to the maximum extent practicable; and
2. The adverse environmental impacts disclosed in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval, those mitigative measures that were identified as practicable.

The report of the City Planning Commission, together with the FEIS, constitutes the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; 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 described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is hereby further amended by changing the Zoning Map, Section No. 12c:

- 1) changing from an R7-2 District to an R7A District property bounded by:
 - a) East 13th Street, a line 100 feet easterly of Second Avenue, East 7th Street, and a line 100 feet westerly of Second Avenue;
 - b) East 13th Street, a line 100 feet easterly of First Avenue, East 6th Street, First Avenue, East 2nd Street, a line 100 feet easterly of First Avenue, East Houston Street, and a line 100 feet westerly of First Avenue;
 - c) East 13th Street, a line 100 feet easterly of Avenue A, the northerly, westerly and southerly boundary line of Tompkins Square Park, a line 100 feet easterly of Avenue A, a line 100 feet southerly of East 2nd Street, a line 100 feet westerly of Avenue A, East 4th Street, Avenue A, the westerly centerline prolongation of East 5th Street, and a line 100 feet westerly of Avenue A;
 - d) East 13th Street, a line 100 feet easterly of Avenue B, East 2nd Street, Avenue B, a line 100 feet southerly of East 2nd Street, a line 100 feet westerly of Avenue B, the southerly, easterly and northerly boundary line of Tompkins Square Park, and a line 100 feet westerly of Avenue B;
 - e) East 12th Street, Avenue C – Loaisaida Avenue, East 10th Street, a line 100 feet easterly of Avenue C – Loaisaida Avenue, a line midway between East 2nd Street and East 3rd Street, Avenue C – Loaisaida Avenue, East 2nd Street, and a line 100 feet westerly of Avenue C – Loaisaida Avenue; and
 - f) a line 100 feet southerly of East Houston Street, Pitt Street, Rivington Street, a line 100 feet westerly of Pitt Street, a line 100 feet northerly of Delancey Street, a line midway between Essex Street and Norfolk Street, the southerly boundary line of a

playground and its easterly prolongation, and Norfolk Street;

- 2) changing from an C6-1 District to a R7A District property bounded by East 7th Street, a line 100 feet easterly of Second Avenue, East 3rd Street, and a line 100 feet westerly of Second Avenue;
- 3) changing from an R7-2 District to a R7B District property bounded by the southerly boundary line of Tompkins Square Park, a line 100 feet westerly of Avenue B, East 4th Street, and a line 100 feet easterly of Avenue A;
- 4) changing from an R7-2 District to a R8A District property bounded by:
 - a) East 10th Street, Avenue D, East Houston Street, Pitt Street, a line 100 feet southerly of East Houston Street, Norfolk Street, the southerly boundary line of a playground and its easterly and westerly prolongation, Essex Street, East Houston Street, a line 100 feet easterly of First Avenue, a line midway between East 2nd Street and East 1st Street, Avenue A, a line 100 feet southerly of East 2nd Street, Avenue B, East 2nd Street, Avenue C – Loaisida Avenue, a line midway between East 2nd Street and East 3rd Street, and a line 100 feet westerly of Avenue D; and
 - b) Rivington Street, Pitt Street, Delancey Street and its westerly centerline prolongation (at Clinton Street), a line midway between Suffolk Street and Clinton Street, a line 100 feet northerly of Delancey Street, and a line 100 feet westerly of Pitt Street;
- 5) changing from an R7-2 District to a R8B District property bounded by:
 - a) East 13th Street, a line 100 feet westerly of Second Avenue, East 1st Street, a line 100 feet easterly of Bowery, and a line 100 feet easterly of Third Avenue;
 - b) East 13th Street, a line 100 feet westerly of First Avenue, East Houston Street, and a line 100 feet easterly of Second Avenue;
 - c) East 13th Street, a line 100 feet westerly of Avenue A, East 6th Street, and a line 100 feet easterly of First Avenue;
 - d) East 4th Street, a line 100 feet westerly of Avenue A, a line midway between East 1st Street and East 2nd Street, a line 100 feet easterly of First Avenue, East 2nd Street, and a line 150 feet easterly of First Avenue;
 - e) East 13th Street, a line 100 feet westerly of Avenue B, the northerly boundary line of Tompkins Square Park, and a line 100 feet easterly of Avenue A;
 - f) East 4th Street, a line 100 feet westerly of Avenue B, a line 100 feet southerly of East 2nd Street, and a line 100 feet easterly of Avenue A;

- g) East 12th Street, a line 100 feet westerly of Avenue C – Loisaida Avenue, East 2nd Street, and a line 100 feet Easterly of Avenue B; and
 - h) East 10th Street, a line 100 feet westerly of Avenue D, a line midway between East 2nd street and East 3rd Street, and a line 100 feet easterly of Avenue C – Loisaida Avenue;
- 6) changing from a C6-1 District to a C4-4A District property bounded by:
- a) a line 100 feet southerly of East Houston Street, Essex Street, the southerly boundary line of a playground and its westerly prolongation, a line midway between Essex Street and Norfolk Street, a line 100 feet northerly of Delancey Street, and Chrystie Street; and
 - b) a line 100 feet southerly of Delancey Street, Ludlow Street, Grand Street, and Chrystie Street;
-
- 7) changing from a C6-1 District to a C6-2A District property bounded by:
- a) East 3rd Street, a line 100 feet easterly of Second Avenue, East Houston Street, Essex Street, a line 100 feet southerly of East Houston Street, Chrystie Street, East Houston Street, a line 65 feet westerly of Second Avenue, East 1st Street, and a line 100 feet westerly of Second Avenue; and
 - b) a line 100 feet northerly of Delancey Street, a line midway between Suffolk Street and Clinton Street, the westerly centerline prolongation of Delancey Street (at Clinton Street), Ludlow Street, a line 100 feet southerly of Delancey Street and Chrystie Street,
- 8) changing from a C6-1 District to a C6-3A District property bounded by Stanton Street, Chrystie Street, Grand Street, a line midway between Bowery and Chrystie Street, a line 100 feet southerly of Delancey Street, and a line 100 feet westerly of Chrystie Street; and
- 9) establishing within a proposed R7A District a C2-5 District bounded by East 7th Street, a line 100 feet easterly of Second Avenue, East 3rd Street, and a line 100 feet westerly of Second Avenue;

Borough of Manhattan, Community District 3, as shown on a diagram (for illustrative purposes only) dated July 3, 2008 and subject to CEQR Declaration E-216.

The above resolution (C 080397(A) ZMM), duly adopted by the City Planning Commission on October 7, 2008 (Calendar No. 22), is filed with the Office of the Speaker, City Council and the Manhattan Borough President, pursuant to Section 197-d of the New York City Charter.

AMANDA M. BURDEN, FAICP, Chair
KENNETH J. KNUCKLES, Esq., Vice Chairman
ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, AIA,
ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,
RICHARD W. EADDY, NATHAN LEVENTHAL, SHIRLEY A. McRAE,
JOHN MEROLO, Commissioners

Exhibit A
to the report by the
City Planning Commission
on the
East Village/Lower East Side Rezoning

"Appendix H" from the
Final Environmental Impact Statement
E-Designations for the Inclusionary Alternative

**Appendix H:
Alternative**

E-Designations for Inclusionary

**Table H-1
Sites Requiring E-Designations
for Hazardous Materials under the Inclusionary Alternative**

Block/Lot	Address
353/75 (Projected)	140 Delancey Street
458/23 (Potential)	32 East 3rd Street
372/33 (Potential)	320 East 3rd Street
376/24 (Potential)	264 East 7th Street
376/22 (Potential)	262 East 7th Street
376/23 (Potential)	262 East 7th Street
377/64 (Potential)	247 East 7th Street
444/21 (Potential)	64 East 3rd Street
448/18 (Potential)	68 East 7th Street
449/20 (Potential)	62 St. Marks Place
464/31 (Potential)	236 East 9th Street
468/54 (Potential)	215 East 12th Street
350/54 (Potential)	301 East Houston Street
402/41 (Potential)	98 Avenue B
<p>Note: <u>This table has been expanded between DEIS and FEIS to incorporate all E-Designations previously listed herein and those listed in Chapter 11. "Hazardous Materials." No new E-Designations are being proposed.</u></p>	

**Table H-2
Sites Requiring E-Designations for Air Quality Under the Inclusionary Alternative**

Block	Lot	Restriction
344	145	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
345	8	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
348	43	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot lines facing Pitt Street and Delancey Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
348	55	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Clinton Street when firing No. 2 oil, to avoid any potential significant air quality impacts.

Appendix H: Inclusionary Alternative Additional E-Designations

H-1

Table H-2 (cont'd)

Sites Requiring E-Designations for Air Quality Under the Inclusionary Alternative

Block	Lot	Restriction
350	4	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 40 feet from the lot line facing Clinton Street when firing No. 2 oil, and at least 20 feet from the lot line facing Clinton Street when firing natural gas, to avoid any potential significant air quality impacts.
350	21	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East Houston Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
350	37	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East Houston Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
350	78	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
353	34	Any new residential and/or commercial development must use natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
353	42	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Norfolk Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
353	47, 75, 79, 80, 82, 83	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 40 feet from the lot line facing Norfolk Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
355	59	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East Houston Street when firing No. 2 oil, and at least 20 feet from the lot line facing East Houston Street when firing natural gas, to avoid any potential significant air quality impacts.
372	30	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 2nd Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
372	33	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
372	31, 32	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 50 feet from the lot line facing East 2nd Street when firing No. 2 oil, and at least 20 feet from the lot line facing East 2nd Street when firing natural gas, to avoid any potential significant air quality impacts.
373	13	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 3rd Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
373	14	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
373	15	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-2 (cont'd)

Sites Requiring E-Designations for Air Quality Under the Inclusionary Alternative

Block	Lot	Restriction
373	61	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
373	62	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 10 feet from the lot line facing Avenue D when firing No. 2 oil, to avoid any potential significant air quality impacts.
373	63	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
373	16, 17	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 40 feet from the lot line facing Avenue D when firing No. 2 oil, and at least 20 feet from the lot line facing Avenue D when firing natural gas, to avoid any potential significant air quality impacts.
374	31	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
374	47	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 10 feet from the lot line facing Avenue D when firing No. 2 oil, to avoid any potential significant air quality impacts.
375	29	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
375	32	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
376	13	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
376	21	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
376	22	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
376	24	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
376	26	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
376	27	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
376	43	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
376	43	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
376	44	Any new residential and/or commercial development must use natural gas as the type of fuel for HVAC systems exclusively, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 7th Street when firing natural gas, to avoid any potential significant air quality impacts.
<u>376</u>	<u>63</u>	<u>Any new residential and/or commercial development must use natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 10 feet from the lot line facing Avenue D, to avoid any potential significant air quality impacts.</u>
377	10	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 10 feet from the lot line facing Avenue C when firing No. 2 oil, to avoid any potential significant air quality impacts.

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-2 (cont'd)

Sites Requiring E-Designations for Air Quality Under the Inclusionary Alternative

Block	Lot	Restriction
377	49	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 8th Street and at least 10 feet from the lot line facing Avenue D when firing No. 2 oil, to avoid any potential significant air quality impacts.
377	50	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
377	51	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot lines facing East 8th Street and Avenue C when firing No. 2 oil, to avoid any potential significant air quality impacts.
377	52	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 8th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
377	53	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 10 feet from the lot line facing East 8th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
377	54	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot lines facing East 8th Street and Avenue D when firing No. 2 oil, to avoid any potential significant air quality impacts.
377	61	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Avenue C when firing No. 2 oil, to avoid any potential significant air quality impacts.
377	64-66	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing Avenue D, when firing No. 2 oil, or at least 20 feet from the lot line facing Avenue D when firing natural gas, to avoid any potential significant air quality impacts.
378	43	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing Avenue D, when firing No. 2 oil, or at least 20 feet from the lot line facing Avenue D when firing natural gas, to avoid any potential significant air quality impacts.
378	28-30	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing Avenue D, at least 15 feet from the lot line facing East 8th Street, and at least 10 feet from the lot line facing East 9th Street when firing No. 2 oil, or at least 10 feet from the lot lines facing Avenue D and East 9th Street, and at least 15 feet from the lot line facing East 8th Street when firing natural gas, to avoid any potential significant air quality impacts.
379	21	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 9th Street when firing No. 2 oil, and at least 20 feet from the lot line facing East 9th Street when firing natural gas, to avoid any potential significant air quality impacts.

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-2 (cont'd)

Sites Requiring E-Designations for Air Quality Under the Inclusionary Alternative

Block	Lot	Restriction
385	24	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 40 feet from the lot line facing East 2nd Street when firing No. 2 oil, and at least 20 feet from the lot line facing East 2nd Street when firing natural gas, to avoid any potential significant air quality impacts.
385	30	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing Avenue B when firing No. 2 oil, to avoid any potential significant air quality impacts.
386	1	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 4th Street when firing No. 2 oil, and at least 20 feet from the lot line East 4th Street when firing natural gas, to avoid any potential significant air quality impacts.
386	61	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
386	62	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
387	42	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
389	51	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 7th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
389	52	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
390	23	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 7th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
390	52	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Avenue C, to avoid any potential significant air quality impacts.
390	58	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 8th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
391	10	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
391	13	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
391	19	Any new residential and/or commercial development must use No. 2 fuel oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
391	51	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Avenue C when firing No. 2 oil, to avoid any potential significant air quality impacts.
392	16	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-2 (cont'd)

Sites Requiring E-Designations for Air Quality Under the Inclusionary Alternative

Block	Lot	Restriction
392	39	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Avenue B when firing No. 2 oil, to avoid any potential significant air quality impacts.
392	40	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 10th Street when firing No. 2 oil, and at least 10 feet from the lot line facing East 10th Street when firing natural gas, to avoid any potential significant air quality impacts.
392	43	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 10th Street when firing No. 2 oil, and at least 10 feet from the lot line facing East 10th Street when firing natural gas, to avoid any potential significant air quality impacts.
393	9	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 10th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
393	59	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 40 feet from the lot line facing Avenue C when firing No. 2 oil, and at least 20 feet from the lot line facing Avenue C when firing natural gas, to avoid any potential significant air quality impacts.
393	61	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Avenue B when firing No. 2 oil, to avoid any potential significant air quality impacts.
394	28	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 11th Street, to avoid any potential significant air quality impacts.
394	32, 34	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 40 feet from the lot line facing Avenue C when firing No. 2 oil, and at least 20 feet from the lot line facing Avenue C when firing natural gas, to avoid any potential significant air quality impacts.
397	19	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 10 feet from the lot line facing East Houston Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
397	27	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 10 feet from the lot line facing Avenue B when firing No. 2 oil, to avoid any potential significant air quality impacts.
398	45	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
399	40	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 4th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-2 (cont'd)

Sites Requiring E-Designations for Air Quality Under the Inclusionary Alternative

Block	Lot	Restriction
399	11, 51	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 80 feet from the lot line facing Avenue A when firing No. 2 oil, to avoid any potential significant air quality impacts.
399	58	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 4th Street, and at least 20 feet from the lot line facing Avenue A when firing No. 2 oil, to avoid any potential significant air quality impacts.
404	9	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 10th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
404	11	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
404	23	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing Avenue A when firing No. 2 oil, to avoid any potential significant air quality impacts.
404	46	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
404	47	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
404	48	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
404	52	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 10 feet from the lot line facing Avenue B when firing No. 2 oil, to avoid any potential significant air quality impacts.
405	19	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Avenue A when firing No. 2 oil, to avoid any potential significant air quality impacts.
406	19	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 12th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
406	48	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing Avenue A when firing No. 2 oil, to avoid any potential significant air quality impacts.
406	52	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
406	23, 24	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 40 feet from the lot line facing Avenue B when firing No. 2 oil, and at least 20 feet from the lot line facing Avenue B when firing natural gas, to avoid any potential significant air quality impacts.
406	55	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
410	32	Any new residential and/or commercial development must use natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-2 (cont'd)

Sites Requiring E-Designations for Air Quality Under the Inclusionary Alternative

Block	Lot	Restriction
410	33	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Ludlow Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
412	2	Any new residential and/or commercial development must use natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
412	12	Any new residential and/or commercial development must use natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
412	21	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
412	61	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
413	26	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 10 feet from the lot line facing Delancey Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
415	36	Any new residential and/or commercial development must use natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
417	64	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East Houston Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
<u>425</u>	<u>31</u>	<u>Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Delancey Street when firing No. 2 oil, to avoid any potential significant air quality impacts.</u>
<u>425</u>	<u>32</u>	<u>Any new residential and/or commercial development must use natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 10 feet from the lot line facing Delancey Street, to avoid any potential significant air quality impacts.</u>
429	8	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
429	18	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing First Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
429	12	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing First Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
429	20	Any new residential and/or commercial development must use No. 2 fuel oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
429	28	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East Houston Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
434	34	Any new residential and/or commercial development must use No. 2 fuel oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
434	42	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 7th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-2 (cont'd)

Sites Requiring E-Designations for Air Quality Under the Inclusionary Alternative

Block	Lot	Restriction
434	46, 48	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 40 feet from the lot line facing Avenue A when firing No. 2 oil, and at least 20 feet from the lot line facing Avenue A when firing natural gas, to avoid any potential significant air quality impacts.
434	50	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
434	54	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
435	16, 48, 49, 52	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 60 feet from the lot line facing Avenue A, when firing No. 2 oil, or at least 20 feet from the lot line facing Avenue A when firing natural gas, to avoid any potential significant air quality impacts.
435	42	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
436	11	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
436	25	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing First Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
437	15	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 9th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
437	33	Any new residential and/or commercial development must use No. 2 fuel oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
437	43	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
438	25	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
440	29	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
443	16	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 50 feet from the lot line facing East Houston Street and at least 40 feet from the lot line facing Second Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
443	19	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing First Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
443	29	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 25 feet from the lot line facing East Houston Street and at least 20 feet from the lot line facing First Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
443	44	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, and shall be at least 20 from the lot line facing First Avenue, to avoid any potential significant air quality impacts.

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-2 (cont'd)

Sites Requiring E-Designations for Air Quality Under the Inclusionary Alternative

Block	Lot	Restriction
443	45, 46	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 10 feet from the lot line facing First Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
443	49	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
444	20, 21	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Second Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
445	2	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 3rd Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
445	16	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
445	17	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
445	64	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
446	3	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing First Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
446	4	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
<u>448</u>	<u>4</u>	<u>Any new residential and/or commercial development must use natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.</u>
448	16	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing First Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
448	18	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
448	40	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing First Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
448	42	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 7th Street when firing No. 2 oil, and at least 20 feet from the lot line facing East 7th Street when firing natural gas, to avoid any potential significant air quality impacts.
448	45	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
448	46	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 7th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
448	47	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 7th Street, to avoid any potential significant air quality impacts.

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-2 (cont'd)

Sites Requiring E-Designations for Air Quality Under the Inclusionary Alternative

Block	Lot	Restriction
448	48	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 7th Street when firing No. 2 oil, or at least 20 feet from the lot line facing East 7th Street when firing natural gas, to avoid any potential significant air quality impacts.
448	50	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 7th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
448	51	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 7th Street and 20 feet from the lot line facing Second Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
449	7	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 7th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
449	13	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Second Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
449	14	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
449	20	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, and ensure that heating, ventilating and air conditioning stack(s) is located at least 15 feet from the lot line facing First Avenue, to avoid any potential significant air quality impacts.
449	23	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot lines facing East 7th Street and Second Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
449	41	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 8th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
449	42	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
449	46	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot lines facing East 8th Street and First Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
449	48	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
449	57	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
450	8	Any new residential and/or commercial development must use No. 2 fuel oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
450	37	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 9th Street and at least 10 feet from the lot line facing Second Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-2 (cont'd)

Sites Requiring E-Designations for Air Quality Under the Inclusionary Alternative

Block	Lot	Restriction
450	38	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 9th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
450	39	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 9th Street and at least 10 feet from the lot line facing First Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
450	44	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
450	45	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 9th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
450	46	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Second Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
450	48	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
450	52	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 9th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
451	4	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 10th Street, and at least 40 feet from the lot line facing First Avenue when firing No. 2 oil, or at least 20 feet from the lot lines facing East 10th Street and First Avenue when firing natural gas, to avoid any potential significant air quality impacts.
451	15	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Second Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
451	24	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Second Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
451	47, 48	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
452	20	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing First Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
453	37	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Second Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
454	66	Any new residential and/or commercial development must use No. 2 fuel oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-2 (cont'd)

Sites Requiring E-Designations for Air Quality Under the Inclusionary Alternative

Block	Lot	Restriction
454	68	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing Second Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
459	18	Any new residential and/or commercial development must use No. 2 fuel oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
459	21	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Bowery Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
459	23	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 3rd Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
460	23	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 4th Street, when firing No. 2 oil, or at least 20 feet from the lot line facing East 4th Street when firing natural gas, to avoid any potential significant air quality impacts.
460	26	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
460	27	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
460	28	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 4th Street and at least 10 feet from the lot line facing Second Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
460	32	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
460	33	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 4th Street and at least 10 feet from the lot line facing Second Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
460	43	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Second Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
460	44	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 5th Street, to avoid any potential significant air quality impacts.
460	45, 46	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 5th Street when firing No. 2 oil, and at least 20 feet from the lot line facing East 5th Street when firing natural gas, to avoid any potential significant air quality impacts.
461	18	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 40 feet from the lot line facing East 5th Street and at least 30 feet from the lot line facing Third Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-2 (cont'd)

Sites Requiring E-Designations for Air Quality Under the Inclusionary Alternative

Block	Lot	Restriction
462	18	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 40 feet from the lot line facing Second Avenue when firing No. 2 oil, or at least 20 feet from the lot line facing Second Avenue when firing natural gas, to avoid any potential significant air quality impacts.
463	18	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and any stacks must be a minimum of 10 feet above the roof, to avoid any potential significant air quality impacts.
463	23	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
463	39	Any new residential and/or commercial development must use No. 2 fuel oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 8th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
463	40	Any new residential and/or commercial development must use No. 2 fuel oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 8th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
463	41	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 8th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
464	15	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 8th Street and at least 20 feet from the lot line facing Third Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
464	16	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 8th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
464	20	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 40 feet from the lot line facing East 8th Street when firing No. 2 oil, or at least 20 feet from the lot line facing East 8th Street when firing natural gas, to avoid any potential significant air quality impacts.
464	27, 31, 132	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
464	32	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
464	47	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
464	55	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
465	58, 59	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 10th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
466	12	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Third Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-2 (cont'd)

Sites Requiring E-Designations for Air Quality Under the Inclusionary Alternative

Block	Lot	Restriction
466	15	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
466	20	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
467	16	Any new residential and/or commercial development must use No. 2 fuel oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
467	20	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 11th Street, to avoid any potential significant air quality impacts.
467	21	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
467	48	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing Second Avenue, to avoid any potential significant air quality impacts.
467	49	Any new residential and/or commercial development must use No. 2 fuel oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
468	26	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, to avoid any potential significant air quality impacts.
468	48	Any new residential and/or commercial development must use natural gas exclusively as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot line facing East 13th Street, to avoid any potential significant air quality impacts.
468	49	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 13th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
468	50	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 13th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.
468	51	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 20 feet from the lot lines facing East 13th Street and Third Avenue when firing No. 2 oil, to avoid any potential significant air quality impacts.
468	54	Any new residential and/or commercial development must use No. 2 oil or natural gas as the type of fuel for HVAC systems, and ensure that the heating, ventilating and air conditioning stack(s) is located at least 30 feet from the lot line facing East 13th Street when firing No. 2 oil, to avoid any potential significant air quality impacts.

Note: This table has been expanded between DEIS and FEIS to incorporate all E-Designations previously listed herein and those listed in Appendix F. "Air Quality E-Designations." No new E-Designations are being proposed.

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-3
Sites Requiring E-Designations for Noise under the Inclusionary Alternative

Block	Lot	Proposed Zoning	Projected Use	Governing Noise Site	Minimum Required Building Attenuation
343	63	R8A*	Residential	9	30
343	66	R8A*	Residential	9	30
343	68, 69, 71, 72, 73	R8A*	Residential	10	35
344	53, 54	R7A	Residential	9,10	30
344	56, 60	R7A	Residential	9,10	30
344	139	R7A	Residential	6	30
344	141, 144	R7A	Residential	9,10	30
344	157	R7A	Residential	9,10	30
345	1	R7A	Residential	6	30
345	2	R7A	Residential	6	30
345	6	R7A	Residential	6	30
345	7	R7A	Residential	6	30
345	8	R7A	Residential	6	30
345	15	R8A*	Residential	5	35
345	16	R8A*	Residential	5	35
345	17, 19	R8A*	Residential	5	35
345	26	R7A	Residential	6	30
345	30, 32, 33	R7A	Residential	6	30
345	35	R7A	Residential	6	30
348	33	R8A*	Residential	10	35
348	34	C6-2A*	Residential	7	40
348	36	C6-2A*	Residential	7	40
348	37	C6-2A*	Residential	5	35
348	38	R8A*	Residential	10	35
348	46	R7A	Residential	6	30
348	64, 66	R7A	Residential	8	35
348	70	R8A*	Residential	10	35
348	71	R8A*	Residential	10	35
348	75	R8A*	Residential	10	35
350	4	R7A	Residential	8	35
350	18	R8A*	Residential	5	35
350	21	R7A	Residential	6	30
350	38	R7A	Residential	8	35
350	54	R8A*	Residential/Commercial	5	35
350	60	R8A*	Residential	5	35
350	61	R8A*	Residential	5	35
350	62, 63	R8A*	Residential	5	35
350	68	R7A	Residential	6	30
350	69	R7A	Residential	6	30
350	71	R7A	Residential	6	30
350	73	R7A	Residential	6	30

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-3
Sites Requiring E-Designations for Noise under the Inclusionary Alternative

Block	Lot	Proposed Zoning	Projected Use	Governing Noise Site	Minimum Required Building Attenuation
353	28, 29, 30	R7A	Residential	6	30
353	34	R7A	Residential	8	35
353	42	C6-2A*	Residential	7	40
353	47, 75, 79, 80, 82, 83	C6-2A*	Residential/Commercial	7	40
354	1	C4-4A	Commercial	8	30**
354	18, 19	R7A	Residential	8	35
354	25	R7A	Residential	6	30
354	37, 38	C4-4A	Residential	8	35
355	45	R7A	Residential	6	30
355	51	R8A*	Residential	5	35
355	52	R8A*	Residential	5	35
355	53	R8A*	Residential	5	35
355	57	R8A*	Residential	5	35
355	59	R7A	Residential	6	30
355	61	R7A	Residential	2	35
355	65	R7A	Residential	6	30
372	3, 4, 5	R8A*	Residential/Commercial	2	30
372	34	R8A*	Residential	2	30
372	36, 37	R8A*	Residential	2	30
372	41, 42	R8A*	Residential	2	30
372	43, 44, 47, 48, 49	R8A*	Residential	5	35
372	52	R8A*	Residential	5	35
373	2	R7A	Residential	2	30
373	36, 38	R8A*	Residential	2	30
374	34	R8A*	Residential	2	30
374	37	R8A*	Residential	2	30
375	41	R8A*	Residential	2	30
376	1, 2	R7A	Residential	2	30
376	32, 33	R8A*	Residential	2	30
376	63	R7A	Residential	2	30
377	1	R7A	Residential	2	30
377	10	R8B	Residential	2	30
377	42	R8A*	Residential	2	30
378	28, 29, 30	R8B	Residential	2	30
378	32	R8A*	Residential	2	30
378	34	R8A*	Residential	2	30
378	40	R8A*	Residential	2	30
378	43	R8B	Residential	2	30
379	21	R8B	Residential	2	30
379	44	R8B	Residential	2	30

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-3
Sites Requiring E-Designations for Noise under the Inclusionary Alternative

Block	Lot	Proposed Zoning	Projected Use	Governing Noise Site	Minimum Required Building Attenuation
384	19	R8A*	Residential	5	35
384	21	R8A*	Residential	5	35
384	33	R8A*	Residential	5	35
385	4	R7A	Residential	2	30
386	5, 7, 8	R7A	Residential	2	30
387	33	R7A	Residential	2	30
387	34	R7A	Residential	2	30
387	35	R7A	Residential	2	30
387	135	R7A*	Residential	2	30
390	34	R7A*	Residential	2	30
390	39	R7A	Residential	2	30
391	7	R7A	Residential	2	30
391	33	R7A*	Residential	2	30
392	32	R7A*	Residential	2	30
392	35	R7A	Residential	2	30
392	40	R8B	Residential	2	30
392	43	R8B	Residential	2	30
393	59	R8B	Residential	3	30
393	61	R8B	Residential/Commercial	2	30
394	10	R7A	Residential	2	30
394	32, 34	R8B	Residential	2	30
394	36	R7A	Residential	2	30
398	29	R7A	Residential	2	30
398	34	R7A	Residential	2	30
399	8	R7A	Residential	2	30
402	41	R7A*	Residential	2	30
402	41	R7A	Residential	2	30
402	42	R7A	Residential	3	30
404	23	R8B	Residential	2	30
404	46	R8B	Residential	3	30
404	47	R8B	Residential	3	30
404	52	R8B	Residential	3	30
404	53	R8B	Residential	3	30
404	56	R7A	Residential	3	30
404	58	R7A*	Residential	3	30
405	19	R8B	Residential	2	30
405	39, 41	R8B	Residential	2	30
406	19	R8B	Residential	2	30
406	23, 24	R8B	Residential	2	30
406	29	R7A	Residential	2	30
406	36	R7A	Residential	2	30
406	45	R8B	Residential	2	30

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-3
Sites Requiring E-Designations for Noise under the Inclusionary Alternative

Block	Lot	Proposed Zoning	Projected Use	Governing Noise Site	Minimum Required Building Attenuation
406	48	R8B	Residential	2	30
406	52	R8B	Residential	2	30
408	4	C4-4A	Residential	6	30
408	24	C4-4A	Residential	5	35
408	26	C4-4A	Residential	5	35
409	17	C6-2A*	Residential	7	40
409	20	C6-2A*	Residential	8	35
410	13, 16	C4-4A	Residential/Commercial	8	35
410	24	C4-4A	Residential	8	35
410	32	C6-2A*	Residential	7	40
410	33	C6-2A*	Residential	7	40
410	34	C6-2A*	Residential	7	40
410	51	C4-4A	Residential/Commercial	6	30
410	52	C4-4A	Residential	8	35
410	64	C6-2A*	Residential	7	40
410	67, 68, 69	C6-2A*	Residential	7	40
411	12	C4-4A	Residential	6	30
411	15	C4-4A	Residential	6	30
411	16	C4-4A	Residential	6	30
411	19	C4-4A	Residential	6	30
411	41	C4-4A	Residential	6	30
412	2	C4-4A	Residential	6	30
412	12	C4-4A	Residential	6	30
412	13, 14, 16	C6-2A*	Residential	5	35
412	21	C6-2A*	Residential	5	35
412	61	C6-2A*	Residential	5	35
412	72	C4-4A	Residential	6	35
413	25	C4-4A	Residential	5	35
413	26	C4-4A	Residential	5	35
413	29	C4-4A	Residential	5	35
415	3	C6-2A*	Residential	1	35
415	10	C4-4A	Residential	8	35
415	23	C4-4A	Residential	8	35
415	27	C4-4A	Residential	8	35
415	36	C4-4A	Residential	8	35
415	77	C6-2A*	Residential	1	35
416	23	C4-4A	Residential	8	35
416	28	C4-4A	Residential	1	35
416	53	C4-4A	Residential	1	35
416	56	C4-4A	Residential	1	35
417	10	C6-2A*	Residential	6	30
417	12	C6-2A*	Residential	5	35

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-3
Sites Requiring E-Designations for Noise under the Inclusionary Alternative

Block	Lot	Proposed Zoning	Projected Use	Governing Noise Site	Minimum Required Building Attenuation
417	13	C6-2A*	Residential	6	30
417	64	C4-4A	Residential	1	35
418	35	C4-4A	Residential	1	35
418	39	C4-4A	Residential	8	35
418	43	C4-4A	Residential	6	30
418	51, 52, 53	C4-4A	Residential	8	35
418	54	C4-4A	Residential	1	30
418	55	C4-4A	Residential	5	35
418	58	C4-4A	Residential	5	35
419	49	C6-2A*	Residential/Commercial	6	30
419	73	C4-4A	Residential	6	30
419	75	C4-4A	Residential	6	30
421	60	C4-4A	Residential	6	30
422	42, 43	C4-4A	Residential	6	30
422	49	C6-2A*	Residential/Commercial	5	35
422	53	C6-2A*	Residential	6	30
423	16, 17	C6-2A*	Residential	6	30
423	19	C6-3A*	Residential	1	35
423	21	C6-2A*	Residential	1	35
423	26	C6-2A*	Residential	6	30
423	28	C6-3A*	Residential	5	35
423	29	C6-2A*	Residential	6	30
423	126	C6-2A*	Residential	1	35
424	27	C6-2A*	Residential	1	35
424	31	C6-3A*	Residential	1	35
424	35	C6-2A*	Residential	1	35
424	37	C6-3A*	Residential	5	35
425	28	C6-2A*	Residential/Commercial	1	35
425	30	C6-2A*	Residential	1	35
425	31	C6-2A*	Residential	1	35
425	32	C6-2A*	Residential	1	35
425	38, 39	C6-2A*	Residential	1	35
426	24	C6-3A*	Residential	1	35
426	27	C6-2A*	Residential	1	35
426	28	C6-2A*	Residential	1	35
426	33	C6-2A*	Residential	1	35
426	35	C6-2A*	Residential	1	35
426	37	C6-3A*	Residential	1	35
426	38	C6-2A*	Residential	1	35
429	7	R7A*	Residential	1	35
429	39	R8A*	Residential	2	30
429	40	R8A*	Residential	5	35

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-3
Sites Requiring E-Designations for Noise under the Inclusionary Alternative

Block	Lot	Proposed Zoning	Projected Use	Governing Noise Site	Minimum Required Building Attenuation
429	41, 43	R8A*	Residential	5	35
434	3	R7A	Residential	1	35
434	34	R7A*	Residential	2	30
434	35	R7A*	Residential	2	30
434	48	R8B	Residential	2	30
435	16, 48, 49, 52	R8B	Residential	2	30
435	34	R7A*	Residential	2	30
435	35	R7A*	Residential	2	30
436	8	R7A	Residential	3	30
437	25	R7A	Residential	3	30
438	8	R7A*	Residential	1	35
438	10	R7A	Residential	2	30
438	11, 12	R8B	Residential	2	30
439	26	R8B	Residential	2	30
439	27, 31, 33, 34	R7A	Residential	2	30
440	6	R7A*	Residential	1	35
440	26	R8B	Residential	2	30
440	32	R7A*	Residential	2	30
440	44	R8B	Residential	2	30
440	46	R8B	Residential	2	30
443	1	C6-2A*	Residential	1	35
443	8	C6-2A*	Residential	1	35
443	36	R7A*	Residential	1	35
443	37	R7A*	Residential	1	35
444	3, 5	C6-2A*	Residential	1	35
444	12	C6-2A*	Residential/Commercial	1	35
444	42	R7A	Residential	1	35
445	3	R7A*	Residential	1	35
446	6	R7A*	Residential	1	35
446	7	R7A*	Residential	1	35
446	29	R7A	Residential	1	35
447	5	R7A*	Residential	1	35
447	32	R7A	Residential	1	35
448	4	R7A	Residential	1	35
449	5	R7A	Residential	1	35
449	20	R8B	Residential	3	30
449	30	R7A	Residential	1	35
450	22	R8B	Residential	3	30
450	23	R8B	Residential	3	30
450	36	R7A*	Residential	3	30
450	38	R8B	Residential	3	30
451	47, 48	R8B	Residential	3	30

Appendix H: Inclusionary Alternative Additional E-Designations

Table H-3
Sites Requiring E-Designations for Noise under the Inclusionary Alternative

Block	Lot	Proposed Zoning	Projected Use	Governing Noise Site	Minimum Required Building Attenuation
452	20	R8B	Residential	2	30
452	33, 34	R7A	Residential	1	35
454	39	R7A*	Residential	1	35
454	40	R7A	Residential	3	30
454	65	R8B	Residential	2	30
456	27	C6-2A*	Residential	1	35
457	33	C6-2A*	Residential	1	35
458	25	C6-2A*	Residential/Commercial	1	35
458	35	C6-2A*	Residential/Commercial	10	35
464	27, 31, 132	R8B	Residential	3	30
465	53	R7A	Residential	1	35
465	58, 59	R8B	Residential	3	30
466	12	R8B	Residential	2	30
468	26	R8B	Residential	2	30
468	54	R8B	Residential	2	30

Notes: This table has been expanded between DEIS and FEIS to incorporate all E-Designations previously listed herein and those listed in Appendix G, "Noise E-Designations." No new E-Designations are being proposed. ** This attenuation required at this location is 5 dB less because it contains only commercial use.

*

CITY PLANNING COMMISSION

October 7, 2008 / Calendar No. 24

N 080398(A) ZRM

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IN THE MATTER OF an application submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter, and proposed for modification pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure, for an amendment of the Zoning Resolution of the City of New York, concerning Article II, Chapter 3 (Bulk Regulations for Residential Buildings in Residence Districts), in the Borough of Manhattan, Community District 3.

The original application for an amendment of the Zoning Resolution was filed by the Department of City Planning on May 2, 2008. The requested action, in conjunction with a related zoning map amendment, would facilitate the department's East Village/Lower East Side rezoning. On July 3, 2008, pursuant to Section 2-06(c)(1) of the ULURP rules, the Department filed an application to modify the proposed amendment to the Zoning Resolution (N 080398(A) ZRM), for public hearing and consideration by the City Planning Commission. The modified application (N 080398(A) ZRM) is the subject of this report.

RELATED ACTIONS

In addition to the amendment of the Zoning Resolution which is the subject of this report (N 080398(A) ZRM), implementation of the proposal also requires action by the City Planning Commission on the following application which is being considered concurrently with this application:

C 080397(A) ZMM: A Zoning Map Amendment to Map No. 12c, to rezone 111 blocks in the East Village and Lower East Side neighborhoods, from R7-2 and C6-1 zoning districts to R7A, R7B, R8A, R8B, C4-4A, C6-2A and C6-3A zoning districts.

On July 7, 2008, the modified applications (N 080398(A) ZRM, C 080397(A) ZMM) were duly referred to Community Board 3 and the Borough President pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure.

Community Board Public Hearing

Community Board 3 held a public hearing on the original application (N 080398 ZRM) and the related ULURP Zoning Map change application (C 080397 ZRM) on May 12, 2008, and, on May 27, 2008, by a vote of 40 in favor, 0 opposed, and 0 abstaining, adopted a resolution recommending approval with modifications.

A summary of the votes and recommendations of Community Board 3 appears in the report on the related application for an amendment to the Zoning Map (C 080397(A) ZMM).

Borough President Recommendation

The original and modified applications for changes to the Zoning Map and the Zoning Resolution (C 080397 ZMM, C 080397(A) ZMM, N 080398 ZRM, N 080398(A) ZRM) were considered by the Borough President, who issued a recommendation for conditional approval on August 11, 2008.

A summary of the Borough President's recommendation appears in the report on the related application for an amendment to the Zoning Map (C 080397(A) ZMM).

City Planning Commission Public Hearing

On July 23, 2008 (Calendar Nos. 3 and 4), the City Planning Commission scheduled August 13, 2008, for a public hearing on the original application (N 080398 ZRM) and the modified

2. The adverse environmental impacts disclosed in the FEIS will be minimized or avoided to the maximum extent practicable by incorporating as conditions to the approval, those mitigation measures that were identified as practicable.

The report of the City Planning Commission, together with the FEIS, constitutes the written statement of facts, and of social, economic and other factors and standards, that form the basis of the decision, pursuant to Section 617.11(d) of the SEQRA regulations; and be it further

RESOLVED, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that based on the environmental determination and the consideration described in this report, the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended as follows:

Matter in underline is new, to be added
 Matter in ~~strikeout~~ is old, to be deleted;
 Matter within # # is defined in 12-10 or
 * * * indicates where unchanged text appears in the Zoning Resolution

23-144

In designated areas where the Inclusionary Housing Program is applicable

In #Inclusionary Housing designated areas#, as listed in the following table, the maximum permitted #floor area ratios# shall be as set forth in Section 23-942 (In Inclusionary Housing designated areas). The locations of such districts are specified in Section 23-922 (Inclusionary Housing designated areas).

Community District	Zoning District
Community District 1, Brooklyn	R6 R6A R6B R7A
Community District 2, Brooklyn	R7A
Community District 3, Brooklyn	R7D
Community District 7, Brooklyn	R8A
<u>Community District 3, Manhattan</u>	<u>R7A R8A R9A</u>
Community District 6, Manhattan	R10
Community District 7, Manhattan	R9A
Community District 2, Queens	R7X

* * *

475 Park Avenue South
New York, New York 10016
www.goldmanharris.com

Relevant ZR Section	Compliance item	C6-1 (R7 Equivalent)	C4-4A (R7A Equivalent)	Net Change	Notes
ZR 23-142, 23-145, 34-112	Residential FAR	3.44	4.00	0.56	No impact, building proposed is fully commercial.
ZR 23-142, 23-145, 34-112	Residential Floor Area	33,810.2 SF	39,314.2 SF	5,504.0 SF	No impact, building proposed is fully commercial.
ZR 33-123	Community Facility FAR	6.5	4.00	-2.50	No impact, building proposed is fully commercial.
ZR 33-123	Community Facility Floor Area	63,885.6 SF	39,314.2 SF	-24,571.4 SF	No impact, building proposed is fully commercial.
ZR 33-122	Commercial FAR	6.00	4.00	-2.00	
ZR 33-122	Commercial Floor Area	58,971.4 SF	39,314.2 SF	-19,657.1 SF	
ZR 33-432, 35-24	Maximum Building Height	N/A	80	N/A	Sky Exposure Plane, 5.6:1 from Allen Street, 2.7:1 from Orchard Street, 2.7:1 from Rivington Street
	Initial Setback Height (Maximum)	85	65	-20	
ZR 33-432, 35-24	Initial Setback Depth (Allen Street)	15	10		
ZR 33-432, 35-24	Initial Setback Depth (Allen Street and Orchard Street)	15	15		
ZR 33-20, 33-26	Rear Yards (Commercial, Through-lot)	None Required.	None Required.		



Buildings

Work Permit Department of Buildings



Permit Number: 104870392-01-NB

Issued: 06/03/2014

Expires: 06/01/2015

Address: MANHATTAN

139 ORCHARD STREET

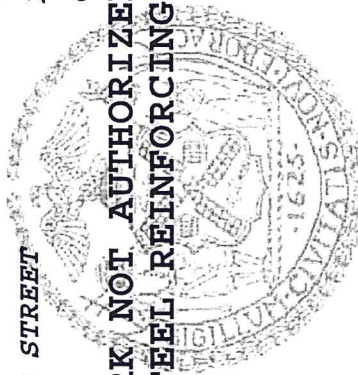
Issued to: NANCY T ERARDI

Business: RICHTER & RATNER CONTRACT

Contractor No: GC-1953

Description of Work: CONCRETE WORK NOT AUTHORIZED - CONCRETE PLACEMENT, FORMWORK, STEEL REINFORCING NOT PERMITTED.

NEW BUILDING -



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500-151

Review is requested under Building Code: 1968

SITE FILL: ON-SITE

To see a Zoning Diagram (ZD1) or to challenge a zoning approval filed as part of a New Building application or Alteration application filed after 7/13/2009, please use "My Community" on the Buildings Department web site at www.nyc.gov/buildings.

Emergency Telephone Day or Night: 311

SITE SAFETY PHONE : 212 669-7043

Borough Commissioner:

Commissioner of Buildings:

Tampering with or knowingly making a false entry in or falsely altering this permit is a crime that is punishable by a fine, imprisonment or both.



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NYC Department of Buildings
Issued and Possible Permits

Premises: 138 ALLEN STREET MANHATTAN
BIN: 1088498 Block: 415 Lot: 67

Job No: 110251361
Job Type: A2 - ALTERATION TYPE 2

NUMBER-DOC-TYPE	HISTORY	PERMIT INFORMATION			STATUS	APPLCNT
		SEQ NO	FIRST ISSUE DATE	LAST ISSUE DATE		
<u>110251361-01-EWOT</u>	History	02	09/29/2008	06/25/2009	ISSUED	DELLACAVA
<u>110251361-02-PL</u>	History	02	11/17/2008	05/28/2009	ISSUED	HUBNER
<u>110251361-03-EWOT</u>	History	02	10/07/2008	06/25/2009	ISSUED	DELLACAVA

If you have any questions please review these [Frequently Asked Questions](#), the [Glossary](#), or call the 311 Citizen Service Center by dialing 311 or (212) NEW YORK outside of New York City.

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NYC Department of Buildings
Work Permit Data

Premises: 138 ALLEN STREET MANHATTAN
BIN: 1088498 Block: 415 Lot: 67

Filed At: 139 ORCHARD ST MANHATTAN
Job Type: A2 - ALTERATION TYPE 2

View Permit History

Job No:	110251361	Fee:	STANDARD
Permit No:	110251361-01-EW-OT	Expires:	06/29/2010
Seq. No.:	02	Status:	ISSUED
Work:	Proposed Job Start: 09/29/2008	Work Approved:	09/24/2008

ALTERATION TYPE 2 - STRUCTURAL
 FILING FOR FOUNDATION AND EXCAVATION IN CONJUNCTION WITH NB#104870392. NO CHANGE
 OF USE, EGRESS OR OCCUPANCY

Use: J-1 - RESIDENTIAL (HOTELS) Landmark: NO Stories: 16
 Site Fill: ON-SITE
 Review is requested under Building Code: 1968

Issued to: CARMINE DELLACAVA
 GENERAL CONTRACTOR - GC 000583
 REGISTERED:

Business: CAVA CONSTRUCTION CO. INC
 15 SO. MACQUESTON PARKWAY MOUNT VERNON NY
 10550
 Phone: 914-268-8822

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NYC Department of Buildings
Work Permit Data

Premises: 138 ALLEN STREET MANHATTAN
BIN: 1088498 Block: 415 Lot: 67

Filed At: 139 ORCHARD ST MANHATTAN
Job Type: A2 - ALTERATION TYPE 2

[View Permit History](#) | [Inspection Results](#)

Job No:	<u>110251361</u>	Fee:	STANDARD
Permit No:	110251361-02-PL	Expires:	05/28/2010
Seq. No.:	02	Filing Date:	05/28/2009 RENEWAL
Work:	PLUMBING - ALTERATION TYPE 2	Proposed Job Start:	11/17/2008
	INSTALL SUBSURFACE PLUMBING FOR FOUNDATION WORK. NO CHANGE OF USE, EGRESS OR OCCUPANCY.	Work Approved:	09/24/2008
Use:	J-1 - RESIDENTIAL (HOTELS)	Landmark:	NO
Site Fill:	ON-SITE	Stories:	16
Review is requested under Building Code:	1968		

Issued to: JOHN HUBNER	MASTER PLUMBER
Business: PYRAMID PLBG & HTG CO	License No: <u>MP 001395</u>
2323 HAVILAND AVENUE BRONX NY 10462	Phone: 718-676-9030

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Buildings

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NYC Department of Buildings Work Permit Data

Premises: 138 ALLEN STREET MANHATTAN
BIN: 1088498 Block: 415 Lot: 67

Filed At: 139 ORCHARD ST MANHATTAN
Job Type: A2 - ALTERATION TYPE 2

View Permit History

Job No:	<u>110251361</u>	Fee:	STANDARD
Permit No:	110251361-03-EW-OT	Expires:	06/29/2010
Seq. No.:	02	Status:	ISSUED
Work:	ALTERATION TYPE 2 - SHORING	Work Approved:	09/24/2008

INSTALLING SHORING FOR EXCAVATION AND FOUNDATION AS SHOWN ON PLANS. NO CHANGE OF USE, EGRESS OR OCCUPANCY.

Use: J-1 - RESIDENTIAL (HOTELS)

Landmark: NO

Stories: 16

Site Fill: ON-SITE

Review is requested under Building Code: 1968

Issued to: CARMINE DELLACAVA

GENERAL
CONTRACTOR - GC 000583
REGISTERED:

Business: CAVA CONSTRUCTION CO. INC
15 SO. MACQUESTON PARKWAY MOUNT VERNON NY
10550

Phone: 914-268-8822

If you have any questions please review these [Frequently Asked Questions](#), the [Glossary](#), or call the 311 Citizen Service Center by dialing 311 or (212) NEW YORK outside of New York City.

Exhibit E

311-08-BZY

APPLICANT – Slater & Beckerman, LLP, for D.A.B. Group LLC, owner.

SUBJECT – Application December 18, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the Zoning district regulations. C4-4A. PREMISES AFFECTED – 77, 79 & 81 Rivington Street, Block 415, Lots 61, 62, 63, 66, 67, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Neil Weisbard.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR §11-331 to renew building permits and extend the time for the completion of the foundation of a 16-story transient hotel (Use Group 5) building; and

WHEREAS, a public hearing was held on this application on March 24, 2009, after due notice by publication in *The City Record*, with continued hearings on April 21, 2009 and May 19, 2009, and then to decision on June 16, 2009; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Manhattan, recommends disapproval of this application; and

WHEREAS, the owner of the adjacent building, 137 Orchard Street (hereinafter, the “Opposition”), testified in opposition to this application on the basis that their building was damaged in the process of the work performed on the subject building; and

WHEREAS, Council Member Alan Jay Gerson submitted written testimony requesting that the Board refrain from deciding whether to renew the subject building permits until the applicant resolves the damage to 137 Orchard Street; and

WHEREAS, the subject site is a through-block site with frontages on the west side of Orchard Street, the south side of Rivington Street, and the east side of Allen Street; and

WHEREAS, the site has a width of 87’-9” and a depth of 127’-3”, and a total lot area of approximately 9,828 sq. ft.; and

WHEREAS, the subject site is a single zoning lot comprising five separate tax lots (Lots 61, 62, 63, 66 and 67); and

WHEREAS, the applicant proposes to construct a 16-story transient hotel (Use Group 5) building (the “Building”) on Lots 61, 66 and 67, utilizing development

rights transferred from Lots 62 and 63; the existing building located on Lot 62 will remain; and

WHEREAS, the Building is proposed to have a total floor area of approximately 39,064 sq. ft., which contributes to a total FAR of 6.0 for the entire zoning lot, and a building height of 191’-0”;

and WHEREAS, the site was formerly located within a C6-1 zoning district; and

WHEREAS, on September 29, 2008, Alteration Type 2 Permit No. 110251361-EW-OT (the “Foundation Permit”) was issued by the Department of Buildings (“DOB”) permitting excavation of the premises and the construction of the foundation of the Building, and work commenced on October 14, 2008; on November 19, 2008, New Building Permit No. 104870392-01-NB (the “New Building Permit”) was issued by DOB permitting the construction of the Building (collectively, the “Permits”); and

WHEREAS, on November 19, 2008 (hereinafter, the “Enactment Date”), the City Council voted to enact the East Village/Lower East Side Rezoning, which changed the zoning district to C4-4A; and

WHEREAS, the Board notes that the applicant provided documentation establishing that the New Building Permit was issued prior to the zoning amendment;¹ and

WHEREAS, the applicant represents that the Building complies with the former C6-1 zoning district parameters; specifically, the proposed 6.0 FAR and building height of 191’-0” were permitted; and

WHEREAS, because the site is now within a C4-4A zoning district, the Building would not comply with the maximum FAR of 4.0 or the maximum total building height of 80’-0”;

and WHEREAS, because the Building violated these provisions of the C4-4A zoning district and work on the foundation was not completed as of the Enactment Date, the Permits lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on November 28, 2008 halting work on the Building; and

WHEREAS, the applicant now applies to the Board to reinstate the Permits pursuant to ZR § 11-331, so that the proposed development may be fully constructed under the prior C6-1 zoning district; and

¹ The official transcript of minutes for the November 19, 2008 New York City Council meeting indicates that the meeting began at 2:20 p.m. and recessed at 3:21 p.m. and that the vote to approve the East Village/Lower East Side Rezoning occurred towards the end of the meeting. The Board finds this to be sufficient evidence that the New Building Permit, which was issued at 2:21 p.m. on November 19, 2008, was issued prior to the zoning amendment.

311-08-BZY

WHEREAS, ZR § 11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued . . . to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations"; and

WHEREAS, a threshold requirement in this application is that the Permits are valid; and

WHEREAS, ZR § 11-31(a) provides that "[a] lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution;" and

WHEREAS, the record indicates that permits were issued to the owner by DOB on (1) September 29, 2008 authorizing excavation of the premises and the construction of a foundation for the 16-story hotel (Use Group 5) building, and (2) on November 19, 2008, authorizing the construction of the 16-story hotel (Use Group 5) building; and

WHEREAS, by letter dated March 13, 2009, DOB stated that the Foundation Permit and the New Building Permit were lawfully issued on September 29, 2008 and November 19, 2008, respectively; and

WHEREAS, DOB initiated a special audit review of the New Building Permit on January 15, 2009, and certain zoning and Building Code objections were raised (the "Objections"); and

WHEREAS, on January 16, 2009, DOB issued a letter to the owner providing notice of its intent to revoke the New Building Permit based on the Objections (the "Notice of Intent"); and

WHEREAS, DOB approved revised plans on January 27, 2009 that addressed the objections identified by the audit and rescinded the letter of intent to revoke the New Building Permit on January 30, 2009; and

WHEREAS, thus, the Board finds that the Foundation Permit was lawfully issued by DOB on September 29, 2008, and that the New Building Permit was lawfully issued by DOB on November 19, 2008; and

WHEREAS, accordingly, the Board finds that the record contains sufficient evidence to satisfy the findings set forth in ZR § 11-31(a) and that a decision may be rendered provided the other findings are met; and

WHEREAS, because the proposed development contemplates construction of one building, it meets the definition of minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

WHEREAS, the applicant states that excavation began on October 14, 2008 and was completed on November 17, 2008, and that substantial progress was made on the foundation as of the Enactment Date; and

WHEREAS, in support of this statement, the applicant has submitted construction logs documenting the amount and type of work performed each day of construction, and dated photographs of the site showing the progress of excavation; and

WHEREAS, at hearing, the Board raised concerns about a foundation chart submitted by the applicant on December 16, 2008, which indicated that a portion of the site was not excavated prior to the Enactment Date; and

WHEREAS, in response, the applicant submitted an affidavit of the contractor stating that the entire site was excavated as of the Enactment Date and that the foundation chart in question referred to a portion of the premises that was backfilled for use as a staging area for the storage of equipment, materials, and excess soil; and

WHEREAS, the Board finds that the excavation performed at the site for the foundation of the Building is complete for vesting purposes under ZR § 11-331; and

WHEREAS, as to substantial progress on the foundation, the applicant represents that approximately 63 percent of the foundation was complete as of the Enactment Date; and

WHEREAS, specifically, the applicant states that as of the Enactment Date, all shoring was complete, all of the required 28 H-beams and 100 timber lags were installed, all of the rebar was installed for the elevator pits, the forms for the elevator pits were constructed and installed and all of the concrete for the elevator pit floors and walls was poured, approximately 24.5 tons of the required 35 tons for the 4,300 sq. ft. rebar steel cage for the mat foundation were installed, and 83 percent of the total waterproofing for the premises was installed; and

WHEREAS, in support of this statement, the applicant has submitted construction logs documenting the amount and type of work performed each day of construction, affidavits from the contractor, and photographs of the foundation work as of the Enactment Date; and

311-08-BZY

WHEREAS, the applicant states that the work that has been completed as of the Enactment Date constitutes the most time-consuming and labor-intensive portions of the foundation work; and

WHEREAS, to attest to the complexity of the work performed as of the Enactment Date, the applicant provided an analysis of the hours of labor completed as of the Enactment Date as compared to the hours of labor remaining to complete the foundation; and

WHEREAS, specifically, the applicant states that 2,526 hours of labor, or approximately 63 percent, of the total estimated hours of labor required to complete construction of approximately 4,019 hours were complete as of the Enactment Date; and

WHEREAS, at hearing, the Board questioned why the shoring technique utilized on the premises differed from the technique referenced in the drawings submitted to the Board accompanying the subject application; and

WHEREAS, in response, the applicant stated that due to the soil conditions at the site, the project engineers determined that revised shoring drawings would be necessary, as a mat structure, consisting of a 39-inch thick concrete slab poured into a 4,300 sq. ft. steel cage and functioning as a single large footing, would be a more efficient approach than individual footings for each column and bearing wall; and

WHEREAS, the applicant subsequently submitted the revised shoring drawings, which reflect the noted mat structure and were approved by DOB on October 17, 2008; and

WHEREAS, the applicant has also submitted financial documents, including invoices, cancelled checks, contracts, and dated photographs which reflect significant expenditure associated with the excavation and foundation work incurred as of the Enactment Date; and

WHEREAS, specifically, the applicant states that \$390,190, or approximately 53 percent, of the total estimated foundation cost of approximately \$742,772 was spent as of the Enactment Date; and

WHEREAS, the Board finds all of the above-mentioned submitted evidence sufficient and credible; and

WHEREAS, the Opposition testified that their building sustained damage in the form of a large crack on the building facade during the applicant's demolition process, and in further cracks, wall separation, and other problems as a result of excessive vibrations during the excavation and pile driving process, and requests that the Board refrain from renewing the Permits until the applicant resolves the damage done to

the adjacent building and reimburses the adjacent building owner for the expenses already incurred as a result of the damage; and

WHEREAS, in response, the applicant submitted a letter from its architect dated February 25, 2009, conceding that certain damage did occur during excavation and that the applicant is in negotiations with the adjacent building owner to resolve their concerns, but contends that cracks on the exterior façade of the adjacent building existed prior to any work being done on the subject site; and

WHEREAS, in addition, the applicant submitted a vibration analysis from an engineering firm, indicating that vibration readings were below the DOB peak particle velocity threshold; and

WHEREAS, the Board notes that disputes regarding property damage are not within the purview of the analysis for a vested rights application and the Opposition's claims may be resolved in a different forum; and

WHEREAS, the Board has reviewed all of the applicant's representations and the submitted evidence and agrees that it establishes that substantial progress was made on the required foundation as of the Enactment Date; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant as outlined above, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under ZR § 11-331 and is entitled to the requested reinstatement of the Permits, and all other related permits necessary to complete construction.

WHEREAS, because the Board finds that excavation was complete and that substantial progress had been made on the foundation, it concludes that the applicant has adequately satisfied all the requirements of ZR § 11-331.

Therefore it is Resolved that this application to renew New Building Permit No. 104870392-01-NB and Alteration Type 2 Permit No. 110251361-EW-OT pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of six months from the date of this resolution, to expire on December 16, 2009.

Adopted by the Board of Standards and Appeals, June 16, 2009.

**A true copy of resolution adopted by the Board of Standards and Appeals, June 16, 2009.
Printed in Bulletin No. 23, Vol. 94.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

220-10-BZY

APPLICANT – D.A.B. Group, LLC, for D.A.B. Group, LLC, owner.

SUBJECT – Application November 18, 2010 – Extension of Time (§11-332) to complete construction of a minor development commenced under the prior C6-1 Zoning District. C4-4A Zoning District.

PREMISES AFFECTED – 77, 79, 81 Rivington Street, aka 139, 141 Orchard Street, northern portion of block bound by Orchard Street, to the east Rivington to the north, Allen Street to the west and Delancy street to the south, Block 415, Lot 61, 62, 63, 66, 67, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Nick Zagami.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on February 15, 2011, after due notice by publication in *The City Record*, and then to decision on March 15, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan, Commissioner Montanez, and Commissioner Otley-Brown; and

WHEREAS, the subject site is a through-block site with frontages on the west side of Orchard Street, the south side of Rivington Street, and the east side of Allen Street; and

WHEREAS, the site has a width of 87'-9" and a depth of 127'-3", and a total lot area of approximately 9,828 sq. ft.; and

WHEREAS, the subject site is a single zoning lot comprising five separate tax lots (Lots 61, 62, 63, 66 and 67); and

WHEREAS, the applicant proposes to construct a 16-story transient hotel (Use Group 5) building (the "Building") on Lots 61, 66 and 67, utilizing development rights transferred from Lots 62 and 63; the existing building located on Lot 62 will remain; and

WHEREAS, the Building is proposed to have a total floor area of approximately 39,064 sq. ft., which contributes to a total FAR of 6.0 for the entire zoning lot, and a building height of 191'-0"; and

WHEREAS, the site was formerly located within a C6-1 zoning district; and

WHEREAS, on September 29, 2008, Alteration Type 2 Permit No. 110251361-EW-OT (the "Foundation Permit") was issued by the Department of Buildings ("DOB") permitting excavation of the premises and the construction of the foundation of the Building, and work

commenced on October 14, 2008; on November 19, 2008, New Building Permit No. 104870392-01-NB (the "New Building Permit") was issued by DOB permitting the construction of the Building (collectively, the "Permits"); and

WHEREAS, on November 19, 2008 (hereinafter, the "Enactment Date"), the City Council voted to enact the East Village/Lower East Side Rezoning, which changed the zoning district to C4-4A; and

WHEREAS, as of that date, the applicant had obtained permits for the development, completed excavation of the property but had not completed the foundations for the property;

WHEREAS, on June 16, 2009 the Board granted a renewal of all permits necessary to complete construction under BSA Cal. No. 311-08-BZY, pursuant to ZR § 11-331, and

WHEREAS, the foundation was completed within six months and construction has continued since; and

WHEREAS, pursuant to ZR § 11-331, however, subsequent to the rezoning of a property, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the ZR, as a "minor development"; and

WHEREAS, for "minor development," an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this

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completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated December 22, 2010, DOB stated that the Foundation Permit and the New Building Permit were lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date and were timely renewed until the expiration of the original two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of November 19, 2010 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the permits, substantial construction has been completed and substantial expenditures were incurred; and

**A true copy of resolution adopted by the Board of Standards and Appeals, March 15, 2011.
Printed in Bulletin No. 12, Vol. 96.**

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes 100 percent of the foundation, and completion of seven floors of the superstructure, with partial construction of the eighth floor; and

WHEREAS, in support of this statement, the applicant has submitted the following: an affidavit from the owner enumerating the completed work; construction contracts, copies of cancelled checks, copies of lien waivers evidencing payments made by the applicant; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$4,826,511, or 32 percent, out of the approximately \$15,249,467 cost to complete; and

WHEREAS, the applicant has submitted financial records, construction contracts, copies of cancelled checks, and copies of lien waivers evidencing payments made by the applicant; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

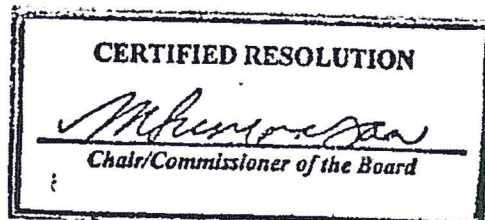
WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the initial permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104870392-01-NB and Alteration Type 2 Permit No. 110251361-EW-OT, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on March 15, 2013.

Adopted by the Board of Standards and Appeals,
March 15, 2011.



220-10-BZY

APPLICANT – Goldman Harris LLC, Orchard Hotel LLC, c/o Maverick Real Estate Partners, vendee, DAB Group LLC, owner.

SUBJECT – Application March 11, 2013 – Extension of time to complete construction (§11-332) and obtain a Certificate of Occupancy of a previous vested rights approval, which expired on March 15, 2013. Prior zoning district C6-1. C4-4A zoning district.

PREMISES AFFECTED – 77, 79, 81 Rivington Street, a/k/a 139, 141 Orchard Street, northern p/o block bounded by Orchard Street to the east, Rivington Street to the north, Allen Street to the west, and Delancy Street to the south, Block 415, Lot 61-63, 66, 67, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application granted
THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time to complete construction and obtain a certificate of occupancy for a minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on July 23, 2013, after due notice by publication in *The City Record*, and then to decision on August 20, 2013; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the subject site is a through-block site with frontages on the west side of Orchard Street, the south side of Rivington Street, and the east side of Allen Street; and

WHEREAS, the site has a width of 87'-9" and a depth of 127'-3", and a total lot area of approximately 9,828 sq. ft.; and

WHEREAS, the subject site is a single zoning lot comprising five separate tax lots (Lots 61, 62, 63, 66 and 67); and

WHEREAS, the applicant proposes to construct a 16-story transient hotel (Use Group 5) building (the "Building") on Lots 61, 66 and 67, utilizing development rights transferred from Lots 62 and 63; the existing building located on Lot 62 will remain; and

WHEREAS, the Building is proposed to have a total floor area of approximately 39,064 sq. ft., which contributes to a total FAR of 6.0 for the entire zoning lot, and a building height of 191'-0"; and

WHEREAS, the site was formerly located within a C6-1 zoning district; and

WHEREAS, on September 29, 2008, Alteration Type 2 Permit No. 110251361-EW-OT (the "Foundation Permit") was issued by the Department of Buildings ("DOB") permitting excavation of the premises and the construction of the foundation of the Building, and work commenced on October 14, 2008; on November 19, 2008, New Building Permit No. 104870392-01-NB (the "New Building Permit") was issued by DOB permitting the construction of the Building (collectively, the "Permits"); and

WHEREAS, on November 19, 2008 (hereinafter, the "Enactment Date"), the City Council voted to enact the East Village/Lower East Side Rezoning, which changed the zoning district to C4-4A; and

WHEREAS, as of that date, the applicant had obtained the Permits for the development and completed excavation, but had not completed the foundations for the property; and

WHEREAS, on June 16, 2009 the Board granted a renewal of all permits necessary to complete construction under BSA Cal. No. 311-08-BZY, pursuant to ZR § 11-331; and

WHEREAS, the foundation was completed within six months and construction proceeded until November 19, 2010; on that date, two years after the Enactment Date, the Permits lapsed pursuant to ZR § 11-331; and

WHEREAS, one day prior to the lapse, on November 18, 2010, the applicant's predecessor filed an application under the subject calendar number pursuant to ZR § 11-332, seeking a two-year extension to complete construction and obtain a certificate of occupancy; and

WHEREAS, on March 15, 2011, under the subject calendar number, the Board granted a two-year extension of the Permits, to expire on March 15, 2013; and

WHEREAS, the applicant represents that, on March 1, 2011—two weeks before the Board's initial grant under the subject calendar—the developer's loan matured, and the applicant, as lender, commenced a foreclosure proceeding against the developer-borrower in Supreme Court; since the filing of that action, construction work at the site has been limited to maintenance of site safety and the construction of a sidewalk; and

WHEREAS, accordingly, because the two-year time limit has expired and construction has not been completed, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the ZR, as a "minor development"; and

WHEREAS, for "minor development," an

220-10-BZY

extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit."; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the work must have been performed pursuant to a valid permit; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, in the context of the prior renewal, DOB issued a letter, dated December 22, 2010, in which it stated that the Permits were lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, accordingly, the Board accepts that the Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, the Board also notes that, based on the record, the Permits have been timely renewed since issuance, including the two-year renewal pursuant to the Board's March 15, 2011 grant; however, no work has been performed and no expenditures undertaken since November 19, 2010; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the applicant notes that, due to the foreclosure proceeding, the only work that has been performed since the prior two-year extension of the Permits by the Board is related to maintenance of site safety and the construction of a sidewalk; as such, the applicant seeks to rely on construction performed and expenditures undertaken as of November 19, 2010, when the Permits initially lapsed; and

WHEREAS, the Board observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the Permits; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the Permits are issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the Permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the Permits and prior to the expiration of the Board's most recent two-year extension of time to complete construction on November 19, 2010, includes: 100 percent of the foundation and completion of seven floors of the superstructure, with partial construction of the eighth floor; and

WHEREAS, in support of this statement, the applicant has submitted the following: an affidavit from the owner enumerating the completed work; construction contracts, copies of cancelled checks, copies of lien waivers evidencing payments made by the applicant, and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the Permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development subsequent to the issuance of the Permits through November 19, 2010 is \$4,826,511, or 32 percent, out of the approximately \$15,249,467 cost to complete; and

WHEREAS, the applicant has submitted financial records, construction contracts, copies of cancelled checks, and copies of lien waivers evidencing payments made by the applicant; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the initial permits; and

220-10-BZY

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the Permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved, that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104870392-01-NB and Alteration Type 2 Permit No. 110251361-EW-OT, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on August 20, 2015.

Adopted by the Board of Standards and Appeals, August 20, 2013.

A true copy of resolution adopted by the Board of Standards and Appeals, August 20, 2013.
Printed in Bulletin No. 34, Vol. 98.

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

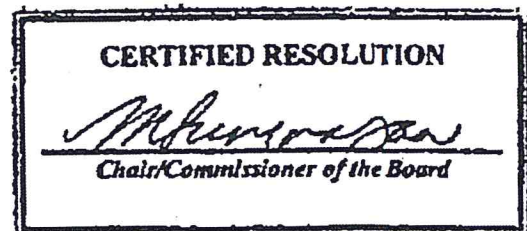




Exhibit H

[✉ CLICK HERE TO SIGN UP FOR BUILDINGS NEWS](#)

NYC Department of Buildings

DOB Violation Display for 010109LL629106019

Premises: 134 ORCHARD STREET MANHATTAN

BIN: [1005306](#) Block: 410 Lot: 8

Issue Date: 01/01/2009

Violation Category: V - DOB VIOLATION - ACTIVE

Violation Type: LL6291 - LOCAL LAW 62/91 - BOILERS

Violation Number: 06019

Device No.: 00911836 - 01-RESIDENTIAL

ECB No.:

Infraction Codes:

Description:

Click [here](#) to view the Civil Penalty Chart.

Disposition:

Code:

Date:

Inspector:

Comments:

If you have any questions please review these [Frequently Asked Questions](#), the [Glossary](#), or call the 311 Citizen Service Center by dialing 311 or (212) NEW YORK outside of New York City.

[✉ CLICK HERE TO SIGN UP FOR BUILDINGS NEWS](#)

NYC Department of Buildings

DOB Violation Display for 010308LL629105856

Premises: 134 ORCHARD STREET MANHATTAN

BIN: [1005306](#) Block: 410 Lot: 8

Issue Date: 01/03/2008

Violation Category: V - DOB VIOLATION - ACTIVE

Violation Type: LL6291 - LOCAL LAW 62/91 - BOILERS

Violation Number: 05856

Device No.: 00911836 - 01-RESIDENTIAL

ECB No.:

Infraction Codes:

Description:

Click [here](#) to view the Civil Penalty Chart.

Disposition:

Code:

Date:

Inspector:

Comments:

If you have any questions please review these [Frequently Asked Questions](#), the [Glossary](#), or call the 311 Citizen Service Center by dialing 311 or (212) NEW YORK outside of New York City.

[✉ CLICK HERE TO SIGN UP FOR BUILDINGS NEWS](#)

NYC Department of Buildings

DOB Violation Display for 051514LBLVIO02242

Premises: 134 ORCHARD STREET MANHATTAN

BIN: [1005306](#) Block: 410 Lot: 8

Issue Date: 05/15/2014

Violation Category: V - DOB VIOLATION - ACTIVE

Violation Type: LBLVIO - LOW PRESSURE BOILER

Violation Number: 02242

Device No.: 00911836 - 01-RESIDENTIAL

ECB No.:

Infraction Codes:

Description: VIOLATION ISSUED FOR FAILURE TO FILE ANNUAL BOILER 2012 INSPECTION REPORT

Click [here](#) to view the Civil Penalty Chart.

Disposition:

Code:

Date:

Inspector:

Comments:

If you have any questions please review these [Frequently Asked Questions](#), the [Glossary](#), or call the 311 Citizen Service Center by dialing 311 or (212) NEW YORK outside of New York City.

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NYC Department of Buildings

DOB Violation Display for 090512AEUHAZ100014

Premises: 134 ORCHARD STREET MANHATTAN

BIN: [1005306](#) Block: 410 Lot: 8

DOB Civil Penalty Due: \$1,500

Issue Date: 09/05/2012**Violation Category:** V - DOB VIOLATION - ACTIVE**Violation Type:** AEUHAZ1 - FAIL TO CERTIFY CLASS 1**Violation Number:** 00014**Device No.:****ECB No.:** [34857823P](#) (refer to for further details)**Description:** FAILURE TO CERTIFY CORRECTION ON IMMEDIATELY HAZARDOUS (CLASS 1) ECB VIOLATION

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NYC Department of Buildings

DOB Violation Display for 090512AEUHAZ100015

Premises: 134 ORCHARD STREET MANHATTAN

BIN: [1005306](#) Block: 410 Lot: 8

DOB Civil Penalty Due: \$1,500

Issue Date:	09/05/2012	Violation Category:	V - DOB VIOLATION - ACTIVE
Violation Type:	AEUHAZ1 - FAIL TO CERTIFY CLASS 1		
Violation Number:	00015	Device No.:	
ECB No.:	34857824R (refer to for further details)		
Description:	FAILURE TO CERTIFY CORRECTION ON IMMEDIATELY HAZARDOUS (CLASS 1) ECB VIOLATION		

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NYC Department of Buildings

DOB Violation Display for 121311LBLVIO00422

Premises: 134 ORCHARD STREET MANHATTAN

BIN: [1005306](#) Block: 410 Lot: 8

Issue Date: 12/13/2011

Violation Category: V - DOB VIOLATION - ACTIVE

Violation Type: LBLVIO - LOW PRESSURE BOILER

Violation Number: 00422

Device No.: 00911836 - 01-RESIDENTIAL

ECB No.:

Infraction Codes:

Description: VIOLATION ISSUED FOR FAILURE TO FILE ANNUAL BOILER 2010 INSPECTION REPORT

Click [here](#) to view the Civil Penalty Chart.

Disposition:

Code:

Date:

Inspector:

Comments:

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NYC Department of Buildings
DOB Violations

Page: 1

Premises: 134 ORCHARD STREET MANHATTAN

BIN: [1005306](#) Block: 410 Lot: 8

NUMBER	TYPE	FILE DATE
V* 031893LL629115246	DOB VIOLATION - DISMISSED	03/18/1993
V* 031894LL629115246	DOB VIOLATION - DISMISSED	03/18/1994
V* 082995LL629111309	DOB VIOLATION - DISMISSED	08/29/1995
V* 021097LL629101158	DOB VIOLATION - DISMISSED	02/10/1997
V 010308LL629105856	DOB VIOLATION - ACTIVE	01/03/2008
V 010109LL629106019	DOB VIOLATION - ACTIVE	01/01/2009
V 121311LBLVIO00422	DOB VIOLATION - ACTIVE	12/13/2011
V 090512AEUHAZ100014	DOB VIOLATION - ACTIVE	09/05/2012
V 090512AEUHAZ100015	DOB VIOLATION - ACTIVE	09/05/2012
V 051514LBLVIO02242	DOB VIOLATION - ACTIVE	05/15/2014

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NYC Department of Buildings
ECB Query By Location

Page: 1 of 1

Premises: 134 ORCHARD STREET MANHATTAN

BIN: [1005306](#) Block: 410 Lot: 8 CB: 103

Dept. of Buildings Violations & Compliance
Total Issued = 5 Open (Non-Compliance) = 3

ECB Hearings
Completed / Defaulted = 5 Pending = 0

ECB Number	Dept. of Buildings Violation Status	Respondent	ECB Hearing Status	Viol Date	Infraction Codes	ECB Penalty Due
34857824R	OPEN - NO COMPLIANCE RECORDED Severity: CLASS - 1	SHAIRA CONSTRUCTION CORP. R 5597 Inspect Unit: SCAFFOLD SAFETY TEAM	IN VIOLATION	06/15/2012	106	\$0.00
34993258H	OPEN - NO COMPLIANCE RECORDED Severity: CLASS - 2	134 ORCHARD LLC Inspect Unit: MANHATTAN CONSTRUCTION	STIPULATION/IN-VIO	09/25/2012	201	\$400.00
34857823P	OPEN - NO COMPLIANCE RECORDED Severity: CLASS - 1	SHAIRA CONSTRUCTION CORP. R 5597 Inspect Unit: SCAFFOLD SAFETY TEAM	IN VIOLATION	06/15/2012	150	\$0.00
					Viol Type: CRANES & DERRICKS	
34593708N	RESOLVED - CURE ACCEPTED Severity: NON-HAZARDOUS	KALIN THELMA Inspect Unit: MANHATTAN CONSTRUCTION	CURED/IN-VIO	09/17/2007	B07	\$0.00
					Viol Type: CONSTRUCTION	
35030671X	RESOLVED - CURE ACCEPTED Severity: CLASS - 2	BEN ZHAVIAN Inspect Unit: EXCAVATION UNIT	CURED/IN-VIO	01/21/2014	206	\$0.00

Compliance Status (Open/Resolved) relates to whether a violation has been corrected/uncorrected. Dismissed violations do not require filing a Certificate of Correction.

ECB Hearing Status and the **ECB Penalty Due** are separate from **Compliance Status** (i.e. a penalty is still due in many cases even when the violating condition has been fixed).

Severity Class

Class 1 - Immediately Hazardous
Class 2 - Major
Class 3 - Lesser

HAZ - Hazardous - 1968 Building Code
NON-HAZ - Non-hazardous - 1968 Building Code

Violation Status Descriptions

OPEN - No Compliance Recorded
OPEN - Certificate Pending (Certificate of Correction submitted and under review)
OPEN - Certificate Disapproved (Certificate of Correction disapproved/not in compliance)
RESOLVED - N/A-Dismissed (at ECB - no Certificate of Correction required)
RESOLVED - Certificate Accepted (Certification of Correction Accepted/in

ECB Hearing Status

CURED/IN-VIO - In Violation/no hearing required
STIPULATION/IN-VIO - No hearing required/in violation
IN VIOLATION - Hearing decision completed
DISMISSED - Hearing decision completed
DEFAULT - Respondent failed to appear at hearing
PUBLICLY-OWNED - No hearing required

compliance)	PENDING - Awaiting ECB hearing or decision
RESOLVED - Cure Accepted (early correction accepted - in violation/no penalty or hearing)	ADMIT/IN-VIO - In Violation/no hearing required
RESOLVED - Compliance Insp/Doc (condition verified by Inspector or by Dept. documentation)	WRITTEN OFF - Imposed penalty legally uncollectable

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NYC Department of Buildings

ECB Violation Details

Premises: 134 ORCHARD STREET MANHATTAN

Filed At: 134 ORCHARD STREET , MANHATTAN , NY 10002

BIN: [1005306](#) Block: 410 Lot: 8

Community Board: 103

ECB Violation Summary

VIOLATION OPEN

ECB Violation Number: 34857824R

Severity: CLASS - 1

Certification Status: NO COMPLIANCE RECORDED

Hearing Status: IN VIOLATION

Penalty Balance Due: \$0.00

Respondent Information

Name: SHAIRA CONSTRUCTION CORP.
 Mailing Address: 632 BROADWAY , NEW YORK , NY 10012
 License/Registration/Tracking Number: [R 5597](#)

Violation Details

Violation Date: 06/15/2012 Violation Type:
 Served Date: 06/15/2012 Inspection Unit: SCAFFOLD SAFETY TEAM

Infraction Codes	Section of Law	Standard Description
106	27-/28-/BC-MISC	MISCELLANEOUS VIOLATIONS

Specific Violation Condition(s) and Remedy:

3314.10.9 PARTIAL SWO.TIE BACK ON ANGLE.FAILED TO PROVIDE A 2ND TIE-BACK FOR A TWO PT.SUSP.SCAFFOLD C-HOOK AT ROOF LEVEL.C-HOOK IS NOT FOR CORNICE USE.CHANGE C-HOOK.REM:PROVIDE A 2ND TIE-BACK OR STRAIT TIE-BACK

Issuing Inspector ID: 2343

DOB Violation Number: 061512CSSUEM02

Issued as Aggravated Level: NO

Dept. of Buildings Compliance Information

Certification Status: NO COMPLIANCE RECORDED

Compliance On:

A Certificate of Correction must be submitted to the Administrative Enforcement Unit (AEU) for all violations. A violation that is not dismissed by ECB will continue to remain ACTIVE or "open" on DOB records until acceptable proof is submitted to the AEU, even if you have paid the penalty imposed by ECB.

ECB Hearing Information

Scheduled Hearing Date: 09/06/2012 Hearing Status: IN VIOLATION

Hearing Time: 10:30

ECB Penalty Information

Penalty Imposed:	\$1,600.00
Adjustments:	\$89.16
Amount Paid:	\$1,689.16
Penalty Balance Due:	\$0.00
Court Docket Date:	12/31/2012

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NYC Department of Buildings

ECB Violation Details

Premises: 134 ORCHARD STREET MANHATTAN

Filed At: 134 ORCHARD STREET , MANHATTAN , NY 10002

BIN: [1005306](#) Block: 410 Lot: 8

Community Board: 103

ECB Violation Summary

VIOLATION OPEN

ECB Violation Number: 34857823P

Severity: CLASS - 1

Certification Status: NO COMPLIANCE RECORDED

Hearing Status: IN VIOLATION

Penalty Balance Due: \$0.00

Respondent Information

Name: SHAIRA CONSTRUCTION CORP.
 Mailing Address: 632 BROADWAY , NEW YORK , NY 10012
 License/Registration/Tracking Number: [R 5597](#)

Violation Details

Violation Date: 06/15/2012 Violation Type: CRANES & DERRICKS
 Served Date: 06/15/2012 Inspection Unit: SCAFFOLD SAFETY TEAM

Infraction Codes	Section of Law	Standard Description
150	150 - UNKNOWN	

Specific Violation Condition(s) and Remedy:

NO RECORD OF DAILY INSPECTION OF SUSPENDED SCAFFOLD PERFORMED BY AUTHORIZED PERSON AT SITE.PARTIAL SWO.RIGGING FOREMAN @SITE EDWIN E GONZALES DIDN'T HAVE A LOG.I PROVIDE HIM W/SAMPLY DAILY LOG.FOR TWO PT. SUSP

Issuing Inspector ID: 2343

DOB Violation Number: 061512CSSUEM01

Issued as Aggravated Level: NO

Dept. of Buildings Compliance Information

Certification Status: NO COMPLIANCE RECORDED

Compliance On:

A Certificate of Correction must be submitted to the Administrative Enforcement Unit (AEU) for all violations. A violation that is not dismissed by ECB will continue to remain ACTIVE or "open" on DOB records until acceptable proof is submitted to the AEU, even if you have paid the penalty imposed by ECB.

ECB Hearing Information

Scheduled Hearing Date: 09/06/2012 Hearing Status: IN VIOLATION
 Hearing Time: 10:30

ECB Penalty Information

Penalty Imposed:	\$2,400.00
Adjustments:	\$133.74
Amount Paid:	\$2,533.74
Penalty Balance Due:	\$0.00
Court Docket Date:	12/31/2012

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Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (1976)

382 N.Y.S.2d 538

52 A.D.2d 10
 Supreme Court, Appellate Division,
 Second Department, New York.

In the Matter of PUTNAM
 ARMONK, INC., Respondent,
 v.
 TOWN OF SOUTHEAST et al., Appellants.

April 19, 1976.

Real estate developer filed Article 78 proceeding to compel town planning board to approve proposed subdivision plats based upon one-fourth-acre lots. The Supreme Court at Special Term, Westchester County, P. Raymond Sirignano, J., entered judgment in Putnam County, granting petition and annulling determination of town planning board refusing to approve subdivision plats, and town appealed. The Supreme Court, Appellate Division, Second Department, Margett, J., held that where petitioner's predecessor in title had acquired vested rights to build on nonconforming one-fourth-acre lots on ground that predecessor had commenced substantial construction and made substantial expenditures on water system, roads, drainage system, model house construction, and advertising, but 15 years later evidence in proceedings on successor's petition raised issues of fact as to whether predecessor recouped or abandoned its interest in such items of expense, judgment entered would be reversed, and proceeding remitted to determine whether substantial economic interest had been abandoned or recouped, and whether considerations of public health, safety and welfare outweighed petitioner's remaining interest in development of property with one-fourth-acre lots.

Reversed and remitted.

Attorneys and Law Firms

*12 **539 Charles H. Velardi, Brewster (Stephen J. Ventre, Carmel, of counsel), for appellants.

Reilly, Like & Schneider, Babylon (Richard P. Weber, Babylon, of counsel), for respondent.

Before HOPKINS, Acting P.J., and MARGETT, DAMIANI, CHRIST and HAWKINS, JJ.

Opinion

MARGETT, Justice.

The genesis of this litigation lies in the year 1955, when a predecessor to petitioner's title acquired a tract of land in the Town of Southeast, in Putnam County, with **540 the intention of subdividing it and constructing a housing development thereon. Plans were created calling for some 500 homes on 1/4 acre lots, with a road grid, drainage and water systems and utilities for the entire tract. In September, 1955 the town enacted a local zoning ordinance which required a minimum building lot of 10,000 square feet (a quarter of an acre), with an 80-foot grontage. At that time the owner's plans were in accordance with the zoning ordinance. Subsequently a builder named Telimar Homes, Inc. purchased the tract for subdivision and development pursuant to the original overall plan. The fact that the land had been acquired for the development of a single integrated project had been repeatedly made known to members of the Town Planning Board, Town Board and Zoning Commission, as well as to the Town Supervisor.

Telimar Homes divided the land into four sections to facilitate orderly financing, development and selling. Plat approval was obtained in August, 1955 for section 1 and in June, 1957 for section 2. Building and selling commenced on these two sections, at which time a waterworks and drainage system were built and a road grid established, to benefit the whole tract. In August, 1957 an amended ordinance was enacted which up-zoned the area to require minimum plots of 20,000 square feet (half an acre). When, in December, 1957, the builder submitted plats for sections 3 and 4, they were rejected by the Planning Board for noncompliance with the 1/2 acre plot requirement of the amended zoning ordinance.

Telimar Homes then commenced an action to declare the invalidity of the amended ordinance as applied to its property. After a lengthy trial before a referee, it was held that Telimar Homes had a vested right to a nonconforming use of its entire tract of land and that the amendment, as applied to its property, was invalid and unconstitutional. Judgment was entered in accordance with the determination of the referee and the Planning Board and other defendants appealed. In *13 Telimar Homes v. Miller, 14 A.D.2d 586, 587, 218 N.Y.S.2d 175, 177, mot. for lv. to app. den. 10 N.Y.2d 709, 223 N.Y.S.2d 1026, 179 N.E.2d 716, this court affirmed,

Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (1976)

382 N.Y.S.2d 538

stating that 'the water system, roads, drainage system, model house construction and advertising were laid out and designed for the benefit of all four sections developed as a single, overall tract' and that substantial construction had been commenced and substantial expenditures had been made on these items in partial development of all the sections. Accordingly, it was held that Telimar Homes had acquired a vested right to a nonconforming use of the entire tract.

It is undisputed that, since July, 1961, when the decision of this court in the Telimar Homes case (supra) was rendered, the developer took no further action with respect to sections 3 and 4 with the result that, today, those sections consist of completely undeveloped woodland.

During the construction on sections 1 and 2, Telimar Homes had created the Southern Putnam Water Works Company to supply the contemplated requirements of the entire development for water. In 1964 the wells stitized by the company as the source of its water failed. As a result of the ensuing drastic shortage of water, the town created the Brewster Heights Water District in order to obtain the assets of the developer's private water company and to obtain a new source of water from a New York City reservoir located within the town. The boundaries of the public water district do not encompass sections 3 and 4. It is also alleged that in past years the residents of sections 1 and 2 experienced substantial difficulties with septic tank sewage disposal systems installed by the builder because the rocky subsoils which underlie the entire tract are generally unsuitable for this type of subsurface disposal. Furthermore, the land in the development is extremely hilly, which makes it especially conducive to a high degree of water runoff, which, in turn, overburdens the existing water drainage system.

Against this background, in November, 1973 the present petitioner, Putnam Armonk, Inc., acquired title to sections 3 and 4 **541 and took an assignment of all the former owner's vested rights under the prior decision of this court. It now intends to develop these sections and, in furtherance thereof, it caused new maps, plans and surveys to be prepared. On April 30, 1974 petitioner's attorneys requested a meeting with the Planning Board to discuss plat approval based upon 1/4 acre lots under its claim of a vested right. On May 23, *14 1974 the Planning Board sent a letter to petitioner's attorneys stating that the vested rights it claimed under the decision of this court 'are no longer valid, and construction

of any further homes on the site are to conform to the Zoning Ord. passed by the Town Board in 1968', which ordinance contains a 1/2 acre minimum lot requirement.

Petitioner commenced the instant proceeding to review the determination of the Town Planning Board and to compel it to approve subdivision plats based upon 1/4 acre lots. Special Term held that petitioner had validly acquired the vested rights of its predecessor in title and that the mere passage of time did not, in and of itself, spell out an intent to abandon development of the site.

[1] On appeal, this court is not required to decide whether a vested right was obtained to develop the site on the basis of 1/4 acre zoning; that question was settled by our decision in *Telimar Homes v. Miller* (supra); principles of collateral estoppel prevent the appellants from again raising the issue. Nor is it open to question that, once such vested rights are established, they continue for the benefit of a successor in title (*Elsinore Property Owners Assn. v. Morwand Homes*, 286, App.Div. 1105, 146 N.Y.S.2d 78; *Matter of Caponi v. Walsh*, 228 App.Div. 86, 238 N.Y.S. 438). Rather, the issue now before this court is whether the petitioner, or its predecessor in title, was divested of its right to build on 1/4 acre lots by events subsequent to our decision in the *Telimar Homes* case. In order to determine this issue, and examination of the theory of 'vested rights' is required.

[2] [3] It is well established that, where a restrictive amendment to a zoning ordinance is enacted, an owner will be permitted to complete construction of a structure or development which constitutes a nonconforming use because of the amendment, only where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance (see 1 *Anderson*, *New York Zoning Law and Practice* (2d ed.), s 6.16; 2 *Rathkopf*, *The Law of Zoning and Planning* (3d ed.), p. 57—6; 1A *Antieau*, *Municipal Corporation Law*, s 7.133). Where substantial construction has been commenced, but expenditures thereon are unsubstantial, no vested rights accrue to the owner (see *Town of Lloyd v. Kart Wheelers Raceway*, 28 A.D.2d 1015, 283 N.Y.S.2d 756). Similarly, where substantial expenditures have been made but substantial construction has not commenced, no vested rights will accrue (see *15 *Town of Hempstead v. Lynne*, 32 Misc.2d 312, 222 N.Y.S.2d 526; *Matter of Smith v. Spiegel & Sons*, 31 A.D.2d 819, 298 N.Y.S.2d 47, affd. 24 N.Y.2d 920, 301 N.Y.S.2d 984, 249 N.E.2d 763; *Matter of Fox Lane Corp. v. Mann*, 216 App.Div.

382 N.Y.S.2d 538

813, 215 N.Y.S. 334, affd. 243 N.Y. 550, 154 N.E. 600; Matter of Caponi v. Walsh, supra, 228 App.Div. p. 89, 238 N.Y.S. p. 441; see, also, Ann., 49 A.L.R.3d 13, s 13, subd. (a), p. 71). The rationale behind this rule is clear. Although every zoning ordinance affects the rights of owners because it restricts utilization of the property in some manner, the right to complete construction of a nonconforming use will be sustained only where 'the property interest * * * is too substantial to justify its deprivation in light of the objectives to be achieved by enforcement of the provision' (People v. Miller, 304 N.Y. 105, 108, 106 N.E.2d 34, 35). In such cases the right to a nonconforming use is termed 'vested' and will not be disturbed where enforcement would cause 'serious loss' to the owner (see People v. Miller, supra, p. 109, 106 N.E.2d 34).

[4] Our inquiry is directed not to an examination of the question of whether events during the passage of almost 15 years since our decision in Telimar Homes (supra), and 21 years since the acquisition of the property for subdivision and development, **542 have so reduced the substantial character of the investment in, and construction on, the tract, that enforcement of the present zoning ordinance is justified. Three factors are relevant on this issue. The first is abandonment, which depends upon the concurrence of two factors, namely an intention to abandon and some overt act, or some failure to act, carrying the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment (see City of Binghamton v. Gartell, 275 App.Div. 457, 460, 90 N.Y.S.2d 556, 559; Ann. 18 A.L.R.2d 725, s 4, pp. 730—731). The second is recoupment, by which we mean the recovery by the owner of all or a part of his financial expenditures on the property without completing construction. The third is the extent to which considerations of public safety, health and welfare, which have manifested themselves over the past 15 years of experience with homes built upon 1/4 acre plots in sections 1 and 2, indicate an overriding benefit to the public to be derived from the enforcement of the present lot size requirements.

[5] The grounds which impelled us to find that Telimar Homes had acquired vested rights to build on nonconforming 1/4 acre lots in sections 3 and 4 were that it had commenced substantial construction and made substantial expenditures on the water system, roads, drainage system, model *16 house construction and advertising to benefit not only sections 1 and 2, but the entire tract. The record before us raises issues

of fact as to whether plaintiff's predecessor in title recouped or abandoned its interest in these items of expense. Thus, model homes built in the 1950's, which have undoubtedly long since been sold, and advertising at that time, will of course not help sales 16 or 18 years later. It appears that Telimar Homes recouped its expenditures in the model homes when it sold them and abandoned any investment it had in advertising when it failed to carry through with the proposed development of sections 3 and 4 within a reasonable time. As for the water system, it appears that Telimar Homes' investment therein was either lost when that system failed in 1964 or was recouped when the public water district bought the assets of the water company which Telimar Homes had created to serve the area. In addition, petitioner admits that it has developed new 'maps, plans, studies, and surveys' for the tract, and thus it may or may not have abandoned the former road grid, storm drains, etc.

Finally, it is alleged that the rocky subsoil of the area has proved unsuitable for subsurface sewage disposal; that central municipal sewage facilities do not exist in the area; that sections 3 and 4 lie outside the present public water district; that the source for a private water supplier is likely to fail, as it did in the other portion of the tract; and that the present overburdened storm water drainage facilities will be overtaxed by the development of the tract as originally proposed.

Accordingly, the judgment appealed from should be reversed and the proceeding remitted to Special Term for a hearing to determine (1) whether petitioner's predecessor in title, or petitioner, did indeed abandon or recoup its formerly substantial economic interest in the construction and (2) whether, if there was such an abandonment, or a recoupment of only part of the original investment, considerations of public health, safety and welfare override petitioner's remaining interest in development of the tract with 1/4 acre lots, so as to make enforcement of the present 1/2 acre zoning ordinance justifiable.

Judgment of the Supreme Court, Westchester County, dated March 18, 1975, and entered in Putnam County, reversed, *17 without costs or disbursements, and proceeding remitted to Special Term for further proceedings in accordance with the opinion of Mr. Justice MARGETT herein.

Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10 (1976)

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HOPKINS, Acting P.J., and DAMIANI, CHRIST and
HAWKINS, JJ., concur.


Parallel Citations

52 A.D.2d 10, 382 N.Y.S.2d 538

End of Document

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Orangetown, Town of v Magee, 156 Misc.2d 881 (1992)
 594 N.Y.S.2d 951

 KeyCite Red Flag - Severe Negative Treatment
Affirmed in Part, Reversed in Part, Dismissed in Part by Town of
 Orangetown v. Magee, N.Y.A.D. 2 Dept., May 8, 1995

156 Misc.2d 881, 594 N.Y.S.2d 951

Town of Orangetown, Plaintiff,

v.

John F. Magee et al., Defendants.

Supreme Court, Rockland County,
 December 23, 1992

([2]) On a counterclaim to reinstate an unlawfully revoked building permit, defendants have established the existence of a "vested right" to construct their building since they have sustained their burden of proving that the building permit was legally issued, that substantial improvements were made and significant sums of money expended in reliance on the permit and that the permit was illegally revoked.

Civil Rights
 Federal Civil Rights Claim
 Unlawful Revocation of Building Permit--Qualified Immunity

CITE TITLE AS: Orangetown, Town of v Magee

HEADNOTES

Municipal Corporations
 Zoning
 Illegal Revocation of Building Permit

([1]) Plaintiff Town acted unlawfully in revoking defendants' building permit to construct a four-acre industrial building in response to public pressure to shut the project down. The Town's asserted reason for revoking the permit, that there were "discrepancies" between the construction work and the filed plans, does not provide a legal basis for the revocation of the building permit, since the removal of massive amounts of dirt, which caused the unsightly appearance of the site, was authorized by the building permit to bring the site to the appropriate grade and there were also no deviations from the approved plans and what was done on the ground. Rather, the evidence proves that a concerted, orchestrated effort was made by the Town Supervisor, some members of the Town Board, the Town Attorney and the Building Inspector to revoke the building permit to satisfy political pressures that were being exerted by a local citizens' group.

Municipal Corporations
 Planning
 Unlawful Revocation of Building Permit--"Vested Rights" of Developer

([3]) On a counterclaim by defendants, plaintiff Town is liable for a civil rights violation under 42 USC § 1983 since the actions of its officials in illegally issuing a stop work order, illegally revoking defendants' building permit and instituting baseless criminal proceedings violated defendants' right to substantive due process of law by depriving them of a constitutionally protected "vested" property interest in the building permit. Since the Town officials acted in an arbitrary and capricious manner in violation of established law and procedure, the defense of "qualified immunity" is without basis in law.

TOTAL CLIENT SERVICE LIBRARY REFERENCES

Am Jur 2d, Constitutional Law, §§ 13, 191, 580 *et seq.*

Carmody-Wait 2d, Proceedings Against a Body or Officer §§ 145:195, 145:199.

42 USCS § 1983. *882

NY Jur 2d, Constitutional Law, §§209,418-421.

ANNOTATION REFERENCES

Zoning: building in course of construction as establishing valid nonconforming use or vested right to completion of construction for intended use. 89 ALR3d 1051.

APPEARANCES OF COUNSEL

OPINION OF THE COURT

Robert J. Stolarik, J.

This is an action on a counterclaim. The first counterclaim seeks a judgment directing plaintiff, Town of Orangetown (hereinafter Town), to reinstate a building permit. The second counterclaim seeks damages against the Town for civil rights violations, in violation of 42 USC § 1983. The trial is bifurcated. The liability phase of the action has been completed and this decision will address only the issues of liability.

FACTS

In 1979, defendants (hereinafter Bradley) began planning for a 184,000 square foot industrial building which was to cover approximately four acres and cost approximately \$3,000,000 to construct. Plans were prepared in consultation with the then Building Inspector. (There was no requirement to make application to the Planning Board under the building regulations in effect at the time.) Bradley submitted a site plan (which contained plans for sanitary sewers, storm sewers, a drainage plan, access roads, parking, and building elevations), a general development plan and plans for the footings, framing layout, roof and outside veneer. The plans included provision for a railroad spur. The plans did not show the proposals for mechanical equipment, electrical equipment and other interior plans, which would be dictated by the needs of future tenants. It was contemplated that additional plans would be submitted as the project progressed and the permit could be extended appropriately. The plan called for a single building (hereinafter Building 15) on a single lot of approximately 34 acres. Prior to issuance of a building permit, Bradley was required to purchase additional acreage to satisfy *883 the Town requirements for access to a public road. Bradley fulfilled this requirement by purchasing 13 acres at a cost of \$123,000. The building permit for Building 15 was issued on April 7, 1980, and was restricted to "land clearing, footings and foundations".

Subsequent to the issuance of the building permit, Bradley commenced to develop the site. The plan called for the excavation of approximately 800,000 square yards of fill, encompassing approximately 20 acres, to bring the site down

to the elevations provided for in the plans, and for which the permit issued. Bradley bid successfully to sell some of his fill to the Town (approximately 300,000 square yards), used some in the development of other sites being developed by them, donated some fill to a local college and also provided fill for the improvement of a Town road (at no cost to the Town). With the beginning of the site development, there were complaints from other residents in the area. There was a complaint regarding smoke from the burning of trees that were being taken down (Bradley had obtained a burn permit), and complaints that the trucks carrying the fill were causing problems on Western Highway. It should be noted that these were Town trucks, but in response to these complaints, the then Supervisor contacted Bradley and prevailed upon them to find a new route. Bradley negotiated with Conrail to use their railroad crossing as part of an alternate route and, over the course of the next year, Bradley was required to pay approximately \$70,000 to flagmen manning the crossing. Over the course of many months following, Bradley and the Town were involved with the further development of the railroad crossing, working with the Department of Transportation and Conrail officials. After approval was obtained to install protective devices, Bradley sent a truck to the midwest to pick up the components of a control station (gates and flashers). Bradley was required to pay \$68,000 for the control devices, none of which was reimbursed by the Town. Their total involvement in the development of the railroad crossing cost Bradley approximately \$250,000.

Bradley also became involved with the Spring Valley Water Company regarding the plan for drainage around Building 15. This plan required placing water and sewer lines under the railroad tracks, and a new plan was submitted and approved in 1982 to accomplish this end. The work under the Conrail tracks required the services of a jacking company and periodic inspections by Conrail, the cost of which was borne by Bradley *884 in an amount in excess of \$100,000. Town approval was also required for this development. They also were engaged in negotiations with the Spring Valley Water Company regarding an easement owned by the Water Company through that part of Bradley's property that was being excavated. The Water Company had a large pipe running through that area which, after the site was brought down to grade level, would be several feet above the ground. Securing the necessary permits from the Water Company to relocate the pipeline apparently was a monumental endeavor and made more difficult by the Water Company's insistence

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that Bradley give up their rights to the self-contained water system within the Bradley industrial complex. The value of this system was estimated by Bradley to be in excess of \$1,000,000, and was an asset they did not want to give up without considerable negotiations and careful consideration, in spite of the fact that the location of Building 15 was dictated by the configuration of the land, the size and design of the building and the necessity for railroad accessibility. These negotiations continued until March 5, 1985 when an agreement was finally concluded between the parties. Bradley agreed to turn over their private water system to the Water Company.

During these years also, a group calling themselves BAR (Blauvelt Area Residents) became interested in Bradley's activities. BAR was a citizens group which apparently monitored the political goings-on in the community with particular interest in building operations in the area of their constituency. One of the leaders of the BAR group was Bradley's former attorney, who claimed to have no personal feelings about Bradley, but who did allow that their association was ended by a fee dispute. As early as 1982, the BAR group started to make Bradley the object of very close scrutiny. They appeared at meetings whenever a Bradley application/petition was presented and, in 1983, appeared at one meeting in such large (and vociferous) numbers, that the Town police were summoned to restore order and move the meeting to another room. The then Supervisor of the Town was a member of the BAR group, as was his wife, but it is interesting to note that Bradley's former attorney denied any knowledge of that, and his wife (also a witness in the case) testified that she never discussed the Bradley case with the then Supervisor outside of official meetings. The court finds this incredible.

Periodic complaints were made by the BAR group about the Bradley activities: The discovery of some empty drums and old *885 furniture on the site, parts of felled trees encroaching on neighboring property, and the location of a temporary storage building on the site which became the main target of the BAR group's activities. Bradley had received a building permit for the building, but it was the BAR group's contention that there was no provision in the Town's building regulations which would permit a temporary building. While all of these complaints seemed to be legitimate, this constant surveillance of Bradley, and the continuing pressure put on the Town officialdom, gives the court the distinct impression

that the BAR group would oppose any further development of the Bradley Industrial Park. (Indeed the former Town Attorney testified that the BAR group was opposed to anything Bradley might want to do with their property.) Their members, given access to the Town files, attended Town meetings that concerned Bradley and at one point even demanded an investigation of the building office. The court notes, however, that even though there might have been some legitimate complaints concerning the Bradley activities, the court must focus on the primary issue in this case, i.e., was the action taken by the Building Inspector in revoking the Bradley's building permit illegal and improper.

The building permit was renewed in April 1983, work continued and by 1985, the extensive site preparations for Building 15 were almost completed, and all of the other projects involving Conrail, the Town and the Spring Valley Water Company were either completed or near completion. (In this regard, the court finds that all of these "off-site" improvements which were necessary for the eventual construction of Building 15, necessarily took a great deal of time, and accordingly finds no "abandonment" of the project.) Actual construction of the building had not begun as yet, but the preparation of the site, and the completion of those other requirements, brought Bradley to the point where they were ready to commence work on the footings. Political and community activity appeared to pick up about this time also. Complaints were made about the Bradley's tree cutting activities relative to the internal road network involving Building 15. Not only were there complaints that felled trees were encroaching on neighboring properties, but there were some questions also being raised about whether or not Bradley had a right to proceed with the road construction. During the early part of 1985, the Bradley building permit for Building 15 was also extended for a six-month period. (Mar. 8, 1985-Oct. 18, 1985.) *886

On June 13, 1985, there was a meeting of certain Town officials including the Building Inspector, the Supervisor, some members of the Town Council and possibly others. There are no minutes of this meeting extant and, not surprisingly, the recollections of the witnesses are rather vague. But the Building Inspector did make notes which have been received in evidence, and which represent the only written record of the meeting. (It should be noted that Bradley was not notified of the meeting.) This meeting resulted in the Building Inspector going to the site the next day and issuing

a violation with regard to the temporary storage building. Bradley met with the Building Inspector to discuss a timetable for the removal of the temporary building. On July 10, 1985, the Building Inspector was again on the site. Trees were being cut and the Building Inspector did not tell Bradley to stop, nor did he suggest they had no permission to proceed with the road. His only admonition was that they should take care that the trees were not dropped on the neighboring properties.

On July 18, 1985, the Bradley's contract with the Town for fill expired. Bid documents were sent out for a new contract, but Bradley decided not to bid in that they were down to grade level with their excavations, and were ready to proceed with the construction of the footings. Some holes were actually dug and reinforcing steel rods were brought to the site.

On July 19, 1985, Bradley was served with a summons and complaint for alleged criminal acts in failing to comply with a stop work order. The testimony revealed that at the time of the service of the criminal summons, the stop work order had yet to be served. (The stop work order was not served on the defendants until July 22, 1985.) The then Town Attorney and the Building Inspector could not explain this obvious gaffe. Indeed, the then Town Attorney could not recall why his office issued the criminal summons ("They had a permit"), and doesn't recall the circumstances under which the stop work order issued, but he testified that no "pressure" was brought on his office to issue the order. He could not recall anything specific about the work site, but vaguely recalls that the stop work order had to do with "illegal activities". (The court notes also that the criminal charges were never pursued and were eventually dismissed in 1988.) The stop work order was directed to the road construction, which defense witnesses testified was in fact authorized by decision PB No. 2-89, dated January 13, 1982.

On July 19, 1985, the Town Clerk sent out notices for a *887 special meeting of the Town Council to be held on July 22, 1985. The meeting was not to be held at the Town Hall but on Avis Court, which thoroughfare was near the Bradley property and where some of the BAR members resided. Obviously, the residents of that community requested that the meeting be held at that site. There was no specific testimony in this regard (nor any recollection thereof), but reason compels the conclusion that the Town Board did not appear uninvited at the Avis Court location. (Again, Bradley was not notified of the meeting.) The meeting was attended

by the Supervisor, the Town Council, the Building Inspector, the then Town Attorney, some other Town officials and many area residents. The testimony concerning the conduct of the meeting was vague, but apparently, there were some raised voices and some angry citizens. The minutes of the meeting were somewhat abbreviated but did reveal that "this special emergency meeting" was held "to review activities and the concerns of residents in the area of Bradley Industrial Park". A resolution was adopted directing the Building Inspector to investigate "whether or not plans have been filed and approved for the work being currently done at Bradley Industrial Park, for the land cleaning, building of a road and for three future buildings." (The court notes that there was sufficient officialdom at the meeting including the Building Inspector, Planning Board members, etc., who could have clarified all of these questions.) The resolution went on to require that "this information and official maps shall be presented to the Board by Monday, July 29, 1985".

There was some conflicting testimony regarding the circumstances of the resolution (some witnesses have no recall of a resolution being passed). There was also some conflicting testimony regarding the Supervisor's direction to the Building Inspector at the meeting to shut Bradley down. Predictably, certain witnesses had no recollection of such a directive. (The then Supervisor, the Building Inspector and the then Town Attorney.) Indeed, the testimony of the then Town Supervisor throughout the trial was characterized by an incredible lack of detail. In response to most questions, the response was that he did not "recall". It is incredible to the court that the then Supervisor could not recall, even generally, the public clamor that was attendant to the construction on the Bradley premises. He barely acknowledged the identity of Bradley, the Magees and their building operation. But a member of the Town Council and the Director of Public Works did recall *888 such a statement. The court chooses to accept the latter testimony, both on credibility and motivational grounds and, also, by reason of the subsequent events. The July 29, 1985 deadline for the submission of the information to the Board was never met. The building permit was revoked prior to that time. The court also notes that there seemed to be little or no purpose for the resolution. It would appear that the Building Inspector (amongst others) knew of the existence of approved plans and permits for the building issued, the roads, land clearing and three other buildings.

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It should be noted that Bradley met with the Building Inspector earlier that day. One of the partners of the Bradley complex, Patrick Magee, brought with him drawings and other documentation relative to the road in question. (The court has previously noted that the stop work order, which was dated July 19, 1985, was not delivered to Bradley until July 22, 1985. However, the criminal summons and complaint was served on Bradley on July 19, 1985, for noncompliance with the stop work order.) The stop work order directed that "all clearing and grading shall cease pending an interpretation and/or clarification of the scope of the construction of the 'roadways' in Decision PB #82-9 of January 13, 1982". The Orangetown Zoning Code requires that all stop work orders "shall state the conditions under which the work may be resumed". Mr. Zimmerman admitted that the July 19, 1985 stop work order failed to comply with this provision of the Code since no such "conditions" were stated under which work could be resumed. PB No. 82-9 reads in pertinent part as follows: "The decision of this Board is that the applicant is to PROCEED [*sic*] and he, the applicant, has permission to construct the necessary roadways as shown on said map." Thus the Building Inspector knew Bradley had a building permit and he knew they had permission to proceed with the road. (The court rejects the testimony of another witness and the Building Inspector's testimony on trial that PB No. 82-9 only meant Bradley could proceed with the "planning" of the road. The court also notes that the Building Inspector, in his examination before trial, acknowledged that Bradley had permission to proceed with the construction of the road.) The Building Inspector also testified on trial that Bradley had no "permit" to proceed with the road. A "road" permit? Nowhere in the record is there any testimony/documentation that there is such a requirement in the Town of Orangetown. It is clear to the court that Bradley had every right as of July 19, 1985 *889 to proceed with the construction of the road and that there was no basis for the issuance of the stop work order. It should have been equally clear to the Building Inspector on July 22, 1985 when he was confronted by Patrick Magee, that Bradley had every right to proceed and that the stop work order should not have been issued. And why the sudden change of attitude with regard to the road construction? The Building Inspector had been there just a few days before and had not expressed any concern that there was any impropriety. In any event, he told Patrick Magee that he should call him the next day and that he could probably proceed with the road construction. (The Building Inspector claims he has no recollection of this conversation.) Attempts

to call the Building Inspector the next day and for the next few days were fruitless and he never called back. It is also noted that the Building Inspector never mentioned to Patrick Magee the meeting which was to be held on Avis Court that evening.

On July 25, 1985, the Building Inspector wrote a letter to the then Supervisor in which he acknowledged the issuance of a building permit for Building 15, but further stated that, "Based on the discrepancies between the present documents for this development and those upon which the two building permits were issued (road layout, site layout, building layout, etc.), the six month extension of Permit #18922 is rescinded and the permit has expired." In this letter he also advised the then Supervisor that "no further operations can be conducted in this area without filing the necessary documents to appear before and receive the approval of the appropriate Boards." This letter was hand delivered to the then Supervisor, and a copy sent "certified mail" to Bradley. This unusual procedure of addressing the revocation to the Supervisor and not to the permit holder leads the court to the reasonable conclusion that the Building Inspector was responding directly to the Supervisor's directive/request to revoke the permit.

The avowed reason for the revocation of the building permit, i.e., "discrepancies" has no basis in fact. There is nothing in the record to indicate that there were any deviations from the approved plans and what was done on the ground. Indeed, the Building Inspector acknowledged that he took no measurements or otherwise determined that there were such deviations. Instead he offered, on trial, the explanation that there was no building on the site, and that it didn't look like a building site. (He also described the construction site as the "Dakota Badlands".) He additionally indicated that the permit *890 was revoked, "Just to expedite it and get rid of it, get it out of my hair". The court is constrained to conclude that the latter was his real motivation in revoking the permit, and that this attitude reflected the attitude of the then Supervisor and others in the Town government at the time. The court notes also that there was no provision in the Town building regulations at the time for the revocation of a building permit. The Building Inspector has no recollection of speaking to Patrick Magee at a Planning Board meeting of July 25, 1985 (in spite of the fact that he was confronted by an angry Patrick Magee), has no recollection of telling Magee that the permit was revoked, and has no recollection of telling Magee not to go to the Zoning Board of Appeals (which would have had the effect of "staying" the revocation). He did state, however, that

he did not tell Magee what to do to have the permit reinstated. He "assumed" that Magee knew what to do.

(The Orangetown Zoning Code has since been amended to preclude the construction of Building 15.)

((1)) On the basis of the record herein, the court concludes that there was no legal basis for the revocation of the building permit. It is clear that the Town succumbed to public pressure to shut Bradley down, and that several Town officials (the Building Inspector, the then Town Supervisor, the then Town Attorney and certain members of the Town Board) participated to accomplish this end.

In its findings of fact, the court has referred to numerous improvements made and monies expended on the subject property in reliance upon the building permit. Defendants' testimony that almost \$4,000,000 was spent on preparation of the land, roadways and footings prior to the revocation of the permit is uncontroverted. In *Matter of Temkin v Karagheuzoff* (34 NY2d 324), a vested right was found to exist where \$700,000 in expenditures had been incurred by the developer. (See also, *Matter of Faymor Dev. Co. v Board of Stds. & Appeals*, 45 NY2d 560 [vested rights were found where substantial expenses had been incurred, the building permit had been illegally revoked and neighborhood protesters had prevented construction work]; *Matter of Bayswater Health Related Facility v Karagheuzoff*, 37 NY2d 408 [vested rights existed where \$590,000 had been expended in reliance on the permit which had been illegally revoked in direct response to political pressure by neighborhood groups].) Accordingly, this court finds that defendants made substantial improvements to the property and incurred substantial expenses, in excess of \$4,000,000, in reliance on their permit.

VESTED RIGHTS

The defendants' first counterclaim seeks an order of this court directing the Building Inspector to reinstate the building permit to permit the construction of Building 15. To be successful on this cause of action, defendants are required to prove the existence of a "vested" right in the building permit. More particularly, they are required to prove that (1) the revoked building permit was legally issued in compliance with all of the provisions of the Town Zoning Ordinance, (2) that they had made substantial improvements and incurred substantial expenses in reliance on the issued permit, and (3) that the permit was illegally revoked.

ILLEGAL PERMIT REVOCATION

If plaintiff had the legal right to revoke the defendants' building permit, there would be no substance to this action. At various junctures in this lawsuit, the Town has proffered different reasons for revoking the defendants' building permit. The court will discuss each of these. *892

LEGALLY ISSUED PERMIT

Plaintiff has never contended that the building permit was illegally issued and the court finds as a fact that the initial building permit and its subsequent extensions were in compliance with all provisions of the Orangetown Zoning Code. *891

"DAKOTA BADLANDS"

Mr. Zimmerman, the Town Building Inspector, alleged that upon inspecting the construction site in July of 1985, it did not look like a construction site but rather resembled the "Dakota Badlands". Neither of these reasons provide a legal basis for revoking the building permit. Pursuant to the terms of the building permit, defendants were authorized to remove 800,000 square yards of dirt to bring the site to the appropriate grade. The removal of such massive amounts of dirt would obviously present an unsightly appearance. However, the removal of dirt was done pursuant to the provisions of the permit and with full knowledge of the Town officials who actually purchased 300,000 square yards of fill for use at the Clarkstown landfill.

SUBSTANTIAL IMPROVEMENTS/ SUBSTANTIAL EXPENSES INCURRED BY BRADLEY IN RELIANCE ON THE PERMIT

The vested rights theory is court-made law which is utilized to permit developers to complete structures/projects which have been halted either by illegal actions of a municipality and/or as a result of community/political pressures. If illegal actions are found to have occurred, the developer is deemed by law to have acquired "vested" rights to complete the project as it was initially approved. The "vested" rights theory, in fact, returns the developer to that point in time where the illegal action occurred and permits the developer to complete the project under the law as it existed at that time.

DISCREPANCY BETWEEN FILED PLANS

The Town has actually presented two separate discrepancy arguments to this court during the course of this litigation.

(A) At one juncture, the Town contended that the actual excavation/site preparation work did not comply with the conditions upon which the original permit was issued, that Bradley was not following the approved plans. They also contended that the road clearing operations were in violation of PB No. 2-89. Eventually, at trial, it was admitted by the Building Inspector that the site conditions on the date he revoked the permit were in full compliance with the original plans and permit which had been issued by the Town. In addition, the Building Inspector reluctantly admitted that defendant had the right under PB No. 2-89 to construct the roads which were in existence on the date the permit was revoked.

(B) At another juncture, the Town argued that the building permit was revoked because Bradley had subsequently filed plans which differed slightly from the plans on which the building permit had been issued. However, at trial, the Town's witnesses agreed that the subsequent filing of different plans did not affect Bradley's right to continued construction work under the original plans. There is no provision of State law or the Town Code which would operate to deprive the defendants of their rights in the original permit based upon the filing of subsequent plans.

In essence, the Town attempted throughout the trial to *893 provide the court with some legal basis for the revocation of the building permit. None was ever provided.

Perhaps the most truthful testimony adduced from the Building Inspector was the statement he made in reference to the revocation of the building permit. "GET RID OF IT"--"GET IT OUT OF MY HAIR".

From the record herein, the court is constrained to conclude that it was the community protesters (the BAR group) and the Town officials that Mr. Zimmerman was "getting rid of" and "getting out of his hair".

([2]) The court therefore finds that defendants have sustained their burden of proving that the building permit was legally

issued, that defendants made substantial improvements and expended significant sums of money in reliance on the permit and that the permit was illegally revoked. Defendants have therefore clearly established the existence of a "vested right" to construct Building 15. Otherwise stated, defendants have proven the substantive elements to establish the existence of a "vested right".

The defendants are directed to join the Building Inspector as a party to this action prior to the damages portion of the trial herein. (*D.B.C.G., Inc. v Town of Ramapo*, 97 AD2d 533; CPLR 1001 [a], [b].)

42 USC § 1983/SUBSTANTIVE

DUE PROCESS VIOLATION

To sustain a claim for a civil rights violation under 42 USC § 1983, the plaintiff must prove the following: (1) A deprivation of a right, privilege, or immunity secured by the United States Constitution, (2) to which it was subjected or caused to be subjected by a person acting under color of State law.

The Town concedes that the Orangetown officials herein were acting under color of State law.

Bradley claims that the Town of Orangetown, through the actions of its officials, deprived them of a "property right" which it had in the permit for Building 15 and therefore violated Bradley's rights under the United States Constitution. More specifically, Bradley claims that Orangetown officials deprived Bradley of its right to "substantive due process of law" by illegally and unlawfully revoking the building permit.

The court must first determine whether the defendant Bradley possessed a "property interest" in the permit for Building 15. *894

"The hallmark of property, the [United States Supreme] Court has emphasized, is an individual entitlement grounded in state law, which cannot be removed except 'for cause.' *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 11-12 (1978); *Goss v. Lopez*, 419 U.S. 565, 573-574 (1975); *Board of Regents v. Roth*, 408 U.S. 564, 576-578 (1972)." (*Logan v Zimmerman Brush Co.*, 455 US 422, 430.) Furthermore, "[p]roperty interests ... are not created by the Constitution'. To determine whether a property interest in some benefit rises to the level of a right protectible under the fourteenth

amendment, courts therefore must look to 'existing rules or understandings that stem from an independent source such as state law--rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.' 408 U.S. at 577, 92 S.Ct. at 2709" (*Brady v Town of Colchester*, 863 F2d 205 [2d Cir 1988]).

As previously discussed, under New York State law, Bradley had acquired a "vested right" in its building permit to construct the 184,000 square foot building on lot 15. This "vested right" constitutes a "property interest" which is subject to protection under the Fourteenth Amendment of the United States Constitution.

([3]) Having found the existence of a constitutionally protected property interest in the building permit, what are Bradley's "substantive due process" rights? Succinctly stated "substantive due process" assured Bradley as a permit holder of the right to be free from arbitrary or irrational actions by the Town of Orangetown. (*Arlington Hgts. v Metropolitan Hous. Corp.*, 429 US 252, 264, 267.) Since the Orangetown Building Inspector had no legal basis to revoke the building permit under State law, there was no rational basis for the Town's actions and the defendants' right to substantive due process of law was violated. (*Brady v Town of Colchester*, *supra*, at 215-216.) As noted in the *Brady* decision, not every incorrect decision by a local official provides a valid claim for constitutional deprivation. No constitutional violation arises when a Town official makes a wrong "judgment call". Otherwise stated, there is no constitutional violation where a public official makes a good-faith mistake or an incorrect decision regarding the applicable law. No such "good-faith" error was made by Orangetown officials in revoking Bradley's building permit. Rather, the evidence adduced at trial proved that a concerted, orchestrated effort was made by the Town Supervisor, some of the members of the Town Board, the Town *895 Attorney and the Building Inspector to revoke Bradley's building permit to satisfy the political pressures that were being exerted by the BAR group. The decision to revoke the building permit was made with total disregard for the provisions of applicable law. (*Faymor Dev. Co. v Board of Stds. & Appeals*, *supra*, at 566; *Bayswater Health Related Facility v Karagheuzoff*, *supra*, at 415.)

The instant case presents a factual scenario similar to that in *Sullivan v Town of Salem* (805 F2d 81 [2d Cir 1986]) where a municipality was alleged to have violated a developer's

Fourteenth Amendment rights by refusing to issue certificates of occupancy for houses which fully complied with all State and municipal laws, zoning rules and regulations and codes. The Second Circuit emphasized that there was no discretion to be exercised by the building officials who were required under State law to issue the certificates of occupancy. In *Sullivan*, the municipality alleged that its reason for not issuing certificates was that the development roads had not been dedicated. However, if dedication was not a lawful requirement for the issuance of a certificate under either Connecticut State law or local municipal law, the municipality would have had no discretion to deny issuance of the certificate. The Federal Circuit Court found that such action, if proven, was sufficient to state a cause of action against the municipality for violation of the developer's rights under the Fourteenth Amendment and 42 USC § 1983.

Likewise, in the instant case, the reasons asserted by the municipality for revoking the permit (the "Dakota Badlands" characterization, the alleged "discrepancy" between the construction work and the filed plans) do not provide a legal basis for the revocation of the defendants' building permit.

Otherwise stated, the Building Inspector and those government officials who pressured him to revoke defendants' building permit were not choosing between legal courses of action and exercising their discretion. They simply responded to the community pressures and revoked the defendants' building permit without any legal basis for their action.

DEFENSE OF IMMUNITY

The defense of "qualified immunity" is not available to Town officials who have been found to have violated defendants' rights. Since the Orangetown officials and the Building Inspector acted in an arbitrary and capricious manner in *896 violation of established law and procedures, the "qualified immunity" defense is without basis in law.

RESPONDEAT SUPERIOR

A municipality may be sued under section 1983 but such liability cannot be based upon "respondeat superior", attributing the acts of government officials/employees to the municipality for the purpose of imposing liability on the municipality. (*Monell v New York City Dept. of Social*

Servs., 436 US 658, 690.) The municipality is subject to liability for the acts of its officials/employees only if the action that is alleged to be unconstitutional “implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers”. (*Supra*, at 690.) Municipalities may also be answerable for “constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channel.” (*Supra*, at 690-691.)

It is also well settled that “municipal liability may be imposed for a single decision by municipal policymakers under appropriate circumstances.” (*Pembaur v City of Cincinnati*, 475 US 469, 480.)

The Supervisor's direction to the Building Inspector at the July 22, 1985 meeting to shut Bradley down is sufficient in and of itself to impose liability on the Town of Orangetown. It is clearly within the Supervisor's authority to establish Town “policy”^{*} and this particular Town policy was without basis in law.

However, numerous other “policy” decisions were made and effectuated by the Town Supervisor, the Town Board, the Town Attorney and the Building Inspector such as the issuance of the illegal stop work order and the commencement of the baseless criminal proceedings. All of these decisions were made for the purpose of stopping construction of Building 15 in violation of Bradley's Fourteenth Amendment rights. Otherwise stated, these Town officials were “responsible for establishing final government policy respecting” the issuance of the stop work order,

Footnotes

* “Policy” is defined as a “course of action consciously chosen from among various alternatives”.

the revocation of the building permit and the institution of criminal proceedings. (*Pembaur v City of Cincinnati*, *supra*, at 483.) These Town officials had two choices in the matter, one legal, the other illegal. They could follow and *897 comply with established State and local laws as they dealt with the concerns being expressed by the community, or they could take whatever action the community/political pressure dictated, regardless of the provisions of applicable law. Unfortunately, the Town officials decided to pursue the latter choice and consciously chose to issue an illegal stop work order, illegally revoke defendants' building permit and institute baseless criminal proceedings.

The Town, itself, is therefore liable for damages which result from its actions in implementing these illegal policy decisions in violation of the defendants' Fourteenth Amendment rights. (42 USC § 1983.)

While the rights of the citizens to petition their government is a fundamental right under the Constitution, Town officials are legally bound to a strict adherence to the existing constitutional and statutory mandates in rendering their decisions and implementing their policies. In this case, the Town simply disregarded the legal requirements to meet the demands of the citizenry: to prevent Bradley from developing its property.

The Clerk of the Court is directed to set this matter down for a trial on the issue of damages. *898

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D.A.B. Group L.L.C
77 Rivington Street
New York, N.Y. 10002

Exhibit J

February 13, 2011

To: Mr. Jeff Mulligan, Executive Director
New York City Board of Standard and Appeals
40 Rector Street, Ninth Floor
New York, N.Y. 10006

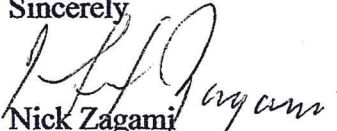
Re: 220-10-BZY Permit Renewal Application
BSA Calendar # 311-08-BZY
139-141 Orchard Street, 77-83 Rivington Street, Manhattan
Block 415, Lots 61, 62, 63, 66 and 67
Zoning District C4-4A

STATEMENT IN SUPPORT OF EXPENDITURES

Hard costs to Date

	Foundations	\$1,794,661
	Superstructure	\$3,031,850
	Total Spent (to 7 th floor)	<u>\$4826,511</u>
Costs	(projected to 9 th floor on original submittal)	\$600,000
	Total Projected Costs	<u>\$5,426,511</u>

Sincerely


Nick Zagami
Owners Representative

Disbursement Summary Sheet

Progress Report #11, Flintlock AFP#5

Allen Street Hotel
139 Orchard Street, New York, NY

Original Loan Amount: \$15,249,467.63

A Date/ NO.	B Application for Payment	C Work Completed this period	D		E Current Payment Due Contractor	G Revised Contract Sum to Date	H Amount above Loan	Delta	I Amount for Funding after loan balancing (C-H)	J Retainage 10%	K Amount for Funding Current Payment Due
			10% Retainage								
1	Demolition (Cavalier) PR1 AFP1	\$230,000.00	\$23,000.00	\$207,000.00	\$0.00	\$0.00	\$0.00	\$230,000.00	\$23,000.00	\$207,000.00	
10/10/08	Demolition (Casino) PR2 AFP3,4,5	\$37,730.00	\$3,773.00	\$33,957.00	\$0.00	\$0.00	\$0.00	\$37,730.00	\$3,773.00	\$33,957.00	
10/10/08	Cava Construction PR2 AFP1,9/15/08	\$145,650.00	\$14,565.00	\$131,085.00	\$0.00	\$0.00	\$0.00	\$145,650.00	\$14,565.00	\$131,085.00	
11/11/08	Cava Construction PR3 AFP2 10/24/08	\$420,614.30	\$42,061.43	\$378,552.87	\$15,345,700.00	\$378,072.37	\$378,072.37	\$42,541.93	\$4,254.19	\$38,287.74	
12/6/08	Cava Construction PR4 AFP3 11/20/08	\$388,450.00	\$38,845.00	\$349,605.00		\$378,072.37	\$378,072.37	\$388,450.00	\$38,845.00	\$349,605.00	
12/15/08	Cava Construction PR5 AFP4 12/08/08	\$397,361.00	\$39,736.10	\$357,624.90	\$15,507,646.00	\$540,018.37	\$540,018.37	\$235,415.00	\$23,541.50	\$211,873.50	
4/6/09	Cava Construction PR6 AFP5 4/6/09	\$442,586.70	\$44,258.67	\$398,328.03	\$15,492,498.00	\$524,870.37	(\$15,148.00)	\$457,734.70	\$45,773.47	\$411,961.23	
9/3/10	Flintlock PR7 AFP1 8/13/10	\$402,820.31	\$40,282.03	\$362,538.28	\$13,000,000.00	\$0.00	\$0.00	\$402,820.31	\$40,282.03	\$362,538.28	
10/14/10	Flintlock PR8, AFP2 10/14/10	\$236,044.53	\$23,604.45	\$212,440.08	\$13,000,000.00	\$0.00	\$0.00	\$236,044.53	\$23,604.45	\$212,440.08	
11/17/2010	Flintlock PR9, AFP3 10/30/10	\$543,367.02	\$54,336.70	\$489,030.32	\$13,000,000.00	\$0.00	\$0.00	\$543,367.02	\$54,336.70	\$489,030.32	
11/22/2010	Flintlock PR10, AFP4 11/19/10	\$680,588.55	\$68,058.86	\$612,529.70	\$13,000,000.00	\$0.00	\$0.00	\$680,588.55	\$68,058.86	\$612,529.70	
		\$579,879.98	\$57,988.00	\$521,891.98	\$13,000,000.00	\$0.00	\$0.00	\$579,879.98	\$57,988.00	\$521,891.98	
	Total Work Completed to Date	\$4,505,092.39				Total Funding to Date:		\$3,980,222.02	\$398,022.20	\$3,582,199.82	
	Demolition Work	\$267,730.00									
	Cava Construction Work Completed To Date	\$1,794,662.00	\$179,466.20	\$1,615,195.80							
	Flintlock Work Completed to Date	\$2,442,700.39	\$244,270.04	\$2,198,430.35							
	Contractors Total Retainage to Date		\$450,509.24			Total Delta:	\$0.00				
	Contractor(s) Paid to Date		\$4,054,583.15								

Additional info added to sheet for clarification/tracking 12/18/08

Amt above Loan = \$281,840.00 (Demo) + Revised Contract Amount - \$15,249,467.63 (Loan Amount)
281,840

Total Completed & Stored to Date: \$4,505,092.39
Total Funded to Date: \$3,582,199.82
Estimated Level of Construction Completion: 79.3%

Flintlock Construction Completed and Stored to Date: \$2,442,700.39
Flintlock Funded to Date: \$2,198,430.35
Flintlock Construction Completion Percentage: 18.8%

29.08% Level of expenditure
23.49% Level of funding
29%

Amount of loan committed (Previously funded + \$13,000,000.00 (Flintlock contract))
\$711,946.00 Available hard cost amount for Bank Contingency

Subj: **Fw: D.A.B. Group LLC**
 Date: 12/20/2010 12:59:34 P.M. Eastern Standard Time
 From:
 To:

— On **Mon, 12/20/10**, Tzouganos, George <gtzouganos@brooklynbank.com> wrote:

From: Tzouganos, George <gtzouganos@brooklynbank.com>
 Subject: D.A.B. Group LLC
 To: "ben zhavi" <dabgroupllc@yahoo.com>
 Cc: "Maher, Richard" <rmaher@brooklynbank.com>, "Gallo, Joanne" <jgallo@brooklynbank.com>
 Date: Monday, December 20, 2010, 7:45 PM

Good afternoon,

Below is a breakdown of the loan

	LOAN	ADVANCED	REMAINING
LAND	\$ 5,500,000.00	\$ 5,500,000.00	\$ 0.00
HARD	\$ 15,250,000.00	\$ 3,568,566.90	\$ 11,681,433.10
SOFT	\$ 1,800,000.00	\$ 1,799,256.84	\$ 743.16
INTEREST	\$ 2,000,000.00	\$ 1,282,140.83	\$ 717,859.17
TOTAL	\$ 24,550,000.00	\$ 12,149,964.57	\$ 12,400,035.43

If you have any questions or concerns feel free to call or e-mail.

Thank you,

George Tzouganos

Brooklyn Federal Savings Bank

78 Livingston Street, 4th Floor

Monday, December 20, 2010 America Online: Nickzagami

Brooklyn , N.Y. 11201

P: (718) 855 – 8500 ext. 1109

F: (718) 855 – 0114

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Information from ESET NOD32 Antivirus, version of virus signature database
5718 (20101220)

The message was checked by ESET NOD32 Antivirus.

PREMISE

77,79, and 81 Rivington Street, and 139 and 141 Orchard Street
Block: 415, Lots: 61, 62, 63, 66 and 67
Borough of Manhattan

Affidavit to the New York City Board of Standard and Appeals

STATE OF New York

COUNTY OF *New York*

Nicholas Zagami, being duly sworn, deposes and states:

1) I am the representative for the owner DAB Group LLC owner of the referenced property supervising the construction of the Project, a fifteen story Hotel at 139-141 Orchard Street Borough of Manhattan.

2) I submit this affidavit in support of the application filed with the New York Board of Standard and Appeals (the Board), by DAB Group LLC (the Owner) the owner of the premise located at 77, 79, and 81 Rivington Street, and 139 and 141 Orchard Street Borough of Manhattan (the Premise) for an extension of time for the Owner to complete the construction of the Proposed Hotel Building (Building) to be located on the Premises.

3) I am familiar with the Premises and the work required to complete the Hotel described in this affidavit, being the Owners representative, I am in full charge of the construction required to complete the Project.

4) The Foundations were completed in November, 2009 and superstructure begun soon after beginning with first floor deck. Soon after the basic platform for the first floor was erected the Project recieved a Stop Work Order from the Department of Buildings because of a missed understood responsibility by the DOB inspector pertaining to the Egress from the rear fire escapes of the adjacent properties who issued the violation.

5) Work was started again in September on the superstructure and to date we have completed the first and second floors over 7000 sf of concrete deck, columns and shear walls.

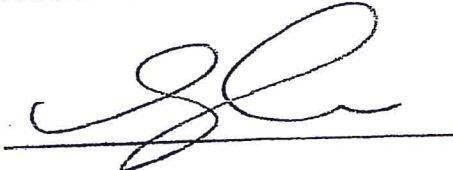
6) By November 19, 2010 we will have completed the concrete floors three through nine inclusive approximately 17,300 sf of reinforced concrete deck, columns and shear walls. Mechanically we would have installed the Electrical, HVAC, and Plumbing roughing to the sixth floor.

7) Also included would be the work required by the NYC Fire Department to install the fire Standpipe and Mechanical Hoist to the sixth floor.


Nicholas Zagami

CERTIFICATE OF ACKNOWLEDGEMENT

On the 28th day of October in the year 2010 before me, the undersigned, personally appeared Nicholas Zagami 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/she/they executed the same in his/her/their 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

RYAN C CARR
Notary Public - State of New York
No. 01CA6212876
Qualified in Kings County
My Commission Expires Oct. 26, 2013

**OWNER'S SWORN STATEMENTS AND
REQUEST FOR LOAN ADVANCE**

TO: BROOKLYN FEDERAL SAVINGS BANK

RE: Draw

Flintlock AFP

For Period Beginning:

Ending:

Project Name:

Allen Street Hotel/139 Orchard St

Loan Number:

18-0105213 € 18-0105882

Date:

12/28/10

1. Pursuant to the certain loan agreement dated 8/20/08 between borrower and BROOKLYN FEDERAL SAVINGS BANK the undersigned hereby requests a loan advance in the amount of 13,031,850.11 and certifies and represents that:

- a. The work performed has been satisfactorily completed and is in full accordance with the Plans and Specifications and Contract Documents and the materials supplied have been delivered and are properly stored at the project.
- b. Sufficient funds remain to complete the Project as provided and before the Date specified in the Loan Documents; all bills of labor, material, services and supplies which constitute or could give rise to mechanic's liens if unpaid have been or will be paid out of the requested advance.
- c. All change orders (signed or anticipated), work directives or changes to the schedule of values have been reported to the Bank.
- d. All changes to the work schedule that effects the completion date have been reported to the Bank.
- e. Lien waivers have been or will be secured for all labor and materials; and this request is in full compliance with the terms of the documents evidencing and securing the loan from BROOKLYN FEDERAL SAVINGS BANK to the Borrower (the "Loan Documents").
- f. All soft cost or indirect loan advances are approved specific expenses related to the project.

2. The Undersigned Hereby Further Certifies And Represents That:

- a) As of this date, no suit or proceeding at law or in equity and no proceeding of any governmental body has been instituted or, to the knowledge of the Borrower, is threatened, which in either case would have a material Adverse affect on the financial condition or business operations of the Borrower or the Project.
- b) As of this date, there exists no default under the Borrower's Loan Documents with BRROKLYN FEDERAL SAVINGS BANK and no event known to the Borrower, has occurred which would, upon the service of notice and/or the lapse of time constitute an event of default there under.
- c) No material adverse changes have occurred in the financial condition or in the assets and liabilities of the Borrower from those set forth in the last financial statements furnished to BROOKLYN FEDERAL SAVINGS BANK.

- d) No adverse change has occurred as to the title of the real estate securing the subject loan and all Real Estate taxes and insurance premiums have been paid in full.
3. The borrow agrees to provide, if requested by Bank, a Vendor Payee list showing the name and the amount currently due each party to whom the Borrower is obligated for labor, material and/or services supplied. This information would be provided in support of the disbursements requested in this Request of Loan Advance.
 4. Disbursement of the loan proceeds hereby requested may be subject to the receipt by Bank of a certificate from the issuing Title Company stating that no claims have been filed of record which adversely affects the title.
 5. Disbursement of the loan proceeds hereby requested may be subject to the receipt by Bank of a report from a third party inspection entity indicating sufficient work is complete to support the current loan advance.
 6. The borrower further authorizes and requests BROOKLYN FEDERAL SAVINGS BANK to charge the total amount of the advance to the loan balance and to make disbursement of the proceeds of this advance as specified or the attached Draw Schedule and in accordance with the terms and procedures provided in the Loan Documents.
 7. The Borrower request that this draw be funded and the disbursement of funds be deposited/wired as follows: (attached deposit and/or wire instruction for each request of disbursement)

Disbursement Amount \$538,355.09

Deposit and/or wire instructions:

(For wires, please note that you will be charged a wire fee of \$50.00)

The undersigned acknowledges and agrees that, even though all or a portion of the disbursement described above may be directed to entities other than the undersigned, receipt of such disbursements by such payees shall constitute receipt of the proceeds of the undersigned.

BORROWER:

BY: DAB GROUP LLC

DATE: _____

PRINT NAME: DAB GROUP LLC Ben ZHARNAJ

TITLE: President

E-MAIL ADDRESS: dabgroup11c@yahoo.com

PHONE #: Cell: (917) 214-7566 Phone (212) 982-4616

APPLICATION AND CERTIFICATE FOR PAYMENT

TO OWNER: DAB Group, LLC
 PROJECT: 139-141 Orchard St

AIA DOCUMENT G702
 APPLICATION NO: 1000060
 PERIOD TO: 12/20/2010
 PROJECT NOS.: CAL. NO.
 DISTRIBUTION TO: OWNER ARCHITECT CONTRACTOR

RECEIVED
 DD. STANDARDS & APPEALS

FROM CONTRACTOR: Ethelred Construction Services, LLC
 585 N. Batey Ave
 Middletown, NY 10543

VIA ARCHITECT: Edward J Mills & Associates Avel
 401 Broadway
 New York, NY 10013

CONTRACT DATE: OWNER ARCHITECT CONTRACTOR

CONTRACT FOR:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the contract Certification Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$13,000,000.00

2. Net change by Change Orders \$0.00

3. CONTRACT SUM TO DATE (Line 1+2) \$13,000,000.00

4. TOTAL COMPLETED & STORED TO DATE \$5,031,850.11
 (Column G on G703)

5. RETAINAGE:

- a. 0 % of Completed Work (\$0.00)
 (Column D + E on G703)
- b. 0 % of Stored Material (\$0.00)
 (Column F on G703)

Total Retainage (Line 5a + 5b or Total in Column I on G703) \$0.00

6. TOTAL EARNED LESS RETAINAGE

(Line 4 less Line 5 Total)

\$2,728,655.12

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT

(Line 6 from prior Certificates)

\$2,198,430.35

8. CURRENT PAYMENT DUE

\$530,224.77

5. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$10,271,334.88

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner		\$0.00	\$0.00
Total approved this Month		\$0.00	\$0.00
TOTALS		\$0.00	\$0.00

NET CHANGES by Change Order \$0.00

By: Edward J Mills Date: 1/4/2011

ARCHITECT: Edward J Mills & Associates Architects
 1992 EIGHTH AVE • ALBANY • 12208 • 518-435-8382 • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK

AIA DOCUMENT G702 - APPLICATION AND CERTIFICATE FOR PAYMENT • 1992 EDITION • AIA® G-702 • FEB 1992

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Ethelred Construction Services, LLC
 By: Stephen A. Weiss Date: 1/4/2011

Subscribed and sworn to before me this 4th day of January 2011
 Notary Public: Sarah A. Thomas State of New York, Qualified in Kings County No. 01TH6198489
 My Commission expires: 11/17/2012

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$530,224.77

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Construction Sheet that are changed to conform to the contract certificate.)

By: Edward J Mills Date: 1/4/2011

ARCHITECT: Edward J Mills & Associates Architects
 1992 EIGHTH AVE • ALBANY • 12208 • 518-435-8382 • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK

By: Edward J Mills Date: 1/4/2011

ARCHITECT: Edward J Mills & Associates Architects
 1992 EIGHTH AVE • ALBANY • 12208 • 518-435-8382 • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK

By: Stephen A. Weiss Date: 1/4/2011

CONTRACTOR: Ethelred Construction Services, LLC
 585 N. Batey Ave
 Middletown, NY 10543

By: Stephen A. Weiss Date: 1/4/2011

CONTRACTOR: Ethelred Construction Services, LLC
 585 N. Batey Ave
 Middletown, NY 10543

By: Stephen A. Weiss Date: 1/4/2011

CONTRACTOR: Ethelred Construction Services, LLC
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 Middletown, NY 10543

By: Stephen A. Weiss Date: 1/4/2011

CONTRACTOR: Ethelred Construction Services, LLC
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 Middletown, NY 10543

By: Stephen A. Weiss Date: 1/4/2011

CONTRACTOR: Ethelred Construction Services, LLC
 585 N. Batey Ave
 Middletown, NY 10543

CONTINUATION SHEET

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT,

containing Contractor's signed Certification, is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for time items may apply.

APPLICATION NO: 00006
 APPLICATION DATE: 12/20/2010
 PERIOD TO: 12/20/2010

ARCHITECT'S PROJECT NO.:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+H)	H % (G-C)	I BALANCE TO FINISH (C-G)	J RETAINAGE (IF VARIABLE) RATE
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
01010	Site Safety	\$175,000.00	\$34,250.00	\$7,000.00	\$0.00	\$61,250.00	35.000	\$113,750.00	\$6,125.00
01020	Roof Protection	\$18,500.00	\$6,237.00	\$378.00	\$0.00	\$6,615.00	35.000	\$12,285.00	\$661.50
01030	Horizontal Safety Netting	\$35,000.00	\$8,750.00	\$1,750.00	\$0.00	\$10,500.00	30.000	\$24,500.00	\$1,050.00
01040	Men & Materials Hoist	\$275,000.00	\$79,750.00	\$11,000.00	\$0.00	\$90,750.00	33.000	\$184,250.00	\$9,075.00
01050	Dewatering-Rain water	\$5,000.00	\$3,750.00	\$250.00	\$0.00	\$4,000.00	80.000	\$1,000.00	\$400.00
02010	Sidewalks	\$24,150.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$24,150.00	\$0.00
02015	Sidewalk Bridge & Str Back	\$25,000.00	\$10,750.00	\$750.00	\$0.00	\$11,500.00	46.000	\$13,500.00	\$1,150.00
02025	Curbing	\$8,100.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$8,100.00	\$0.00
02030	Asphalt Street Repairs	\$2,600.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$2,600.00	\$0.00
02060	Landscaping	\$8,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$8,000.00	\$0.00
03015	Superstructure Concrete	\$2,487,000.00	\$1,745,374.00	\$425,377.00	\$0.00	\$2,170,751.00	87.300	\$316,249.00	\$317,115.10
03030	Housekeeping Feds	\$2,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$2,000.00	\$0.00
03045	Courtyard Saw Cut Concrete Topping	\$7,600.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$7,600.00	\$0.00
03050	Concrete Bench	\$800.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$800.00	\$0.00
04010	3rd CMU Interior	\$25,212.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$25,212.00	\$0.00
04015	4th CMU Exterior	\$80,662.00	\$0.00	\$6,404.96	\$0.00	\$6,404.96	8.000	\$73,557.04	\$640.50
04020	4th CMU	\$41,300.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$41,300.00	\$0.00
04030	Seaflooding - 8 months	\$215,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$215,000.00	\$0.00
04060	Stucco	\$295,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$295,000.00	\$0.00
04065	Pavers	\$21,425.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$21,425.00	\$0.00
05010	Railings - Stairs	\$65,288.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$65,288.00	\$0.00
05015	Railing at Water Tank	\$7,880.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$7,880.00	\$0.00
05020	Platbor Post and Rails Convenience Stair	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$3,500.00	\$0.00
05025	Structural Steel and Durrage	\$72,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$72,000.00	\$0.00
05030	Interior Stairs, Rails, and Ladder	\$12,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$12,000.00	\$0.00
05035	Metal Screen at Convenience Stair	\$17,700.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$17,700.00	\$0.00
06010	Window Sills & Aprons	\$5,880.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$5,880.00	\$0.00
06100	Rough Carpentry - OSHA Protection	\$57,500.00	\$0.00	\$2,250.00	\$0.00	\$2,250.00	30.000	\$36,250.00	\$1,125.00
06150	Wood Grounds and Blocking	\$19,600.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$19,600.00	\$0.00
07020	Roofing and Flashing	\$145,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$145,000.00	\$0.00
07030	Fire Stopping	\$40,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$40,000.00	\$0.00
07045	Expansion Joint, Adjoining Roof & Walls	\$25,312.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$25,312.00	\$0.00
09005	HM Doors	\$38,550.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$38,550.00	\$0.00

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G703-1992

CONTINUATION SHEET

AIA DOCUMENT G703

PAGE 2 OF 3 PAGES

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification, is attached.

APPLICATION NO.: 000006

In tabulations below, amounts are stated to the nearest dollar.

APPLICATION DATE: PERIOD TO: 12/20/2010

Use Column I on Contracts where variable retainage for time items may apply.

ARCHITECT'S PROJECT NO.:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		E THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+H)	(G-C) %	H BALANCE TO FINISH (C-G)	I RETAINAGE (IF VARIABLE) RATE
			FROM PREVIOUS APPLICATION (D-E)							
08010	Hotel Room Entry	\$59,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$59,000.00	\$0.00
08015	Wood Bathroom	\$51,600.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$51,600.00	\$0.00
08020	Access Doors	\$21,560.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$21,560.00	\$0.00
08025	Custom Steel Gate and Pivot Hinge	\$2,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$2,500.00	\$0.00
08030	Hardware	\$97,600.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$97,600.00	\$0.00
08035	Glass Wall Conventance Stairs	\$8,450.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$8,450.00	\$0.00
08045	Aluminum & Glass - Staircase - 1st Floor	\$67,756.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$67,756.00	\$0.00
08050	Purched Windows	\$195,690.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$195,690.00	\$0.00
08065	Window Wall	\$497,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$497,000.00	\$0.00
08070	Glass Balcony Railing	\$37,620.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$37,620.00	\$0.00
08075	Metel & Glass Canopy	\$60,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$60,000.00	\$0.00
08080	Mechanical Louvers	\$5,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$5,000.00	\$0.00
09010	Framing & Drywall	\$722,212.00	\$0.00	\$-4,444.24	\$0.00	\$0.00	\$14,444.24	2.006	\$707,767.76	\$1,444.42
09015	Ceilings & Soffits	\$110,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$110,000.00	\$0.00
09020	Exterior Wall Framing	\$275,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$275,000.00	\$0.00
09040	Ceramic Tile	\$124,800.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$124,800.00	\$0.00
09060	Painting - Priming only on Walls, K-Dex on Ceiling	\$102,900.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$102,900.00	\$0.00
10015	Exterior Sign - 12 ea. 12" Metel Letters	\$3,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$3,000.00	\$0.00
10020	Vanities	\$24,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$24,500.00	\$0.00
10025	Glass Tub and Shower Enclosures	\$103,180.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$103,180.00	\$0.00
10040	Mirrors	\$20,400.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$20,400.00	\$0.00
10045	Garage Door	\$10,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$10,000.00	\$0.00
10050	Bathroom Accessories	\$9,800.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$9,800.00	\$0.00
10055	Signage - Interior	\$5,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$5,000.00	\$0.00
10050	Rubbish Chute	\$55,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$55,000.00	\$0.00
10065	Stair - Basement to 1st Floor	\$20,000.00	\$0.00	\$800.00	\$0.00	\$0.00	\$800.00	4.000	\$19,200.00	\$80.00
10070	Vestibule Mat	\$2,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$2,500.00	\$0.00
10075	Canopy	\$50,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$50,000.00	\$0.00
14010	Elevators	\$495,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$495,000.00	\$0.00
14020	Cab Allowance - 2 Cabs @ \$15,000	\$30,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$30,000.00	\$0.00
14025	Hydraulic Lift	\$75,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$75,000.00	\$0.00
15010	HVAC - Ductwork & Miscellaneous HVAC Work	\$335,426.00	\$6,706.52	\$6,706.52	\$0.00	\$0.00	\$13,417.04	4.000	\$322,008.96	\$1,341.72
15015	Servo Equipment Only (No other HVAC)	\$508,851.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$508,851.00	\$0.00

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G703-1992

CONTINUATION SHEET

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT,

APPLICATION NO.: 00006

containing Contractor's signed Certification, is attached.

APPLICATION DATE: 12/20/2010

In tabulations below, amounts are stated to the nearest dollar.

PERIOD TO: 12/20/2010

Use Column I on Contracts where variable retainage for line items may apply.

ARCHITECT'S PROJECT NO.:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		E THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H BALANCE TO FINISH (G-C)	I RETAINAGE (IF VARIABLE) RATE	
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD						
15020	Storage Equipment Installation Only	\$213,623.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$213,623.00	\$0.00
15040	Plumbing	\$845,345.00	\$38,813.80	\$16,906.96	\$0.00	\$0.00	\$50,720.76	6.000	\$794,624.30	\$5,072.04
15045	Plumbing Fixtures - Allowance	\$127,000.00	\$0.00	\$7,255.43	\$0.00	\$0.00	\$7,255.43	5.713	\$119,744.57	\$0.00
15050	Sprinkler & Standpipe	\$243,765.00	\$-3,877.70	\$4,575.30	\$0.00	\$0.00	\$48,753.00	20.000	\$195,012.00	\$4,875.30
15060	Site Utilities	\$40,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$40,000.00	\$0.00
16010	Light & Power	\$669,658.00	\$23,437.33	\$3,348.29	\$0.00	\$0.00	\$26,785.52	4.000	\$642,872.48	\$2,678.52
16020	Emergency Generator System and ATS	\$130,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$130,000.00	\$0.00
16025	Fire Alarm & Communication Systems	\$59,992.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$59,992.00	\$0.00
16030	Electrical Fixtures	\$113,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$113,000.00	\$0.00
16050	Subtotal	\$10,872,167.00	\$2,026,198.35	\$509,358.54	\$0.00	\$0.00	\$2,535,596.89	23.322	\$8,336,570.11	\$252,854.11
20000	General Conditions	\$1,087,217.00	\$212,811.86	\$40,748.89	\$0.00	\$0.00	\$253,560.75	23.322	\$833,656.25	\$25,356.10
20010	Overhead	\$119,394.00	\$23,409.33	\$4,482.28	\$0.00	\$0.00	\$27,891.71	23.322	\$91,702.29	\$2,789.15
20020	Builders Fee	\$603,949.00	\$118,216.98	\$22,633.61	\$0.00	\$0.00	\$140,852.59	23.322	\$463,096.01	\$14,035.31
20030	Insurance	\$317,073.00	\$63,063.87	\$11,883.90	\$0.00	\$0.00	\$73,947.77	23.322	\$243,125.23	\$0.00
20040	Subtotal	\$2,127,833.00	\$416,582.04	\$79,751.18	\$0.00	\$0.00	\$496,333.22	23.322	\$1,631,501.78	\$42,230.56
		\$13,000,000.00	\$2,442,700.39	\$589,149.72	\$0.00	\$0.00	\$3,031,850.11	23.322%	\$9,968,149.89	\$295,064.57

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AIA

Document G702™ - 1992

Application and Certificate for Payment

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04 09

TO OWNER:	Ed Mills & Associates 50 White Street New York, NY 10013	PROJECT:	Allen Street Allen Street
FROM	Cava Construction & Development	VIA	
CONTRACTOR:	15 So MacQuesten Pkwy. Mt Vernon, NY 10550	ARCHITECT:	

APPLICATION NO:	006	Distribution	
PERIOD TO:	October 15, 2009	OWNER	
CONTRACT FOR:	General Construction	ARCHITECT	
CONTRACT DATE:		CONTRACTOR	
PROJECT NOS:	/20814/	FIELD	
OTHER			

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 15,249,986.00
2. NET CHANGE BY CHANGE ORDERS \$ 0.00
3. CONTRACT SUM TO DATE (Line 1±2) \$ 15,249,986.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 2,112,150.00
5. RETAINAGE:
 - a. 10 % of Completed Work
(Column D + E on G703) \$ 211,215.00
 - b. 0 % of Stored Material
(Column F on G703) \$ 0.00
 Total Retainage (Lines 5a + 5b or Total in Column I of G703) \$ 211,215.00
6. TOTAL EARNED LESS RETAINAGE \$ 1,900,935.00
(Line 4 Less Line 5 Total) *1,383,769.47*
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ 1,396,935.00
(Line 6 from prior Certificate)
8. CURRENT PAYMENT DUE \$ 504,000.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE \$ 13,349,051.00
(Line 3 less Line 6)

CHANGE ORDER SUMMARY		
	ADDITIONS:	DEDUCTIONS:
Total changes approved in previous months by Owner	\$ 0.00	\$ 0.00
Total approved this Month	\$ 0.00	\$ 0.00
TOTALS	\$ 0.00	\$ 0.00
NET CHANGES by Change Order	\$	\$ 0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work which previous Certificates for Payment were issued and payments received from the Owner, that current payment shown herein is now due.

CONTRACTOR: _____ Date: *10/19/09*

By: _____
State of: *New York*
County of: *Westchester*

Subscribed and sworn to before me this *10* day of *October* 20*09*
Notary Public: *Grace M. Shaw*
No. 01SH5050941
Qualified in Westchester County
Commission Expires: *10/23/2013*

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge and belief the Work has progressed as indicated, the quality of the Work is accordance with the Contract Documents, and the Contractor is entitled to payment of AMOUNT CERTIFIED *\$ 504,000* \$ 504,000.00

(Attach explanation if amount certified differs from the amount applied. Initial all figures on the Application and on the Continuation Sheet that are changed to conform with the amount certified)

By: *[Signature]* Date: *10/19/09*

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any right the Owner or Contractor under this Contract.



AIA Document G703™ - 1992

Continuation Sheet

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 006
 APPLICATION DATE: 10/15/2009
 PERIOD TO: 10/15/2009
 ARCHITECT'S PROJECT NO:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		E THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H % (G ÷ C)	I BALANCE TO FINISH (C - G)	J RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)							
1	MOBILIZATION	300,000.00	150,000.00	150,000.00	0.00	0.00	300,000.00	100.00 %	0.00	15,000.00
2	SUPERVISION	400,000.00	45,000.00	10,000.00	0.00	0.00	55,000.00	13.75 %	345,000.00	4,500.00
3	INSURANCE	375,000.00	37,500.00	30,000.00	0.00	0.00	67,500.00	18.00 %	307,500.00	3,750.00
4	REFUSE REMOVAL	210,000.00	10,000.00	10,000.00	0.00	0.00	20,000.00	9.52 %	190,000.00	1,000.00
5	DUMPSTERS	55,000.00	13,000.00	5,000.00	0.00	0.00	18,000.00	32.73 %	37,000.00	1,300.00
6	GENERAL CONDITIONS	750,000.00	75,000.00	50,000.00	0.00	0.00	125,000.00	16.67 %	625,000.00	7,500.00
7	PROPERTY PROTECTION	70,000.00	24,000.00	5,000.00	0.00	0.00	29,000.00	41.43 %	41,000.00	2,400.00
8	SURVEYOR	30,000.00	30,000.00	0.00	0.00	0.00	30,000.00	100.00 %	0.00	3,000.00
9	HANGING SCAFFOLD	100,000.00	0.00	0.00	0.00	0.00	0.00	0.00 %	100,000.00	0.00
10	MATERIAL HOIST	275,000.00	0.00	100,000.00	0.00	0.00	100,000.00	36.36 %	175,000.00	0.00
11	FEE	500,000.00	50,000.00	0.00	0.00	0.00	50,000.00	10.00 %	450,000.00	5,000.00
	EXCAVATION	0.00	0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
12	MOBILIZATION	95,650.00	95,650.00	0.00	0.00	0.00	95,650.00	100.00 %	0.00	9,565.00
13	SHORING-DELIVER STEEL	27,900.00	27,900.00	0.00	0.00	0.00	27,900.00	100.00 %	0.00	2,790.00
14	SHORING-INSTALL BEAM YBRATORY	87,500.00	87,500.00	0.00	0.00	0.00	87,500.00	100.00 %	0.00	8,750.00
15	SHORING-LAGGING FOUNDATION	35,800.00	35,800.00	0.00	0.00	0.00	35,800.00	100.00 %	0.00	3,580.00
16	EXCAVATION-MASS CUT OF CLEAN FILL	198,000.00	198,000.00	0.00	0.00	0.00	198,000.00	100.00 %	0.00	19,800.00
17	EXCAVATION-INSTALL GRAVEL BASE	9,000.00	9,000.00	0.00	0.00	0.00	9,000.00	100.00 %	0.00	900.00
18	EXCAVATION-ELEVATOR	16,000.00	16,000.00	0.00	0.00	0.00	16,000.00	100.00 %	0.00	1,600.00

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	PIT CONTROLLED FILL																				
19	CONCRETE-ELEVATOR PIT WALLS	15,000.00	15,000.00	0.00	0.00	15,000.00	100.00 %	0.00	1,500.00												
20	CONCRETE-INTERIOR PERIMETER FOOTINGS	7,200.00	7,200.00	0.00	0.00	7,200.00	100.00 %	0.00	720.00												
21	CONCRETE-5" SLAB ON GRADE	10,200.00	10,200.00	0.00	0.00	10,200.00	100.00 %	0.00	1,020.00												
22	CONCRETE-CELLAR MAT SLAB	305,750.00	305,750.00	0.00	0.00	305,750.00	100.00 %	0.00	30,575.00												
23	CONCRETE-FOUNDATION WALL	148,500.00	148,500.00	0.00	0.00	148,500.00	100.00 %	0.00	14,850.00												
24	CONCRETE SUPERSTRUCTURE	2,688,950.00	134,450.00	200,000.00	0.00	334,450.00	12.44 %	2,354,500.00	13,445.00												
25	MISC. CONCRETE	30,000.00	0.00	0.00	0.00	30,000.00	0.00 %	30,000.00	0.00												
26	SIDEWALKS & CURBS	35,000.00	0.00	0.00	0.00	35,000.00	0.00 %	35,000.00	0.00												
27	MASONRY	76,775.00	0.00	0.00	0.00	76,775.00	0.00 %	76,775.00	0.00												
28	STRUCTURAL METALS	150,000.00	0.00	0.00	0.00	150,000.00	0.00 %	150,000.00	0.00												
29	WATER TANK ENCLOSURE	54,200.00	0.00	0.00	0.00	54,200.00	0.00 %	54,200.00	0.00												
30	ORNAMENTAL METALS	30,000.00	0.00	0.00	0.00	30,000.00	0.00 %	30,000.00	0.00												
31	METAL STUDS	600,000.00	0.00	0.00	0.00	600,000.00	0.00 %	600,000.00	0.00												
32	DRYWALL	399,246.00	0.00	0.00	0.00	399,246.00	0.00 %	399,246.00	0.00												
33	ROOFING	172,585.00	0.00	0.00	0.00	172,585.00	0.00 %	172,585.00	0.00												
34	SEMIC JOINTS	50,000.00	0.00	0.00	0.00	50,000.00	0.00 %	50,000.00	0.00												
35	CAULKING	35,000.00	0.00	0.00	0.00	35,000.00	0.00 %	35,000.00	0.00												
36	FIRESTOPPING	25,000.00	0.00	0.00	0.00	25,000.00	0.00 %	25,000.00	0.00												
37	DOORS FRAMES HARDWARE (MAT)	112,000.00	0.00	0.00	0.00	112,000.00	0.00 %	112,000.00	0.00												
38	WINDOWS	228,000.00	0.00	0.00	0.00	228,000.00	0.00 %	228,000.00	0.00												
39	EXTERIOR WALLS PANELS (F&D)	920,955.00	0.00	0.00	0.00	920,955.00	0.00 %	920,955.00	0.00												
40	CANOPY/MARQUEE	50,000.00	0.00	0.00	0.00	50,000.00	0.00 %	50,000.00	0.00												
41	STOREFRONT	197,600.00	0.00	0.00	0.00	197,600.00	0.00 %	197,600.00	0.00												
42	INTERIOR STOREFRONT	11,250.00	0.00	0.00	0.00	11,250.00	0.00 %	11,250.00	0.00												
43	GLASS BAISTRRADE	43,625.00	0.00	0.00	0.00	43,625.00	0.00 %	43,625.00	0.00												
44	MISC. GLASS	10,000.00	0.00	0.00	0.00	10,000.00	0.00 %	10,000.00	0.00												
45	BATHROOM VANITIES	19,600.00	0.00	0.00	0.00	19,600.00	0.00 %	19,600.00	0.00												

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	(MAT ONLY)																		
46	GUEST ROOM ENTRY LOCKS	39,200.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
47	PRIMING & K-DEX INTERIOR STONE/TILE (MAT ONLY)	83,300.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
48	BASEMENT FINISHES (OUTSIDE FEE)	98,800.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
49	FF&E MATERIALS	25,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
50	FF&E MATERIALS (OUTSIDE FEE)	719,200.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
51	FF&E INSTALLATION	30,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
52	SPECIALTIES	10,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
53	SHOWER DOORS	58,800.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
54	LOBBY FINISHES	25,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
55	KITCHEN EQUIPMENT (F&I)	50,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
56	LINEN CHUTE ELEVATOR	25,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
57	MOBILIZATION PASSENGER	60,000.00	0.00	1,200.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
58	SHOPDRAWINGS	10,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
59	EQUIPMENT	200,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
60	RAILS & MOTOR INSTALL	111,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
61	CAB INSTALLATION	150,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
62	CAB FINISHES	30,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
63	ELEVATOR FINISHES FREIGHT	15,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
64	SHOPDRAWINGS	3,600.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
65	EQUIPMENT	17,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
66	RAILS & MOTOR INSTALL	5,400.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
67	CAB INSTALLATION	5,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
68	CAB FINISHES PLUMBING	5,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
69	MOBILIZATION UNDERGROUND	25,000.00	0.00	2,500.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
70	PLUMBING	18,000.00	0.00	18,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
71	WATER & SEWER SERVICE	50,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

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72	PLUMBING ROUGH IN	425,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	425,000.00	0.00
73	FUEL OIL SYSTEM	50,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	50,000.00	0.00
74	PLUMBING EQUIPMENT	157,280.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	157,280.00	0.00
75	PLUMBING FIXTURE	80,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	80,000.00	0.00
76	WATER TANK	30,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	30,000.00	0.00
77	SPRINKLER DRAWINGS	17,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	17,000.00	0.00
78	SPRINKLER STANDPIPE	75,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	75,000.00	0.00
79	SPRINKLER ROUGH IN	100,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	100,000.00	0.00
80	SPRINKLER EQUIPMENT	100,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	100,000.00	0.00
	HVAC	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
81	HVAC MOBILIZATION	21,600.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	21,600.00	0.00
82	HVAC DUCTWORK	100,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	100,000.00	0.00
83	GUESTROOM HVAC	250,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	250,000.00	0.00
84	HVAC EQUIPMENT	250,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	250,000.00	0.00
85	HYDRONIC PIPING	500,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	500,000.00	0.00
86	HVAC CONTROLS	150,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	150,000.00	0.00
	ELECTRICAL	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
87	ELECTRIC MOBILIZATION	75,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	75,000.00	0.00
88	SWITCH GEAR	143,520.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	143,520.00	0.00
89	EMERGENCY GENERATOR	60,000.00	5,000.00	0.00	0.00	0.00	0.00	5,000.00	8.33	0.00	0.00	55,000.00	500.00	0.00
90	TEMP SERVICE & LIGHTING	50,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	50,000.00	0.00
	SERVICE WIRING & CONDUITS	150,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	150,000.00	0.00
91	RISERS & PANELS	100,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	100,000.00	0.00
92	ROUGH IN	200,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	200,000.00	0.00
93	FIRE ALARM	10,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	10,000.00	0.00
94	SHOPDRAWINGS	50,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	50,000.00	0.00
95	FIRE ALARM ROUGH IN	100,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	100,000.00	0.00
	FIRE ALARM PROGRAMMING & EQUIPMENT	125,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	125,000.00	0.00
97	ELECTRIC FINISHES	50,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	50,000.00	0.00
98	LIGHT FIXTURES	50,000.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	50,000.00	0.00
	CHANGE ORDERS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

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C/O#2	VIBRANALYSIS	22,000.00	22,000.00	0.00	0.00	22,000.00	100.00 %	0.00	2,200.00
C/O#3	SITE SAFETY MONTHLY	27,735.00	27,735.00	0.00	0.00	27,735.00	100.00 %	0.00	2,773.50
C/O#4	SHORING	21,008.00	21,008.00	0.00	0.00	21,008.00	100.00 %	0.00	2,100.80
C/O#5	EXCAVATION EXTRAS	50,765.00	50,765.00	0.00	0.00	50,765.00	100.00 %	0.00	5,076.50
C/O#6	NIGHT SHIFT	7,568.00	7,568.00	0.00	0.00	7,568.00	100.00 %	0.00	756.80
C/O#7	RELOCATE BOILER PLUE	9,949.00	9,949.00	0.00	0.00	9,949.00	100.00 %	0.00	994.90
C/O#8	WATERPROOFING	85,000.00	85,000.00	0.00	0.00	85,000.00	100.00 %	0.00	8,500.00
C/O#9	HANGING PLATFORM	10,239.00	10,239.00	0.00	0.00	10,239.00	100.00 %	0.00	1,023.90
C/O#10	LABOR 5 WEEKS	8,248.00	8,248.00	0.00	0.00	8,248.00	100.00 %	0.00	824.80
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00 %	0.00	0.00

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User Notes:

	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
GRAND TOTAL	15,492,498.00	\$ 1,794,662.00	\$ 560,000.00	\$ 0.00	\$ 2,354,662.00	15.20 %	13,137,836.00	\$	\$ 179,466.20

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CONDITIONAL PARTIAL WAIVER OF LIEN

STATE OF New York

COUNTY OF Westchester)

ss

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has been employed by Cava Construction Co. Inc. to furnish labor and materials for premises known as Allen Street of which DAB Group LLC is the owner.

The undersigned, for and in consideration of \$389,328.03 three hundred eighty nine thousand, three hundred, twenty eight dollars and three cents * representing the total of requisition #5

*effective upon receipt of a check in the amount of Three Hundred Eighty Nine Thousand, Three Hundred, Twenty Eight Dollars and three cents.

and other good and valuable considerations representing the amount paid to date for the total value of work completed and installed, the receipt thereof is hereby acknowledged, do hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the State of New York, relating to mechanic's liens, with respect to and on said above described premises, and the improvements thereon, and on the material, fixtures, apparatus or machinery, furnished and on the monies, funds or other considerations due or to become due from the owner, on account of labor, services, material, fixtures, apparatus or machinery, furnished to this date by the undersigned for the above described premises.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be signed by its officer thereunto duly authorized and its corporate seal to be affixed this 23rd day of April, 2009.

COMPANY: Cava Construction Co. Inc.

BY: Carmine Dellacava

SEAL

Title:

STATE OF: New York

COUNTY OF: Westchester

Sworn to me this 23rd day of April, 2009

[Handwritten signature of Jodi A. Mosiello]

JODI A MOSIELLO
Notary Public, State of New York
No. 01M05048289
Qualified in Westchester County
Commission Expires August 21, 2009

CAL. NO.

2011 JAN 25 P 4:16

RECEIVED
DD. STANDARDS & APPEALS

CONDITIONAL PARTIAL WAIVER OF LIEN

STATE OF New York

COUNTY OF Westchester)

ss

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has been employed by Cava Construction Co. Inc.

to furnish labor and materials for premises known as Allen Street

of which DAB Group LLC is the owner.

The undersigned, for and in consideration of \$357,624.59 three hundred fifty seven thousand six hundred twenty four dollars and fifty nine cents * representing the total of requisition #4

***effective upon receipt of a check in the amount of \$ (Requisition #)**

and other good and valuable considerations representing the amount paid to date for the total value of work completed and installed, the receipt thereof is hereby acknowledged, do hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the State of New York, relating to mechanic's liens, with respect to and on said above described premises, and the improvements thereon, and on the material, fixtures, apparatus or machinery, furnished and on the monies, funds or other considerations due or to become due from the owner, on account of labor, services, material, fixtures, apparatus or machinery, furnished to this date by the undersigned for the above described premises.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be signed by its officer

thereunto duly authorized and its corporate seal to be affixed this 10 day of Dec, 2008.

COMPANY: Cava Construction Co. Inc.

BY: Peter Sarpico

Title:

Peter Sarpico
V.P.

SEAL

STATE OF: New York

COUNTY OF: Westchester

*Signed to me this 10th
day of Dec. 2008*

GRACE M. SHAW

Notary Public State of New York

No. 01SH5050941

Qualified in Westchester County

Commission Expires 12/30 2009

Grace M. Shaw

PARTIAL RELEASE AND WAIVER OF LIEN

FROM: CAVA CONSTRUCTION CORP.
15 South Macquesten Pkwy
Mount Vernon, New York 10550

TO: Edward J Mills & Associates
50 White Street
New York, NY 10013

Period Ending:

Project:

- Owner:
- Premises: Allen Street
- General Contractor: Cava Construction Co. Inc.
- Contract Work:
- Contract Date: 8/2008
- Original Contract Amount: \$15,249,986.00
- Change Order Amounts: \$95,714.30
- Adjusted Contract Amount: \$15,345,700.30
- Amount of Work Done To Date: \$566,264.30
- Retainage Amount Not Yet Due: \$56,626.43
- Net Amount Due To Date: \$363,987.87
- Total Payments Received To Date: \$145,650.00

For and in consideration of the payment of \$150,000.00 which amount is represented as being paid in accordance with the Payment Request or Invoice(s) referenced below, the sufficiency of which is hereby acknowledged, the undersigned does hereby waive, release and relinquish any and all rights, claims, demands, liens, claims for relief, causes of action and the like, whether arising at law, under a contract, in tort, in equity or otherwise, which the undersigned has now or may have had arising out of the performance of work or the furnishing of labor or materials by the undersigned through 10/24/08 date, the effective date of the Waiver and Release, pursuant to Contract/Subcontract/Purchase Order No. _____, dated, August 2008 with Cava Construction Co. Inc. in connection with construction of Allen Street/Orchard Street ("the Project"). Use of the term "the Company" herein shall be deemed to mean and refer to CAVA CONSTRUCTION CORP. and its agents, representatives, employees, directors and all those acting on their behalf. Use of the term "the Owner" herein shall be deemed to mean and refer to the Owner and its agents, representatives, employees, directors and all those acting on their behalf. All references herein to the Company, to the Owner and the undersigned shall be deemed to include such party's heirs, legal representatives, successors and assigns.

This Waiver and Release applies to all facts, acts, events, circumstances, changes, constructive or actual, delays, accelerations, extra work, disruptions, interferences and the like which have occurred, or may be claimed to have occurred, prior to the effective date hereof, excepting only any claims currently unresolved for which written notice has been provided to the Company as follows:

Except as specifically described above, and excepting retainage, if any, held under the Contract/Subcontract/Purchase Order, the undersigned expressly waives all claims against the Company and Owner as hereinabove described. This Waiver and Release is intended to apply to and protect the Company's payment and performance bond surety, if any, as well as anyone claiming by or through the Company, the Owner, or the surety in connection with any claim, demand, lien, claim for relief, cause of action and the like waived, released and relinquished by the terms of this Waiver and Release.

The Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants and represents that it has fully reviewed the terms and conditions of this Waiver and Release, that it is fully informed with respect to the legal effect of the Waiver and Release and that it has voluntarily chosen to accept the terms and conditions of this Waiver and Release in return for the payment recited above.

The undersigned further represents that all employees, laborers, material men and subcontractors employed by the undersigned in connection with the Project and all bills currently due for labor, materials, supplies and taxes furnished by others to the undersigned in connection with construction of improvements upon the Project have been fully paid and that no obligations, legal, equitable or otherwise are owed by the undersigned in connection with its work on the Project. With respect to this representation and warranty, the undersigned does hereby agree to indemnify and hold harmless the Company, its payment and performance bond surety, if any, the Owner and any others claiming by or through them, from any and all claims, damages, losses, expenses and the like incurred by reason of any claim that the undersigned has not fully paid for all labor, materials and expenses incurred in connection with its work on the Project.

The undersigned further agrees that making and receipt of payment and execution of this Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of the undersigned to the Company.

IN WITNESS WHEREOF, on behalf of the undersigned, with full authority, I have executed this Waiver and Release under seal effective the 2 day of December, 2008.

SUBCONTRACTOR

BY: [Signature]
Title: President

Sworn to before me this 2
day of December, 2008

[Signature]
Notary Public

GRACE M. SHAW
Notary Public State of New York
No. 01SH5050941
Qualified in Westchester County
Commission Expires 10/03 2009

PARTIAL RELEASE AND WAIVER OF LIEN

FROM: CAVA CONSTRUCTION CORP.
15 South Macquesten Pkwy
Mount Vernon, New York 10550

TO: Edward I Mills & Associates
50 White Street
New York, NY 10013

Period Ending:

Project:

- Owner:
- Premises: Allen Street
- General Contractor: Cava Construction Co. Inc.
- Contract Work:
- Contract Date: 8/2008
- Original Contract Amount: \$15,249,986.00
- Change Order Amounts: \$95,714.30
- Adjusted Contract Amount: \$15,345,700.30
- Amount of Work Done To Date: \$145,650.00
- Retainage Amount Not Yet Due:
- Net Amount Due To Date: \$145,650.00
- Total Payments Received To Date: 0

For and in consideration of the payment of \$145,650.00 which amount is represented as being paid in accordance with the Payment Request or Invoice(s) referenced below, the sufficiency of which is hereby acknowledged, the undersigned does hereby waive, release and relinquish any and all rights, claims, demands, liens, claims for relief, causes of action and the like, whether arising at law, under a contract, in tort, in equity or otherwise, which the undersigned has now or may have had arising out of the performance of work or the furnishing of labor or materials by the undersigned through 9/30/08 date), the effective date of the Waiver and Release, pursuant to Contract/Subcontract/Purchase Order No. _____, dated August 2008 with Cava Construction Co. Inc. in connection with construction of Allen Street/Orchard Street ("the Project"). Use of the term "the Company" herein shall be deemed to mean and refer to CAVA CONSTRUCTION CORP. and its agents, representatives, employees, directors and all those acting on their behalf. Use of the term "the Owner" herein shall be deemed to mean and refer to the Owner and its agents, representatives, employees, directors and all those acting on their behalf. All references herein to the Company, to the Owner and the undersigned shall be deemed to include such party's heirs, legal representatives, successors and assigns.

This Waiver and Release applies to all facts, acts, events, circumstances, changes, constructive or actual, delays, accelerations, extra work, disruptions, interferences and the like which have occurred, or may be claimed to have occurred, prior to the effective date hereof, excepting only any claims currently unresolved for which written notice has been provided to the Company as follows:

Except as specifically described above, and excepting retainage, if any, held under the Contract/Subcontract/Purchase Order, the undersigned expressly waives all claims against the Company and Owner as hereinabove described. This Waiver and Release is intended to apply to and protect the Company's payment and performance bond surety, if any, as well as anyone claiming by or through the Company, the Owner, or the surety in connection with any claim, demand, lien, claim for relief, cause of action and the like waived, released and relinquished by the terms of this Waiver and Release.


The Waiver and Release is freely and voluntarily given and the undersigned acknowledges, warrants and represents that it has fully reviewed the terms and conditions of this Waiver and Release, that it is fully informed with respect to the legal effect of the Waiver and Release and that it has voluntarily chosen to accept the terms and conditions of this Waiver and Release in return for the payment recited above.

The undersigned further represents that all employees, laborers, material men and subcontractors employed by the undersigned in connection with the Project and all bills currently due for labor, materials, supplies and taxes furnished by others to the undersigned in connection with construction of improvements upon the Project have been fully paid and that no obligations, legal, equitable or otherwise are owed by the undersigned in connection with its work on the Project. With respect to this representation and warranty, the undersigned does hereby agree to indemnify and hold harmless the Company, its payment and performance bond surety, if any, the Owner and any others claiming by or through them, from any and all claims, damages, losses, expenses and the like incurred by reason of any claim that the undersigned has not fully paid for all labor, materials and expenses incurred in connection with its work on the Project.

The undersigned further agrees that making and receipt of payment and execution of this Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, punch list work, warranty and guaranty work, and any other obligations of the undersigned to the Company.

IN WITNESS WHEREOF, on behalf of the undersigned, with full authority, I have executed this Waiver and Release under seal effective the 2 day of December, 2008.

SUBCONTRACTOR

BY: 
Title: President

Sworn to before me this 2
day of December, 2008


Notary Public

GRACE M. SHAW
Notary Public State of New York
No. 01SH5050941
Qualified in Westchester County
Commission Expires 12/10 2009

CASINO DEVELOPMENT GROUP, INC.
54-01 43RD STREET
MASPETH, NY 11378

To: Owner, Borrower, Construction Manager, Administrative Agent and Lenders
 Period Ending ("date") 11/30/ 2008

Re: Borrower:	DAB Group, LLC*
Owner:	DAB Group, LLC*
Premise:	139-141 Orchard St NY, NY
Construction Manager:	Cava Construction
Contract Work:	Concrete Foundation
Contract Date:	8/7/08
Original Contract Amount:	\$ 956,500.00
Change Orders:	\$ 0.00
Adjusted Contract Amount:	\$ 956,500.00
Amount of Work Performed to Date:	\$ 462,680.00
Retainage Amount Not Yet Due:	\$ 46,268.00
Net Amount Due To Date:	\$ 416,412.00
Total Payments Received to Date:	\$ 319,762.00

The undersigned contractor, subcontractor or supplier hereby acknowledges receipt of \$319,762.00 (in cash only and not in equivalents or other agreements) and aggregate payments equal to the Total Payments received to Date stated above. DOES HEREBY CERTIFY AND ACKNOWLEDGE that it has received all sums due and owing to it for work performed or materials supplied at or in connection with the Project to the date of all prior requisitions and DOES HEREBY FOREVER RELEASE AND WAIVE for itself, its successors and assigns (a) any and all rights, claims and demands it has or may have against the General Contractor or the Borrower identified above, and their respective successors and assigns (collectively, the "Released Parties") to the date of all prior requisitions ; and (b) all right which it has or may have pursuant to the New York State Lien law to file any lien against the Project or any interest of any of the Released Parties therein or any other assets or interest of any of the Released Parties.

The undersigned represents that it has fully paid all its subcontractors, laborers, materialmen and any other person retained or hired by the Company on or in connection with the Project to date (including without limitation all union benefits) and the undersigned agrees to indemnify and save and hold the Released Parties harmless from any and all claims and expenses, including attorney's fees that may be made by any of the undersigned's subcontractors, laborers, materialmen, for any damages, injury or liability arising from or in connection with the performance of the work or the furnishing of materials or any of its or their subcontractors, laborers, materialmen, agents, servants and employees in performance of the Subcontract or Purchase Order, or anywise in connection with any of the work performed or materials furnished upon or in connection with the Project or any breach or default by the undersigned hereunder. In the event a lien is filed against the property in connection with the subcontractor's work, the undersigned agrees to immediately post a bond in satisfaction of the lien and to proceed to discharge the lien and/or satisfy any judgment or award rendered. Any or all of the Released Parties may at their option (i) post a bond, and discharge such lien (ii) defend any action related to lien, (iii) pay and satisfy any judgment or award and the undersigned shall be responsible for and pay such Released Parties all direct and indirect costs thereof, including attorney fees. The undersigned further stipulates that the signatory hereto is an authorized officer with full power to execute this waiver and release a claim

* and its successors and assigns

Duly authorized, executed and delivered by the undersigned this 30th day of September, 2008.

CHECKS RECEIVED	PAID BY	DATE	CHECK NUMBER
\$ 100,000.00	Cava Const.	11/19/08	24314
\$ 100,000.00	DAB Group, Inc	11/20/08	2586
\$ 129,000.00	DAB Group, Inc	12/02/08	2685

WITNESSED OR NOTARIZED BY:

(1) Angela Colavito

[Signature]
 (Contractor, Subcontractor or Supplier)

(2) _____

by: [Signature]
 CHIEF FINANCIAL OFFICER

ANGELA COLAVITO
 Notary Public, State of New York
 No. 01004935100
 Qualified in Nassau County
 Commission Expires July 25, 2009

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

PAGE ONE OF 1 PAGES

TO OWNER:

DAB GROUP, LLC
85 West Hawthorne Ave
Valley Stream, NY 11580

PROJECT: Allen Street Hotel

139-141 Orchard Street
New York, NY 10002

FROM CONTRACTOR:

Casino Development Group, Inc
54-30 48th Street
Maspeth, NY 11378

VIA ARCHITECT:

Edward I Mills & Associates
50 White Street
New York, NY 10013

CONTRACT FOR: Concrete Foundation

APPLICATION NO: 7
RECEIVED Distribution to:
BU. STANDARDS & PRACTICE OWNER
2011 JAN 25
X ARCHITECT
X CONTRACTOR
CAL. NY

PERIOD TO: 03/31/09

PROJECT NOS:

CONTRACT DATE: 8/7/08

SUBCONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G703, is attached.

- 1. ORIGINAL CONTRACT SUM \$ 956,500.00
- 2. Net change by Change Orders \$ 77,204.30
- 3. CONTRACT SUM TO DATE (Line 1 ± 2) \$ 1,033,704.30
- 4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 1,033,704.30

5. RETAINAGE: a. 0 % of Completed Work \$ 0.00

b. % of Stored Material (Column F on G703) \$

6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total) \$ 1,033,704.30

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$ 933,704.00

8. CURRENT PAYMENT DUE \$ 100,000.30

9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$ 0.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$65,716.30	
Total approved this Month	\$11,488.00	
TOTALS	\$77,204.30	\$0.00
NET CHANGES by Change Order	\$77,204.30	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner; and that current payment shown herein is now due.

CONTRACTOR:

By:  Date: 3/31/2009

State of: New York County of: Nassau
Subscribed and sworn to before me this 31 day of March 2009
Notary Public: Angela Colavito
My Commission expires: 7/25/09
ANGELA COLAVITO
Notary Public, State of New York
No. 010C04935100
Commission Expires July 25, 2009

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 100,000.30

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)
ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

PAGE ONE OF PAGES

TO OWNER: DAB Group, LLC

PROJECT: 139-141 Orchard St

APPLICATION NO: 00006

Distribution to:

PERIOD TO: 12/20/2010

PROJECT NOS.:

OWNER
 ARCHITECT
 CONTRACTOR

FROM CONTRACTOR: Flintlock Construction Services, LLC
585 N. Barry Ave
Manhasset, NY 10543

VIA ARCHITECT: Edward I Mills & Associates Arcl
401 Broadway
New York, NY 10013

CONTRACT DATE:

CONTRACT FOR:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the contract Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$13,000,000.00

2. Net change by Change Orders \$0.00

3. CONTRACT SUM TO DATE (Line 1 + 2) \$13,000,000.00

4. TOTAL COMPLETED & STORED TO DATE \$3,031,850.11
(Column G on G703)

5. RETAINAGE: a. 0 % of Completed Work: \$0.00
(Columns D + E on G703)

b. 0 % of Stored Material: \$0.00
(Column F on G703)

Total Retainage (Line 5a + 5b or Total in Column I on G703) \$303,184.99

6. TOTAL EARNED LESS RETAINAGE \$2,728,665.12
(Line 4 less Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$2,198,430.35
(Line 6 from prior Certificate)

8. CURRENT PAYMENT DUE \$530,234.77

9. BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6) \$10,271,334.88

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$0.00	\$0.00
TOTALS	\$0.00	\$0.00
NET CHANGES by Change Order	\$0.00	\$0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Flintlock Construction Services, LLC
By: Stephen A. Weiss Date: 1/4/2011
State of: _____
County of: _____

Subscribed and sworn to before me this 4th day of January 2011
Notary Public: Sarah Thomas State of New York, Qualified in King County
My Commission expires: 11/17/2012

ARCHITECTS CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$530,234.77

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT: Edward I Mills & Associates Architect
By: Edward I Mills Date: 1-4-2011

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Insurance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

RECEIVED
BD. STANDARDS & APPEALS
2011 JAN 25 P 4: 11

CONTINUATION SHEET

AIA DOCUMENT G703

PAGE 3 OF 3 PAGES

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT,

APPLICATION NO.: 00006

containing Contractor's signed Certification, is attached.

APPLICATION DATE:

In tabulations below, amounts are stated to the nearest dollar.

PERIOD TO: 12/20/2010

Use Column I on Contracts where variable retainage for line items may apply.

ARCHITECT'S PROJECT NO.:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H BALANCE TO FINISH (G-C)	I RETAINAGE (IF VARIABLE) RATE
			(D + E)	THIS PERIOD				
15020	Slugs Equipment Installation Only	\$219,623.00	\$0.00	\$0.00	\$0.00	\$0.00	\$219,623.00	\$0.00
15040	Plumbing	\$843,345.00	\$33,813.80	\$16,906.90	\$0.00	\$50,720.70	\$794,624.30	\$5,072.04
15045	Plumbing Fixtures - Allowance	\$127,000.00	\$0.00	\$7,255.43	\$0.00	\$7,255.43	\$119,744.57	\$725.54
15050	Sprinkler & Standpipe	\$243,765.00	\$43,877.70	\$4,875.30	\$0.00	\$48,753.00	\$195,012.00	\$4,875.30
15060	Site Utilities	\$40,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$40,000.00	\$0.00
16010	Light & Power	\$669,638.00	\$23,437.33	\$3,348.19	\$0.00	\$26,785.52	\$642,852.48	\$1,678.55
16020	Emergency Generator System and ATS	\$130,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$130,000.00	\$0.00
16025	Fire Alarm & Communication Systems	\$39,992.00	\$0.00	\$0.00	\$0.00	\$0.00	\$39,992.00	\$0.00
16030	Electrical Fixtures	\$114,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$114,000.00	\$0.00
16050	Subtotal	\$10,872,167.00	\$2,076,198.35	\$509,398.54	\$0.00	\$2,585,596.89	\$8,536,670.11	\$753,599.65
20000	General Conditions	\$1,087,217.00	\$212,811.86	\$40,748.89	\$0.00	\$253,560.75	\$833,656.25	\$24,356.10
20010	Overhead	\$119,594.00	\$23,409.33	\$4,482.38	\$0.00	\$27,891.71	\$91,702.29	\$2,789.15
20020	Buildings Fee	\$603,949.00	\$118,216.98	\$22,656.01	\$0.00	\$140,872.99	\$463,076.01	\$14,083.31
20030	Insurance	\$317,073.00	\$62,053.87	\$11,883.90	\$0.00	\$73,947.77	\$243,125.23	\$7,394.78
20040	Subtotal	\$2,127,853.00	\$416,502.04	\$79,751.18	\$0.00	\$496,253.22	\$1,631,579.78	\$49,625.34
		\$13,000,000.00	\$2,442,700.39	\$389,149.72	\$0.00	\$2,831,850.11	\$9,968,149.89	\$303,184.99

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G703-1992

CONTINUATION SHEET

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO.: 00006
 APPLICATION DATE: 12/20/2010
 PERIOD TO: 12/20/2010
 ARCHITECT'S PROJECT NO.:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H BALANCE TO FINISH (C-G)	I RETAINAGE (IF VARIABLE) RATE
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD				
08010	Hotel Room Entry	\$59,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$59,000.00	\$0.00
08015	Wood Bathroom	\$31,600.00	\$0.00	\$0.00	\$0.00	\$0.00	\$31,600.00	\$0.00
08020	Access Doors	\$21,360.00	\$0.00	\$0.00	\$0.00	\$0.00	\$21,360.00	\$0.00
08025	Custom Steel Gate and Pivot Hinge	\$2,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,500.00	\$0.00
08030	Hardware	\$97,600.00	\$0.00	\$0.00	\$0.00	\$0.00	\$97,600.00	\$0.00
08035	Glass Wall Convenience Stairs	\$8,250.00	\$0.00	\$0.00	\$0.00	\$0.00	\$8,250.00	\$0.00
08045	Aluminum & Glass - Stairfront - 1st Floor	\$67,756.00	\$0.00	\$0.00	\$0.00	\$0.00	\$67,756.00	\$0.00
08050	Punctured Windows	\$195,690.00	\$0.00	\$0.00	\$0.00	\$0.00	\$195,690.00	\$0.00
08055	Window Wall	\$497,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$497,000.00	\$0.00
08070	Glass Balcony Railing	\$37,620.00	\$0.00	\$0.00	\$0.00	\$0.00	\$37,620.00	\$0.00
08075	Metal & Glass Canopy	\$60,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$60,000.00	\$0.00
08080	Mechanical Louvers	\$5,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5,000.00	\$0.00
09010	Framing & Drywall	\$722,212.00	\$0.00	\$0.00	\$0.00	\$0.00	\$722,212.00	\$0.00
09015	Ceilings & Soffits	\$110,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$110,000.00	\$0.00
09020	Exterior Wall Framing	\$275,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$275,000.00	\$0.00
09040	Ceramic Tile	\$124,800.00	\$0.00	\$0.00	\$0.00	\$0.00	\$124,800.00	\$0.00
09060	Painting - Priming only on Walls, K&D on Ceiling	\$102,900.00	\$0.00	\$0.00	\$0.00	\$0.00	\$102,900.00	\$0.00
10015	Exterior Sign - 12 ea. 12" Metal Letters	\$3,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$3,000.00	\$0.00
10020	Verdiles	\$24,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$24,500.00	\$0.00
10025	Glass Tub and Shower Enclosures	\$103,180.00	\$0.00	\$0.00	\$0.00	\$0.00	\$103,180.00	\$0.00
10040	Mirror	\$20,400.00	\$0.00	\$0.00	\$0.00	\$0.00	\$20,400.00	\$0.00
10045	Garage Door	\$10,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$10,000.00	\$0.00
10050	Bathroom Accessories	\$9,800.00	\$0.00	\$0.00	\$0.00	\$0.00	\$9,800.00	\$0.00
10055	Signage - Interior	\$5,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$5,000.00	\$0.00
10060	Rubbish Chute	\$55,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$55,000.00	\$0.00
10065	Stair - Basement to 1st Floor	\$20,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$20,000.00	\$0.00
10070	Vestibule Mat	\$2,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$2,500.00	\$0.00
10075	Canopy	\$50,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$50,000.00	\$0.00
14010	Elevators	\$495,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$495,000.00	\$0.00
14020	Cab Allowance - 3 Cabs @ \$15,000	\$50,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$50,000.00	\$0.00
14025	Hydraulic Lift	\$75,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$75,000.00	\$0.00
15010	HVAC-Ductwork & Miscellaneous HVAC Work	\$335,426.00	\$6,708.32	\$6,708.32	\$0.00	\$13,416.64	\$322,009.66	\$1,341.72
15015	Sawto Equipment Only (No other HVAC)	\$508,851.00	\$0.00	\$0.00	\$0.00	\$0.00	\$508,851.00	\$0.00

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CONTINUATION SHEET

AIA DOCUMENT G703

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO.: 00006
 APPLICATION DATE: 12/20/2010
 ARCHITECT'S PROJECT NO.:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		E THIS PERIOD	F MATERIALS STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H BALANCE TO FINISH (C-G)	I RETAINAGE (IF VARIABLE) RATE
			FROM PREVIOUS APPLICATION (D+E)	THIS PERIOD					
01010	Site Safety	\$175,000.00	\$54,250.00	\$7,000.00	\$0.00	\$61,250.00	35.00%	\$113,750.00	\$4,125.00
01020	Roof Protection	\$18,900.00	\$6,237.00	\$378.00	\$0.00	\$6,615.00	35.00%	\$12,285.00	\$661.50
01030	Horizontal Safety Netting	\$35,000.00	\$8,750.00	\$1,750.00	\$0.00	\$10,500.00	30.00%	\$24,500.00	\$1,050.00
01040	Men & Materials Hoist	\$275,000.00	\$79,750.00	\$11,000.00	\$0.00	\$90,750.00	33.00%	\$184,250.00	\$8,075.00
01050	De-watering-Rain water	\$5,000.00	\$3,750.00	\$750.00	\$0.00	\$4,500.00	90.00%	\$500.00	\$500.00
02010	Sidewalks	\$24,150.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$24,150.00	\$0.00
02015	Sidewalk Bridge & Set Back	\$25,000.00	\$10,750.00	\$750.00	\$0.00	\$11,500.00	46.00%	\$13,500.00	\$1,150.00
02025	Curbing	\$8,100.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$8,100.00	\$0.00
02030	Asphalt Street Repairs	\$2,600.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$2,600.00	\$0.00
02060	Landscaping	\$8,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$8,000.00	\$0.00
03015	Superstructure Concrete	\$2,487,000.00	\$1,745,874.00	\$425,277.00	\$0.00	\$2,171,151.00	87.30%	\$315,849.00	\$217,115.10
03030	Housekeeping Pads	\$2,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$2,000.00	\$0.00
03045	Concrete Saw Cut Concrete Topping	\$7,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$7,000.00	\$0.00
03050	Concrete Bench	\$800.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$800.00	\$0.00
04010	8" CMU Interior	\$25,212.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$25,212.00	\$0.00
04015	6" CMU Exterior	\$80,062.00	\$0.00	\$6,404.95	\$0.00	\$6,404.95	8.00%	\$73,657.04	\$640.50
04020	4" CMU	\$41,300.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$41,300.00	\$0.00
04030	Seafishing - 3 months	\$215,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$215,000.00	\$0.00
04060	Stucco	\$295,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$295,000.00	\$0.00
04065	Pavers	\$21,425.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$21,425.00	\$0.00
05010	Railings - Stairs	\$65,288.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$65,288.00	\$0.00
05015	Railings at Water Tank	\$7,980.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$7,980.00	\$0.00
05020	Flahar Post and Rails Convenience Stair	\$3,500.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$3,500.00	\$0.00
05025	Structural Steel and Dismantling	\$72,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$72,000.00	\$0.00
05030	Alford Stairs, Rails, and Ladder	\$12,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$12,000.00	\$0.00
05035	Meal Screen at Convenience Stair	\$17,700.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$17,700.00	\$0.00
06050	Window Sills & Aprons	\$5,880.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$5,880.00	\$0.00
06100	Rough Carpentry, OSHA Protection	\$37,500.00	\$9,000.00	\$0.00	\$0.00	\$11,250.00	30.00%	\$26,250.00	\$1,125.00
06150	Wood Grounds and Blocking	\$19,600.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$19,600.00	\$0.00
07030	Roofing and Flashing	\$145,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$145,000.00	\$0.00
07030	Roofing and Flashing	\$40,000.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$40,000.00	\$0.00
07045	Fire Stopping	\$25,312.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$25,312.00	\$0.00
08005	Expansion Joint Adjoining Roof & Walls	\$38,550.00	\$0.00	\$0.00	\$0.00	\$0.00	0	\$38,550.00	\$0.00

AIA DOCUMENT G703 - APPLICATION AND CERTIFICATE FOR PAYMENT - 1992 EDITION - AIA® ©1992 - THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-4392 - WARNING: Unauthorized photocopying violates U.S. copyright laws and will subject the violator to legal prosecution. This document has been reproduced electronically with the permission of The American Institute of Architects under License #7003 to Phoenix Systems, Inc. Reproduction of this document without proper credit attribution is not permitted. Contact The American Institute of Architects to verify the current version of this document and license status.

RECEIVED
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2011 JAN 25 P 4:17
CAL. NO.

UNCONDITIONAL PARTIAL WAIVER OF LIEN

STATE OF New York
COUNTY OF New York)

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has been employed by DAB Group LLC
to furnish labor and materials for premises known as

139-141 Orchard St, New York, NY of which DAB Group LLC is the owner.

The undersigned, for and in consideration of One Million Eight Hundred Ninety-Eight Thousand
Four Hundred Dollars and No Cents
(\$1,898,400.00) for payments through requisition # 5,

and other good and valuable considerations representing the amount paid to date for the total value
of work completed and installed, not including retainages, the receipt whereof is hereby
acknowledged, does hereby waive and release any and all lien or claim of, or right to lien, under the
statutes of the State of New York, relating to mechanic's liens, with respect to and on said above
described premises, and the improvements thereon, and on the material, fixtures, apparatus or
machinery, furnished and on the monies, funds or other considerations due or to become due
from the owner, on account of labor, services, material, fixtures, apparatus or machinery, furnished
to this date by the undersigned for the above described premises.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be signed by its officer
thereunto duly authorized and its corporate seal to be affixed this 30th day of December, 2010.

COMPANY: Flintlock Construction Services LLC

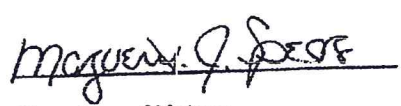


Signature: Andrew Weiss

Title: Managing Member

STATE OF: New York

COUNTY OF: Westchester



Signature of Notary



PARTIAL

December 22, 2010

5

**WAIVER OF LIEN
MATERIAL OR LABOR**

TO ALL WHOM IT MAY CONCERN:

WHEREAS THE UNDERSIGNED Casino Development Group, Inc HAS BEEN EMPLOYED BY FLINTLOCK CONSTRUCTION SERVICES, LLC to FURNISH LABOR AND/OR MATERIALS FOR PREMISES KNOWN as 139 Orchard Street Block 415 Lot 56.

NOW, THEREFORE, KNOW YE, THAT Casino Development Group, Inc IN CONSIDERATION OF THE SUM OF \$1,298,314.06 AND OTHER GOOD AND VALUABLE CONSIDERATIONS, THE RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED, DO HEREBY WAIVE AND RELEASE ANY AND ALL LIEN, OR CLAIM OR RIGHT TO LIEN ON SAID ABOVE DESCRIBED BUILDING AND PREMISES UNDER THE STATUTES OF THE STATE OF NEW YORK RELATING TO MECHANICS LIENS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED OR WHICH MAY BE FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF THE SAID FIRM OR INDIVIDUAL THEREIN NAMED FOR SAID BUILDING OR PREMISES, *FOR WORK AND DEPOSITS THROUGH December 6, 2010*

BY: 
Casino Development Group, Inc

SUBSCRIBED AND SWORN TO ME THIS
22- DAY OF December, 2010

STATE OF New York
COUNTY OF


NOTARY PUBLIC

MY COMMISSION EXPIRES:

4

December 22, 2010

PARTIAL

**WAIVER OF LIEN
MATERIAL OR LABOR**

TO ALL WHOM IT MAY CONCERN

WHEREAS THE UNDERSIGNED FJF Electric HAS BEEN EMPLOYED BY FLINTLOCK CONSTRUCTION SERVICES LLC to FURNISH LABOR AND/OR MATERIALS FOR PREMISES KNOWN as 139 Orchard Street Block 415 Lot 56.

NOW, THEREFORE, KNOW YE, THAT FJF Electric IN CONSIDERATION OF THE SUM OF \$37,000.00 AND OTHER GOOD AND VALUABLE CONSIDERATIONS, THE RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED, DO HEREBY WAIVE AND RELEASE ANY AND ALL LIEN, OR CLAIM OR RIGHT TO LIEN ON SAID ABOVE DESCRIBED BUILDING AND PREMISES UNDER THE STATUTES OF THE STATE OF NEW YORK RELATING TO MECHANICS LIENS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED OR WHICH MAY BE FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF THE SAID FIRM OR INDIVIDUAL THEREIN NAMED FOR SAID BUILDING OR PREMISES, FOR WORK AND DEPOSITS THROUGH December 6, 2010

BY: 
FJF Electric

SUBSCRIBED AND SWORN TO ME THIS
22nd DAY OF December, 2010

STATE OF New York
COUNTY OF



NOTARY PUBLIC

MY COMMISSION EXPIRES: 4-4-2014

EMMA MARIE O'NEILL
Notary Public, State of New York
No. 0104910238
Qualified in Nassau County
Commission Expires April 4, 2014

3

PARTIAL

December 22, 2010

WAIVER OF LIEN
MATERIAL OR LABOR

TO ALL WHOM IT MAY CONCERN:

WHEREAS THE UNDERSIGNED Rockledge Scaffold Corp HAS BEEN EMPLOYED BY FLINTLOCK CONSTRUCTION SERVICES, LLC to FURNISH LABOR AND/OR MATERIALS FOR PREMISES KNOWN as 139 Orchard Street Block 415 Lot 56.

NOW, THEREFORE, KNOW YE, THAT Rockledge Scaffold Corp, Inc IN CONSIDERATION OF THE SUM OF \$98,599.24 AND OTHER GOOD AND VALUABLE CONSIDERATIONS, THE RECEIPT WHEREOF IS HEREBY ACKNOWLEDGED, DO HEREBY WAIVE AND RELEASE ANY AND ALL LIEN, OR CLAIM OR RIGHT TO LIEN ON SAID ABOVE DESCRIBED BUILDING AND PREMISES UNDER THE STATUTES OF THE STATE OF NEW YORK RELATING TO MECHANICS LIENS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED OR WHICH MAY BE FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF THE SAID FIRM OR INDIVIDUAL THEREIN NAMED FOR SAID BUILDING OR PREMISES, FOR WORK AND DEPOSITS THROUGH December 6, 2010

BY: Teremiah Hamilton
Rockledge Scaffold Corp,

SUBSCRIBED AND SWORN TO ME THIS
22nd DAY OF December, 2010

STATE OF New York
COUNTY OF New York

Bridget M. Carroll
NOTARY PUBLIC

MY COMMISSION EXPIRES: 11/04/2014

BRIDGET M. CARROLL
Notary Public - State of New York
No. 01-CA6068449
Qualified in New York County
My Commission Expires Nov. 04, 2010
2014



6

PARTIAL

December 2, 2010

WAIVER OF LIEN
MATERIAL OR LABOR

TO ALL WHOM IT MAY CONCERN:

WHEREAS THE UNDERSIGNED JJK Mechanical, Inc HAS BEEN EMPLOYED BY
FLINTLOC CONSTRUCTION SERVICES LLC to FURNISH LABOR AND/OR
MATERIALS FOR PREMISES KNOWN as 139 Orchard Street Block 4/5 Lot 56.

NOW, THE FORE, KNOW YE, THAT JJK Mechanical Inc IN CONSIDERATION OF
THE SUM OF \$82,200.00 AND OTHER GOOD AND VALUABLE CONSIDERATIONS,
THE RECEIPT WHEREOF THEY REBY ACKNOWLEDGED, DO HEREBY WAIVE AND
RELEASE ANY AND ALL LIEN, OR CLAIM OR RIGHT TO LIEN ON SAID ABOVE
DESCRIBED BUILDING AND PREMISES UNDER THE STATUTES OF THE STATE OF
NEW YORK RELATING TO MECHANICS LIENS, ON ACCOUNT OF LABOR OR
MATERIALS, OR BOTH, FURNISHED OR WHICH MAY BE FURNISHED BY THE
UNDERSIGNED TO OR ON ACCOUNT OF THE SAID FIRM OR INDIVIDUAL THEREIN
NAMED FOR SAID BUILDING OR PREMISES, FOR WORK AND DEPOSITS
THROUGH December 6, 2010

BY:

JJK Mechanical, Inc

SUBSCRIBED AND SWORN TO ME THIS
DAY OF 2010

PLEASE SEND IT

STATE OF New York
COUNTY OF

BY FEDEX

NOTARY PUBLIC

MY COMMISSION EXPIRES:

TAX

8

SERRES, VISIONE & RICE, INC
108 GREENWICH STREET * 212-349-3500 * New York, NY 10006

-----INVOICE-----

FLINTLOCK CONSTRUCTION SERVICES, LLC &
DAB GROUP, LLC
585 N. BARRY AVENUE
MAMARONECK, NY 10543

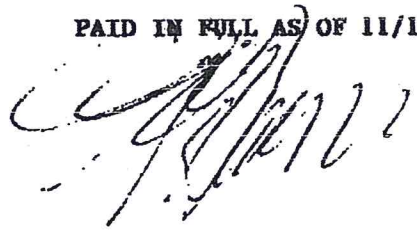
Invoice Date 11/09/10
Invoice No. 54507
Bill-To Code FLIN3
Client Code FLIN3
Inv Order No. 1*37694

Named Insured: FLINTLOCK CONSTRUCTION SERVICES, LLC &

Amount Remitted: \$

Please return this portion with your payment

Make checks payable to: SERRES, VISIONE & RICE, INC

Effective Date	Policy Period	Coverage Description	Transaction Amount
11/03/10	11/03/10 to 05/03/12	VALIANT INSURANCE COMPANY Policy No. VCGL042500 *New - General Liability	110,500.00
		Invoice Number: 54507 Amount Due:	110,500.00
PAID IN FULL AS OF 11/10/10 			

*Premiums Due and Payable on Effective Date

Disbursement Summary Sheet

Progress Report #11, Flintlock AFP#5

Allen Street Hotel
139 Orchard Street, New York, NY

Original Loan Amount: \$15,249,467.63

A Date/ NO.	B Application for Payment	C Work Completed this period	D		E Current Payment Due Contractor	G Revised Contract Sum to Date	H Amount above Loan	I Delta	J Amount for Funding after loan balancing (C-H)	K Retainage 10%	L Amount for Funding Current Payment Due
			10% Retainage	Amount above Loan							
1	Demolition (Cavalier) PR1 AFP1	\$230,000.00	\$23,000.00	\$207,000.00	\$0.00	\$0.00	\$0.00	\$230,000.00	\$23,000.00	\$207,000.00	
10/10/08	Demolition (Casino) PR2 AFP3,4,5	\$37,730.00	\$3,773.00	\$33,957.00	\$0.00	\$0.00	\$0.00	\$37,730.00	\$3,773.00	\$33,957.00	
10/10/08	Cava Construction PR2 AFP1 9/15/08	\$145,650.00	\$14,565.00	\$131,085.00	\$0.00	\$0.00	\$0.00	\$145,650.00	\$14,565.00	\$131,085.00	
11/11/08	Cava Construction PR3 AFP2 10/24/08	\$420,614.30	\$42,061.43	\$378,552.87	\$15,345,700.00	\$378,072.37	\$378,072.37	\$42,541.93	\$4,254.19	\$38,287.74	
12/6/08	Cava Construction PR4 AFP3 11/20/08	\$388,450.00	\$38,845.00	\$349,605.00	\$15,507,646.00	\$378,072.37	\$378,072.37	\$388,450.00	\$38,845.00	\$349,605.00	
12/15/08	Cava Construction PR5 AFP4 12/08/08	\$397,361.00	\$39,736.10	\$357,624.90	\$15,492,498.00	\$540,018.37	\$161,946.00	\$235,415.00	\$23,541.50	\$211,873.50	
4/6/09	Cava Construction PR6 AFP5 4/6/09	\$442,586.70	\$44,258.67	\$398,328.03	\$15,492,498.00	\$524,870.37	(\$15,148.00)	\$457,734.70	\$45,773.47	\$411,961.23	
9/3/10	Flintlock PR7 AFP1 8/13/10	\$402,820.31	\$40,282.03	\$362,538.28	\$13,000,000.00	\$0.00	\$0.00	\$402,820.31	\$40,282.03	\$362,538.28	
10/14/10	Flintlock PR8, AFP2 10/14/10	\$236,044.53	\$23,604.45	\$212,440.08	\$13,000,000.00	\$0.00	\$0.00	\$236,044.53	\$23,604.45	\$212,440.08	
11/1/2010	Flintlock PR9, AFP3 10/30/10	\$543,367.02	\$54,336.70	\$489,030.32	\$13,000,000.00	\$0.00	\$0.00	\$543,367.02	\$54,336.70	\$489,030.32	
11/22/2010	Flintlock PR10, AFP4 11/19/10	\$680,588.55	\$68,058.86	\$612,529.70	\$13,000,000.00	\$0.00	\$0.00	\$680,588.55	\$68,058.86	\$612,529.70	
		\$579,879.98	\$57,988.00	\$521,891.98	\$13,000,000.00	\$0.00	\$0.00	\$579,879.98	\$57,988.00	\$521,891.98	
	Total Work Completed to Date	\$4,505,092.39					Total Funding to Date:	\$3,980,222.02	\$398,022.20	\$3,582,199.82	
	Demolition Work	\$267,730.00									
	Cava Construction Work Completed To Date	\$1,794,662.00	\$179,466.20	\$1,615,195.80							
	Flintlock Work Completed to Date	\$2,442,700.39	\$244,270.04	\$2,198,430.35							
	Contractors Total Retainage to Date		\$450,509.24				Total Delta:	\$0.00			
	Contractor(s) Paid to Date			\$4,054,583.15							

Additional info added to sheet for clarification/tracking 12/18/08

Amt above Loan = \$281,840.00 (Demo) + Revised Contract Amount - \$15,249,467.63 (Loan Amount)
281,840

Total Completed & Stored to Date:
Total Funded to Date: \$4,505,092.39
\$3,582,199.82
Estimated Level of Construction Completion:
Flintlock Construction Completed and Stored to Date: \$2,442,700.39
Flintlock Funded to Date: \$2,198,430.35
Flintlock Construction Completion Percentage: 18.8%

29.08% Level of expenditure
23.49% Level of funding
29%

\$14,537,521.63 Amount of loan committed
(Previously funded + \$13,000,000.00 (Flintlock contract)
\$711,946.00 Available hard cost amount for Bank Contingency

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01/13/11

Accrual Basis

DAB GROUP LLC
Register QuickReport
 May 1, 2010 through January 13, 2011

RECEIVED
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 CALLED

Type	Date	Num	Memo	Account	Split	Amount
Flintlock Construction Services LLC						
Check	9/20/2010	3150		1010 - HSBC	1500 Land	-330,000.00
Check	11/1/2010	3157		1010 - HSBC	1500 Land	-90,000.00
Check	11/10/2010	3168		1010 - HSBC	X 1500 Land	-450,000.00
Check	12/6/2010	3174		1010 - HSBC	X 1500 Land	-576,000.00
Check	12/20/2010	3196		1010 - HSBC	X 1500 Land	-452,400.00
Check	1/13/2011	3148	Paid Requisit...	1010 - HSBC	1500 Land	-300,030.45
Total Flintlock Construction Services LLC						-2,198,430.45
TOTAL						-2,198,430.45

DAB GROUP LLC
85 W. HAWTHORNE AVE.
VALLEY STREAM, NY 11580

HSBC BANK
1-866-7210

12-20-10

003196

PAY TO THE
ORDER OF

Flintlock Construction Services LLC

\$ 452,400.00

DOLLARS

Four Hundred Fifty Two Thousand ⁴⁰⁰/₁₀₀

Memo Req # 5

AUTHORIZED SIGNATURE

⑆001196⑆ ⑆021001088⑆ 010779035⑆

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

DAB GROUP LLC

003196

W

DAB GROUP LLC

003196

DAB GROUP LLC
85 W. HAWTHORNE AVE.
VALLEY STREAM, NY 11580

HSBC BANK
1-800-210

9/30/10

TO THE ORDER OF FLITLOCK CONSTRUCTION SERVICES LLC \$330,000 DOLLARS

THREE HUNDRED THIRTY THOUSAND

AUTHORIZED SIGNATURE

003150 0210010880 010779035

SECURITY FEATURES INCLUDED. DETAILS ON BACK

DAB GROUP LLC

00315

DAB GROUP LLC

00315

DAB GROUP LLC
 25 W. HARTFORD AVE.
 WILLY BRIDGE, NY 11090

9/20/10 003150
 PAY TO THE ORDER OF
 FLITLOCK CONSTRUCTION SERVICES LLC \$330,000.00
 THREE HUNDRED THIRTY THOUSAND
 NOLO VOID NOL

#001150# 0021001088# 010779015#

Paid: 09/21 Amt: \$330,000.00 Check #: 3150

DAB GROUP LLC
 25 W. HARTFORD AVE.
 WILLY BRIDGE, NY 11090

11/03 003157
 PAY TO THE ORDER OF
 Flitlock Construction LLC \$90,000.00
 Ninety Thousand & No/100
 No. 151-101 Onland St.

#001157# 0021001088# 010779015#

Paid: 11/03 Amt: \$90,000.00 Check #: 3157

DAB GROUP LLC
 25 W. HARTFORD AVE.
 WILLY BRIDGE, NY 11090

11/12 003168
 PAY TO THE ORDER OF
 Flitlock Construction Services L.L.C. \$450,000.00
 Four Hundred Fifty Thousand & No/100
 No. Republic #3

#001168# 0021001088# 010779015#

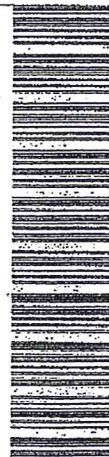
Paid: 11/12 Amt: \$450,000.00 Check #: 3168

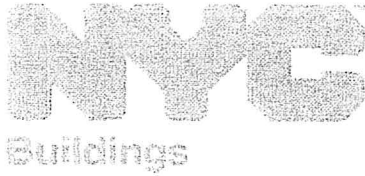
DAB GROUP LLC
 25 W. HARTFORD AVE.
 WILLY BRIDGE, NY 11090

12/07 003174
 PAY TO THE ORDER OF
 Flitlock Construction \$576,000.00
 Five Hundred Seventy Six Thousand & No/100
 No. 151-101 Onland St.

#003174# 0021001088# 010779015#

Paid: 12/07 Amt: \$576,000.00 Check #: 3174





[CLICK HERE TO SIGN UP FOR BUILDINGS NEWS](#)

NYC Department of Buildings

Overview for Complaint #:1242853 = RESOLVED

Complaint at: 139 ORCHARD STREET BIN: 1005500 Borough: MANHATTAN ZIP: 10002

Re: CLR STS CONSTRUCTION CO IS POURING FOUNDATION AND THERE IS A STOP WORK ORDER

Category Code: 86 WORK CONTRARY TO STOP WORK ORDER

DOB District: N/A

Special District:

Assigned To: EMERGENCY RESPONSE TEAM

Priority: A

Received: 11/22/2008 14:34 Block: 415 Lot: 67 Community Board: 103

Owner: D.A.B. GROUP

Last Inspection: 11/22/2008 -- BY BADGE # 1807 CIRILLO MARIO ERT

Disposition: 11/25/2008 -- I2 - NO VIOLATION WARRANTED FOR COMPLAINT AT TIME OF INSPECTION

Disposition Entered By: ZSA 11/25/2008 08:00:42

Job Number:

Comments: NO CONSTRUCTION ACTIVITY

Complaint Disposition History

Disposition Date	Code	Disposition	Inspection By	Date
------------------	------	-------------	---------------	------

If you have any questions please review these [Frequently Asked Questions](#), the [Glossary](#), or call the 311 Citizen Service Center by dialing 311 or (212) NEW YORK outside of New York City.

475 Park Avenue South
New York, New York 10016
www.goldmanharris.com

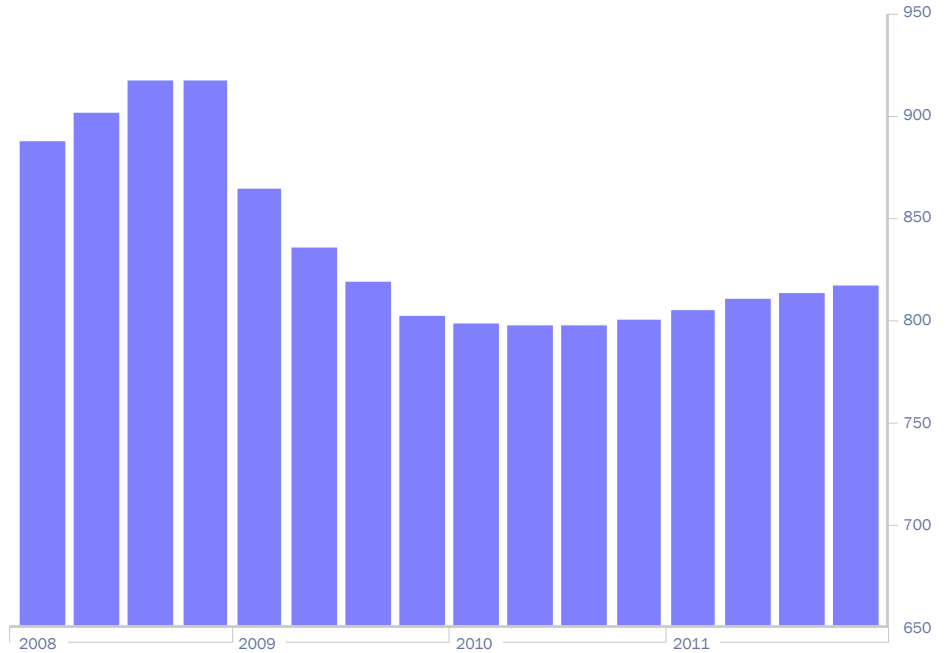
Turner Building Cost Index	
Time Period	Index Value
2011 (Fourth Quarter)	818
2015 (Second Quarter)	938
Net Increase	14.67%

2011 Statement in Support of Expenditures (as included in 220-10-BZY)		
Item	2011	2015 (TBCI adjusted)
Foundations	\$ 1,794,661.00	
Superstructure	\$ 3,031,850.00	
Total Spent (to 7th Floor)	\$ 4,826,511.00	
Costs (Projected to 9th floor on Original Submittal)	\$ 600,000.00	\$ 688,019.56
Total Projected Costs	\$ 5,426,511.00	\$ 5,514,530.56
Total Projected Costs to Complete Construction (As cited in 220-10-BZY)	\$15,249,467.00	\$17,486,563.81
Adjusted Projected Cost of Complete Construction (with Change Orders included, and as cited in correspondence submitted in conjunction with 220-10-BZY)	\$15,345,700.30	\$17,596,914.53

Note: The Turner Building Cost Index tracks the construction costs of non-residential buildings in the United States. Index Sheets are provided as part of this attachment.

“Commodity and material prices, although stable, are putting slight upward pressure on construction prices. There are some indications of material price increases in the first part of 2012. However, price increases predicted by producers have not materialized.”

Karl F. Almstead
Vice President



Martin Luther King Jr. National Memorial
Washington, DC

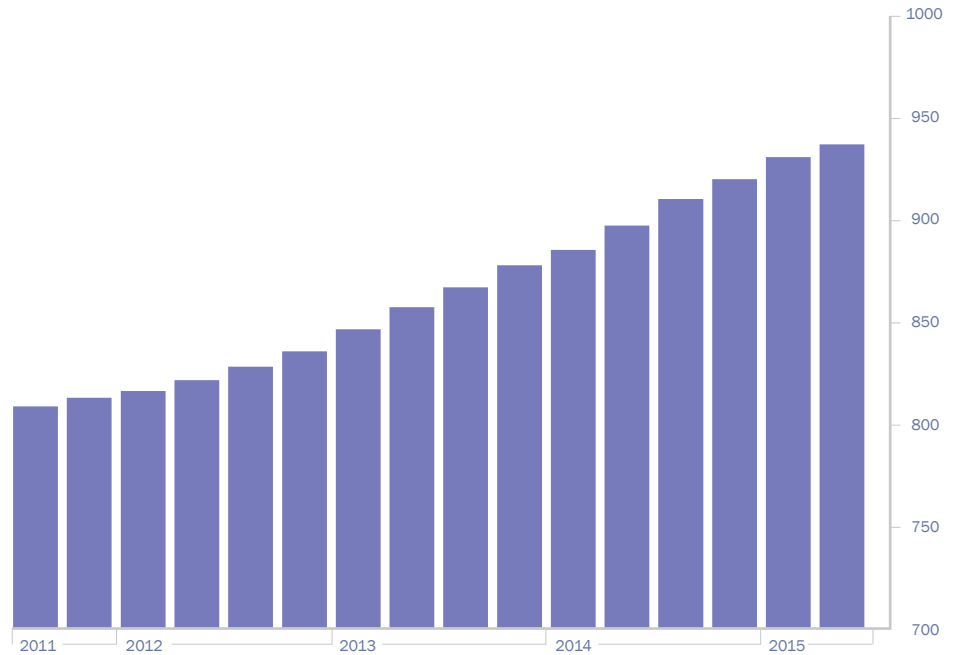
Quarter	Index	Δ%
4th Quarter 2011	818	0.49
3rd Quarter 2011	814	0.37
2nd Quarter 2011	811	0.62
1st Quarter 2011	806	0.62

Year	Average Index	Δ%
2011	812	1.6
2010	799	-4.0
2009	832	-8.4
2008	908	6.3
2007	854	7.7
2006	793	10.6
2005	717	9.5
2004	655	5.4
2003	621	0.3
2002	619	1.0
2001	613	3.0
2000	595	4.4
1999	570	3.8

Turner’s Building Cost Index is determined by the following factors considered on a nationwide basis: labor rates and productivity, material prices and the competitive condition of the marketplace.

“While the volume of work and labor availability varies across individual geographic construction markets, the steady, high level of construction activity in specific urban areas has resulted in domestic construction cost increases.”

Attilio Rivetti
Vice President



The Whitney Museum of American Art
New York, New York

Quarter	Index	Δ%
2nd Quarter 2015	938	1.19
1st Quarter 2015	927	1.09
4th Quarter 2014	917	0.99
3rd Quarter 2014	908	1.34

Year	Average Index	Δ%
2014	902	4.4
2013	864	4.1
2012	830	2.1
2011	812	1.6
2010	799	-4.0
2009	832	-8.4
2008	908	6.3
2007	854	7.7
2006	793	10.6
2005	717	9.5
2004	655	5.4
2003	621	0.3
2002	619	1.0


The Turner Building Cost Index is determined by the following factors considered on a nationwide basis: labor rates and productivity, material prices and the competitive condition of the marketplace.

ARCHITECT'S AFFIDAVIT IN 58-15-A

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

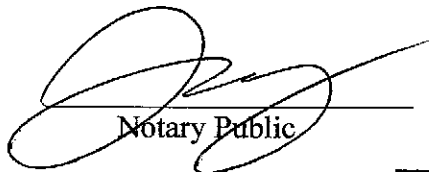
JEFFREY COLE, being sworn, states:

1. I am a registered architect licensed in the State of New York and am the principal of Jeffrey Cole Architects. My office is located at 258 East 3rd Street, New York, NY 10009.
2. I am submitting this affidavit to the New York City Board of Standards and Appeals at the request of the Applicant in the captioned matter.
3. I am familiar with the property (the "Property") known as 139-141 Orchard Street/77-81 Rivington Street in Manhattan (Block 415, Lots 66 and 67).
4. The Property is improved with a partially built, 16-story transient hotel with a completed superstructure, some mechanical risers installed, and some framing completed. The façade has not been constructed. I am informed that construction ceased in 2011.
5. In my professional opinion, the condition of the construction work completed to date has not been compromised and can be utilized to complete the construction of the hotel.



Jeffrey Cole

Sworn to before me this
23 day of July, 2015.



Notary Public

JAMES E YETTER
Notary Public, State of New York
No. 01YE6324839
Qualified in New York County
Commission Expires May 18, 2019

58-015-A

Response to Notice of Comments

1. *Provide the status of any and all violations and your efforts to cure them.*

Curing of all active violations will be undertaken following the sale of the property. The Subject Property has an active stop work order along with several open violations. DOB BIS print-outs are attached as part of this revised application. See Exhibit "H".

2. *Revise the Statement of Facts to provide more detail as to how you meet threshold under the common law.*

The Statement of Facts and Findings has been revised.

3. *Provide a copy of the Analysis from GKA and the backup they used to support those costs*

Arcade Orchard Street LLC is no longer the contract vendee in this application and GKA's estimates on behalf of Arcade have been removed from the Statement of Facts and Findings.

4. *Please provide information as to the financing in place to proceed with the project.*

The project is to be sold at auction after completion of these BSA proceedings.

5. *Please confirm that there are no other changes in applicable law (e.g., building code) that would result in a lapse of the permit.*

Permits have been kept current throughout the extension. There are no changes in the law, aside from the zoning amendment, that would create a lapse of the permit.

6. *Please discuss how compliance with the current building code would affect your site.*

Compliance with the 2014 Code would be likely required if the building is subject to the C4-4A zoning. Apart from the reduction in FAR and height under the C4-4A zoning, compliance with the 2014 Building Code would further reduce the total number of proposed hotel rooms by requiring two separate stairs rather than a single pair of "scissor stairs." The stairs would have to be located on opposite sides of the existing floor plate at a distance (between the stair entryways) no less than 1/3 of the diameter of the floor plate. The amount of corridor space would likely remain the same, but the typical floor plate would gain depth rather than frontage along the walls that can provide light and air to the hotel rooms (as required by the Multiple Dwelling Law).

7. *Provide a construction table comparing items of work performed and the amount completed to the total amount of work necessary to complete the scope of work.*

See Revised Statement of Facts and Findings (Exhibits J and K).

8. *Provide an affidavit from the architect or engineer that states the condition of the construction work done to date has not been compromised and can be used currently.*

An affidavit by Jeffrey Cole, a registered architect, is attached to the Revised Statement of Facts and Findings stating that the condition of the construction work done to date has not been compromised and can be used currently.

9. *Provide a chart and a narrative which identifies the following costs associated with each component of the development: (1) projected for completion; (2) contracted for; and (3) actually expended as of the date of the rezoning. Itemize each hard and soft cost and provide totals for each column.*

See Revised Statement of Facts and Findings (Exhibits J and K).

10. *Provide copies of all canceled checks.*

Copies of cancelled checks were previously provided to the Board in a prior extension (Cal. No. 311-08-BZY) and are attached herewith as part of the "Statement in Support of Expenditures," which also includes contract costs and applications for payment on behalf of the contractor.

11. *Provide a detailed discussion with an associated chart showing what would have been built under the previous zoning, and what can be built under the present zoning. This discussion should include the maximum floor area ratio, square footage, unit count, built form (detached, semi-detached, or attached, and height if affected), and the effect of front and side yard regulations, etc. if there was change. This discussion should also incorporate the costs expended since the initial building permits were obtained, with detail about cost for items that cannot be reused under the new zoning, which will therefore be lost.*

This chart has been provided as part of the Revised Statement of Facts and Findings (Exhibit C).



Board of Standards and Appeals

250 Broadway, 29th Floor
New York, NY 10007
212-386-0009 - Phone
646-500-6271 - Fax
www.nyc.gov/bsa

AFFIDAVIT OF OWNERSHIP AND AUTHORIZATION

Affidavit of Ownership

Zvi Benjamin Zhavian, being duly sworn, deposes and says that (s)he resides at _____, in the City of _____, in the County of _____, in the State of _____; that 77-79 Rivington Street Realty LLC is the owner in fee of all that certain lot, piece or parcel of land located in the Borough of Manhattan, in the City of New York and known and designated as Block 415, Lot(s) 61 and 62, Street and House Number 77-79 Rivington Street; and that the statement of facts in the annexed application are true.

Check one of the following conditions:

- Sole property owner of zoning lot
- Cooperative Building
- Condominium Building
- Zoning lot contains more than one tax lot and property owner

Owner's Authorization

The owner identified above hereby authorizes GoldmanHarris LLC to make the annexed application in her/his behalf.

Signature of Owner _____
Print Name BEN ZHAVIAN
Print Title OWNER

Sworn to pursuant to attached authority this 24th day

Of July, 2015

ARTHUR A HIRSCHLER
Notary Public, State of New York
No. 02HI4971814
Qualified in Nassau County

Revised March 8, 2012

My Commission Expires Sept 10, 2018



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AFFIDAVIT OF OWNERSHIP AND AUTHORIZATION

Affidavit of Ownership

Zvi Benjamin Zhavian, being duly sworn, deposes and says that (s)he resides at _____, in the City of _____, in the County of _____, in the State of _____; that DAB Group LLC is the owner in fee of all that certain lot, piece or parcel of land located in the Borough of Manhattan, in the City of New York and known and designated as Block 415, Lot(s) 66 and 67, Street and House Number 139-141 Orchard Street; and that the statement of facts in the annexed application are true.

Check one of the following conditions:

- Sole property owner of zoning lot
- Cooperative Building
- Condominium Building
- Zoning lot contains more than one tax lot and property owner

Owner's Authorization

The owner identified above hereby authorizes GoldmanHarris LLC to make the annexed application in her/his behalf.

Signature of Owner _____
Print Name BEN ZHAVIAN
Print Title OWNER

Sworn to before me ^{pursuant to attached authority} this 24th day of July 2015

Of July 2, 2015

[Signature]

Revised March 8, 2012
ARTHUR A HIRSCHLER
Notary Public, State of New York
No. 02H4971914
Qualified in Nassau County
My Commission Expires Sept. 10, 2015