

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN THE NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND THE NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), executed this 22nd day of December, 2011, between the NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION (“DEP”) with its main offices at 59-17 Junction Boulevard, Flushing, New York, 11373, and the NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION (“DPR”), with its main office at The Arsenal, Central Park, New York, New York, 10065.

WHEREAS, DPR has jurisdiction over Fort Washington Park, which is located between the Hudson River, the westerly end side of Dyckman Street and Staff Street in the Borough of Manhattan, Block 2178 Lot 530 (hereinafter referred to as the “Park”), which includes an existing 5’0” x 7’0” and an existing 36” storm sewer located below ground (hereinafter referred to as the “Sewers”) both operated by DEP within an access corridor (the Access Corridor”), as further described in **Exhibit ‘A’** attached hereto and made a part hereof; and

WHEREAS, it is understood and agreed that should the City of New York through the DPR convey, transfer or otherwise dispose of the property, an easement shall be retained to the benefit of DEP regarding the Access Corridor. Such easement shall be described and identified in the same manner in the attached **Exhibit ‘A’**; and

WHEREAS, there is a current project, inter alia, to construct a restaurant/marina in proximity of the Sewers, including but not limited to planting of grass, shrubs and paving in proximity of the Access Corridor, as shown on **Exhibit ‘B’** (hereinafter generally referred to as the “Project”); and

WHEREAS, in conjunction with the Project, DEP has requested that DPR shall agree to provide access to DEP to repair, maintain, operate, inspect and renew the Sewers through the Park in accordance with the terms and conditions as herein described; and

NOW THEREFORE, it is agreed by and between the parties as follows:

1. This MOU shall commence as of the date of the latest signature below.
2. DPR hereby grants to the DEP permission and authority repair, maintain, operate, inspect and renew the Sewers located within the Access Corridor as further described in Exhibit A as follows:
 - a. **Permits:** Where non-emergency maintenance, extensive repair or replacement work within the Access Corridor is likely to disturb the surface of said Access Corridor, DEP will acquire a standard DPR construction permit. DEP, its contractors, employees or agents are authorized, upon reasonable prior notification, to enter upon such real property with labor, material and equipment

to effectuate the above described purposes pursuant to the terms of a standard DPR construction permit, which the DPR will issue in a reasonable time prior to the DEP commencing work. No DPR construction permit will be required for routine maintenance or emergency work within the Access Corridor. However, in case of emergency work, DEP will notify DPR as soon as reasonably possible after the emergency work has commenced.

- b. **Routine Maintenance:** In the event that DEP needs access to the Sewers through the Access Corridor for minimal routine maintenance which is not likely to disturb the surface of the Access Corridor, DEP, its contractors, employees or agents are authorized, upon reasonable prior notification, to enter upon such real property with labor, material and equipment to effectuate the above described purposes.
3. In the event that any of DEP's repair or replacement work causes damage to the Access Corridor or the Park, DEP will repair the damage and restore the affected area to its prior condition.
 4. DPR agrees that vehicular access shall be available at all times to the subject real property in order to allow DEP to perform the necessary maintenance work in the Access Corridor. In addition, DPR agrees that no new permanent structure of any type shall be erected upon the Access Corridor besides such structures which have been agreed upon by DEP and DPR as part of the Project, unless otherwise agreed to by the parties.
 5. DPR agrees that if any construction is undertaken by DPR or its contractor in the vicinity of the Sewers, the Sewers shall be reasonably protected and no materials shall be stored that cannot be promptly removed from the area, in the event of an emergency.
 6. Neither party may assign any of its rights pursuant to this MOU without the prior written approval of the other party.
 7. Any notices to be sent pursuant to this MOU shall be sent certified mail, return receipt requested to the following addresses or to such other address as may be specified in writing:

a. If to DPR:

New York City Department of Parks and Recreation
Olmstead
117-02 Roosevelt Avenue
Flushing, NY 11368
Attn: Interagency Coordinator

With a copy to:

New York City Department of Parks and Recreation
The Arsenal
830 Fifth Avenue, Room 314
New York, NY 10065

Attn: General Counsel

b. If to DEP:

New York City Department of Environmental Protection
Bureau of Water and Sewer Operations, 3rd Floor
96-05 Horace Harding Expressway
Corona, New York 11373
Attn: Deputy Commissioner

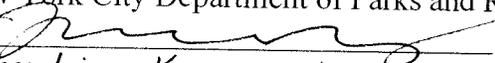
With a copy to:

New York City Department of Environmental Protection
Bureau of Legal Affairs
59-17 Junction Boulevard, 19th Floor
Flushing, NY 11373
Attn: General Counsel

8. This MOU may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed the original, but all such counterparts together shall constitute but one and the same instrument.
9. This MOU may not be modified or amended except by written agreements executed by each party hereto.
10. This MOU and the attachments hereto contain all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this MOU shall be deemed to bind any of the parties hereto or vary any of the terms and conditions contained herein.

In Witness Whereof, the parties have executed this MOU as of the latest date of the signatures appearing below.

New York City Department of Parks and Recreation

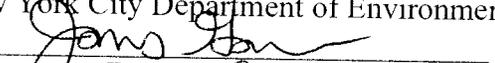
By: 

Name: Liam Kavanagh

Title: First Deputy Commissioner

Date: December 8, 2011

New York City Department of Environmental Protection

By: 

Name: JAMES GARIN

Title: DIRECTOR OF ENGINEERING

Date: DECEMBER 22, 2011

EXHIBIT A
SH. 1 OF 2

There follows a suggested technical description of a proposed sewer corridor on the northerly side of lot 530 in block 2178 in Manhattan, NYC as shown on Map prepared by Wohl & O'Mara, LLP

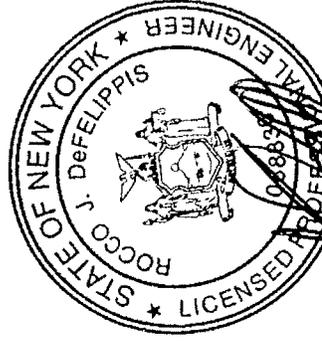
BEGINNING at a point on the most westerly terminus side of Dyckman Street distant 74.0 feet northerly, as measured along said most westerly terminus side of Dyckman Street, from the point formed by the intersection of the southerly side of Dyckman Street with the most westerly terminus side of Dyckman Street.

1. Thence westerly forming an exterior angle of 96.5 degrees 219.8 feet to a point on the westerly lot line of lot 530.
2. Thence northerly along said westerly line of lot 530 forming an exterior angle of 261.1 degrees 42.6 feet to a point on the northerly line of lot 530.
3. Thence easterly along said northerly line of lot 530 forming an exterior angle of 280.0 degrees 207.09 feet to a point.
4. Thence continuing along said northerly line of lot 530 forming an exterior angle of 196.4 degrees 16.22 feet to a point on said most westerly terminus side of Dyckman Street.
5. Thence southerly along said most westerly terminus side of Dyckman Street 33.3 feet to the point or place of beginning.

EXHIBIT 'A'

SH. 2 OF 2

BOROUGH OF MANHATTAN
CITY OF NEW YORK



WOHL & O'MARA, L.L.P.
CIVIL ENGINEERS & LAND SURVEYORS
544 VANDERBILT AVENUE
STATEN ISLAND, NEW YORK 10304
(718) 448-7456

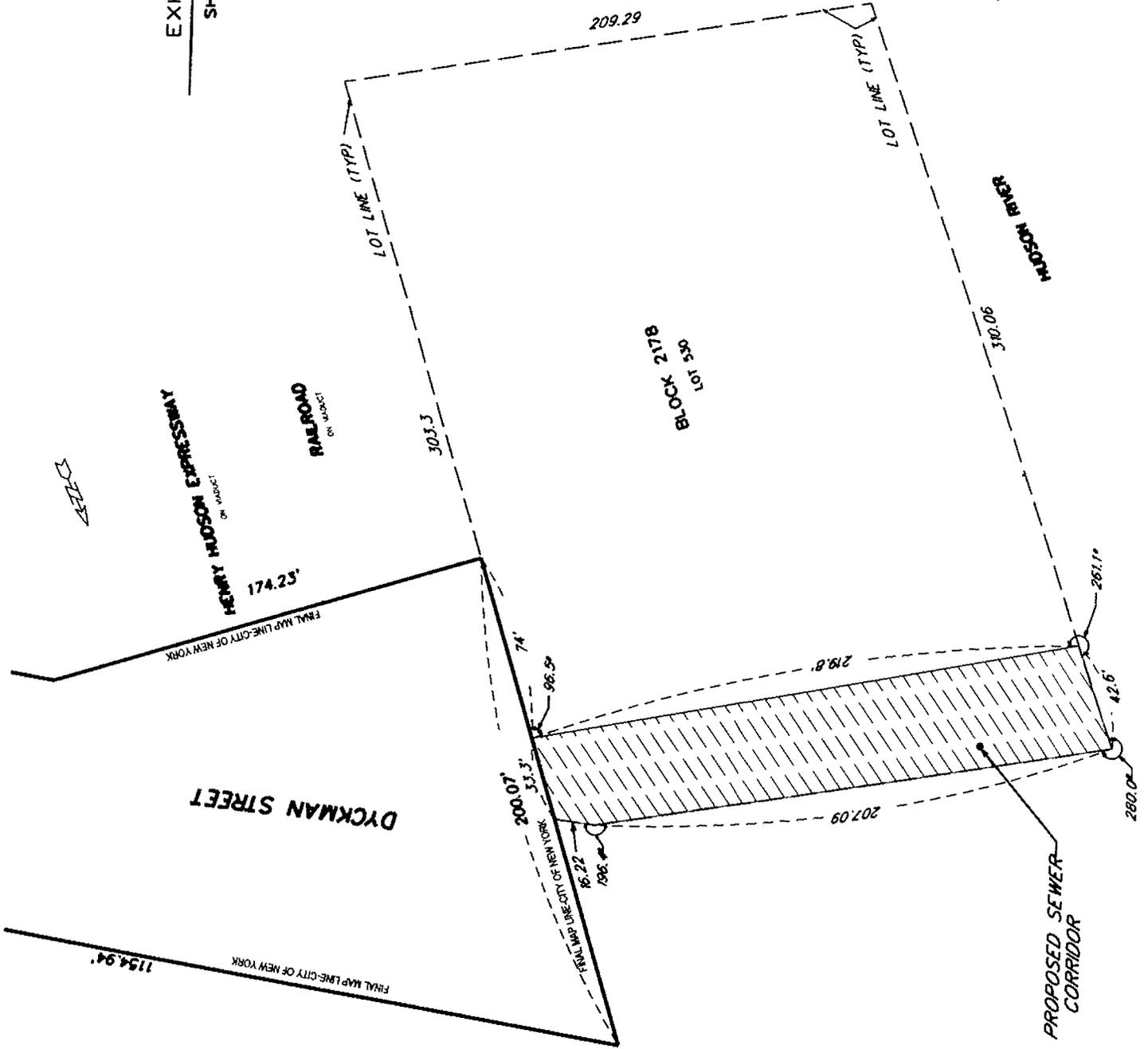
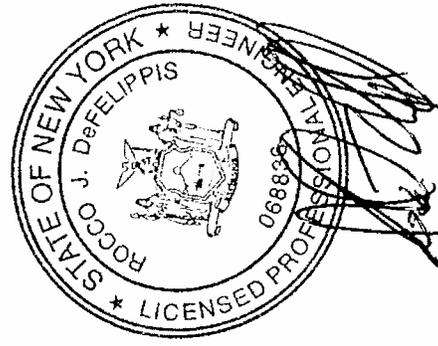
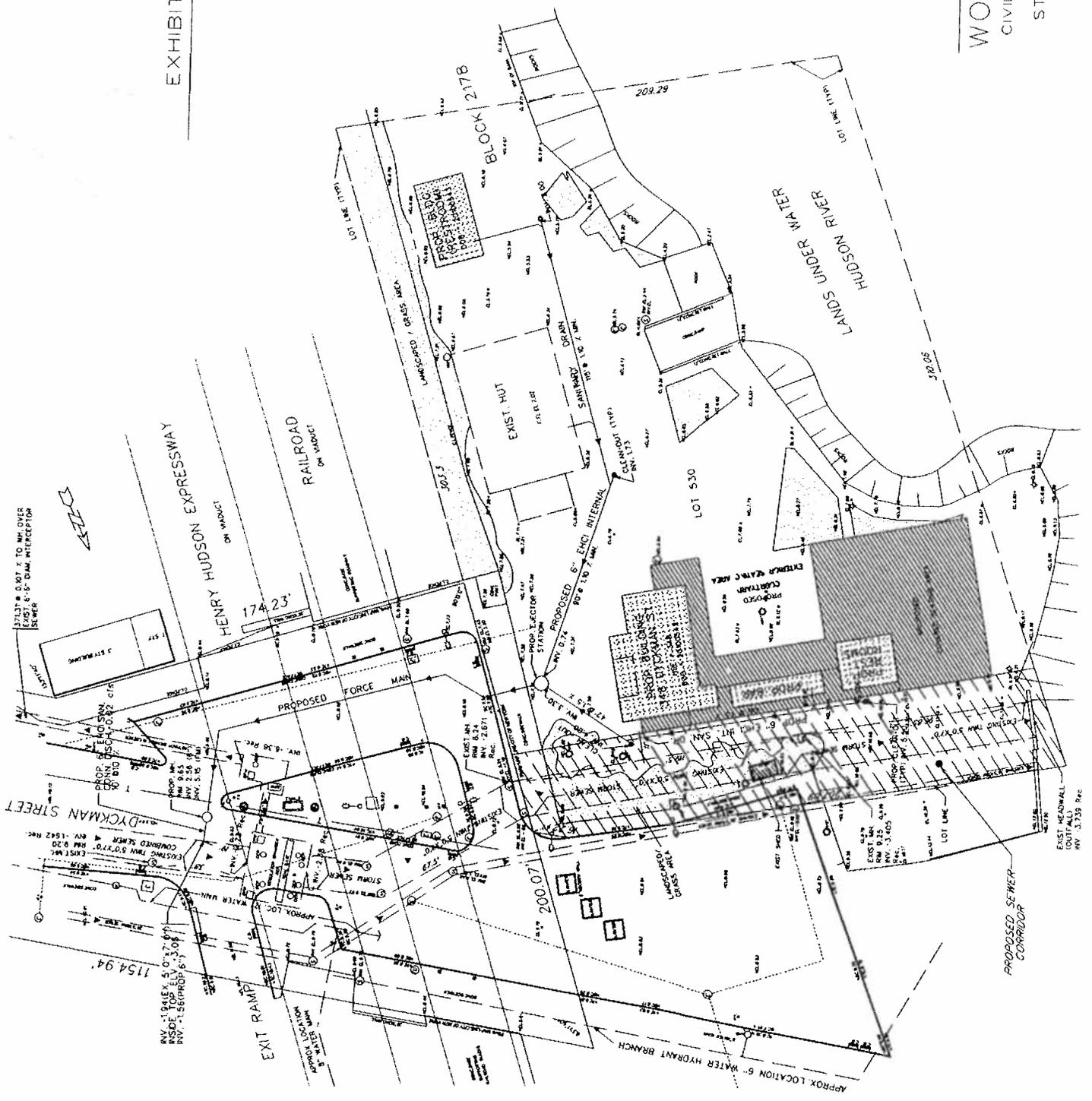


EXHIBIT 'B'



WOHL & O'MARA, L.L.P.
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 544 VANDERBILT AVENUE
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 (718) 448-7456



EXIST. HEADWALL (OUTFALL)
 NY 3739 Rec