

EXHIBIT H

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

BRUNO GARCIA,

Plaintiff,

-against-

PLAZA 400 OWNERS CORP. and SATO
CONSTRUCTION CO., INC.,

Defendants.

Index No: 154024/2017

EFile Case

**RESPONSE TO
PRELIMINARY CONFERENCE
ORDER DATED APRIL 9, 2018**

Defendants PLAZA 400 OWNERS CORP. and SATO CONSTRUCTION CO., INC.,
(hereinafter "answering Defendants"), respond to the Preliminary Conference Order dated April
9, 2018 as follows:

1. Names and addresses of all eyewitnesses or notice witness.

Santiago Olivera
9022 New Krak, apt. 1
North Bergen, NJ

Federico Stella
61 East 196th Street
Bronx, NY 10468

Ansberto Morales
3915 Bergenline Ave.
Apt 5
Union City, NJ 07087

2. Statements of opposing parties.

These answering Defendants are not in possession of any statements of opposing
parties.

3. Photographs.

Please find attached as Exhibit A, copies of all photographs in the possession of these answering Defendants.

4. Incident reports.

Please find attached as Exhibit B, a copy of the incident report that is in in the possession of these answering Defendants.

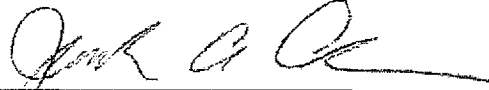
5. Contracts and other work records.

Please find attached as Exhibit C, copies of any contracts and work records that are currently in the possession of these answering Defendants.

PLEASE TAKE NOTICE, that these answering Defendants reserve the right to supplement and/or amend their responses to these demands up to and including the time of trial.

Dated: New York, New York
May 8, 2018

GOLDBERG SEGALLA, LLP

By 

Joseph A. Oliva, Esq.

Attorneys for Defendants

**PLAZA 400 OWNERS CORP. and
SATO CONSTRUCTION CO. INC.**

711 3rd Avenue, 19th Floor

New York, New York 10017

P: 646.292.8734 / F: 646. 292.8701

Email: joliva@goldbergsegalla.com

TO: GINARTE, GALLARDO, GONZALEZ, & WINOGRAD, LLP

Michael L. Edelman, Esq.

Attorneys for Plaintiff

BRUNO GARCIA

225 Broadway, 13th Floor

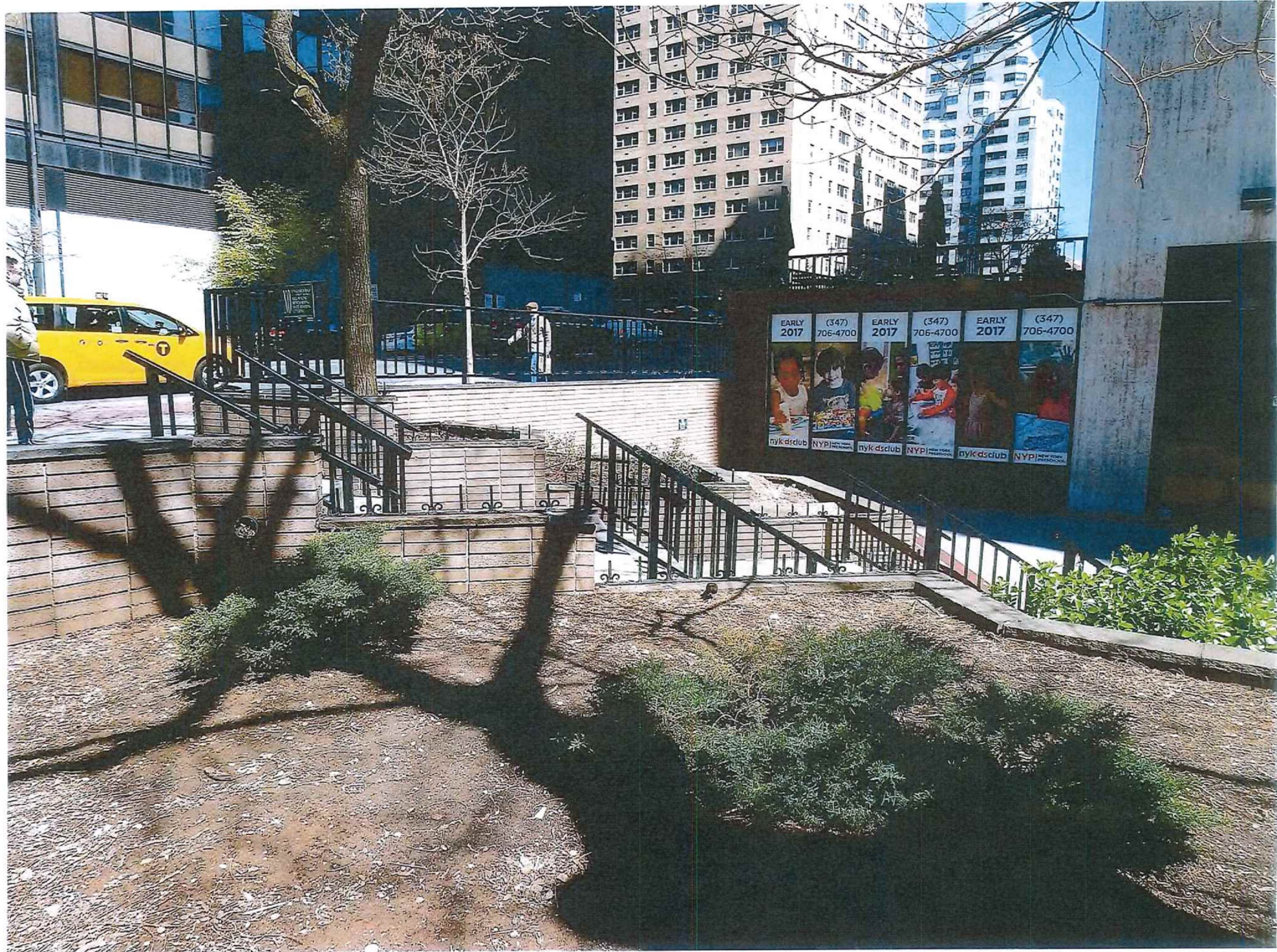
New York, New York 10007

P: 212.601.9700

EXHIBIT A





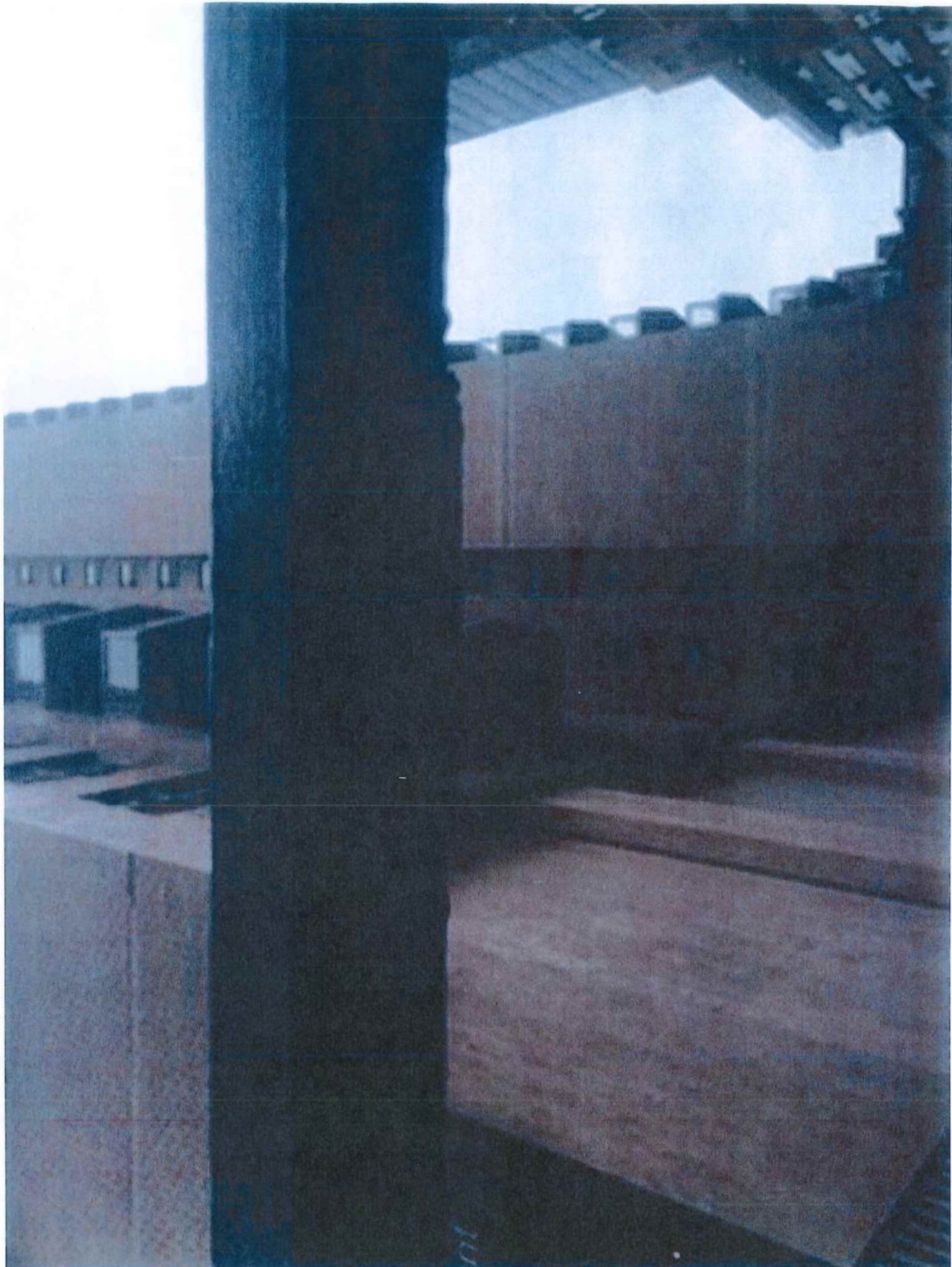


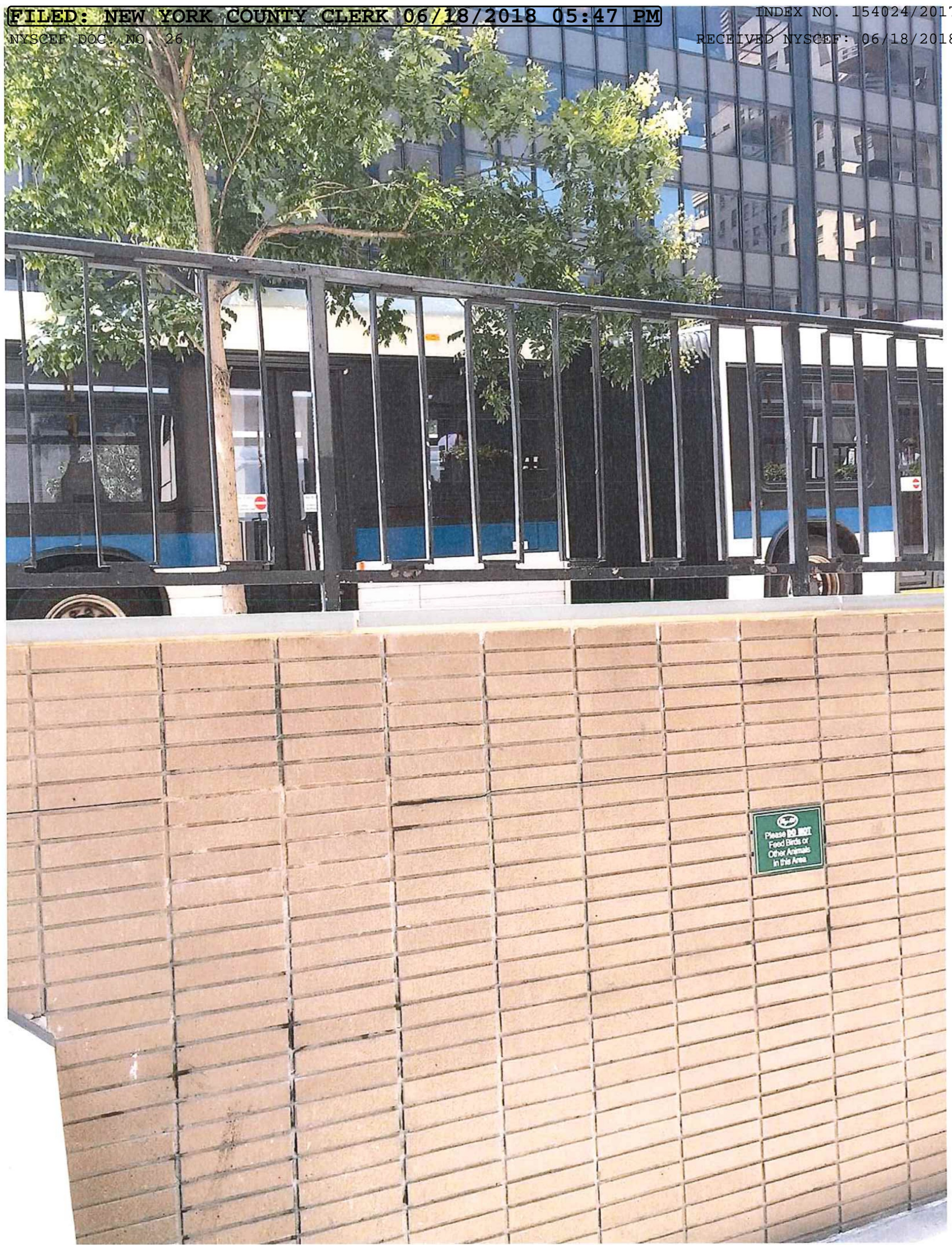


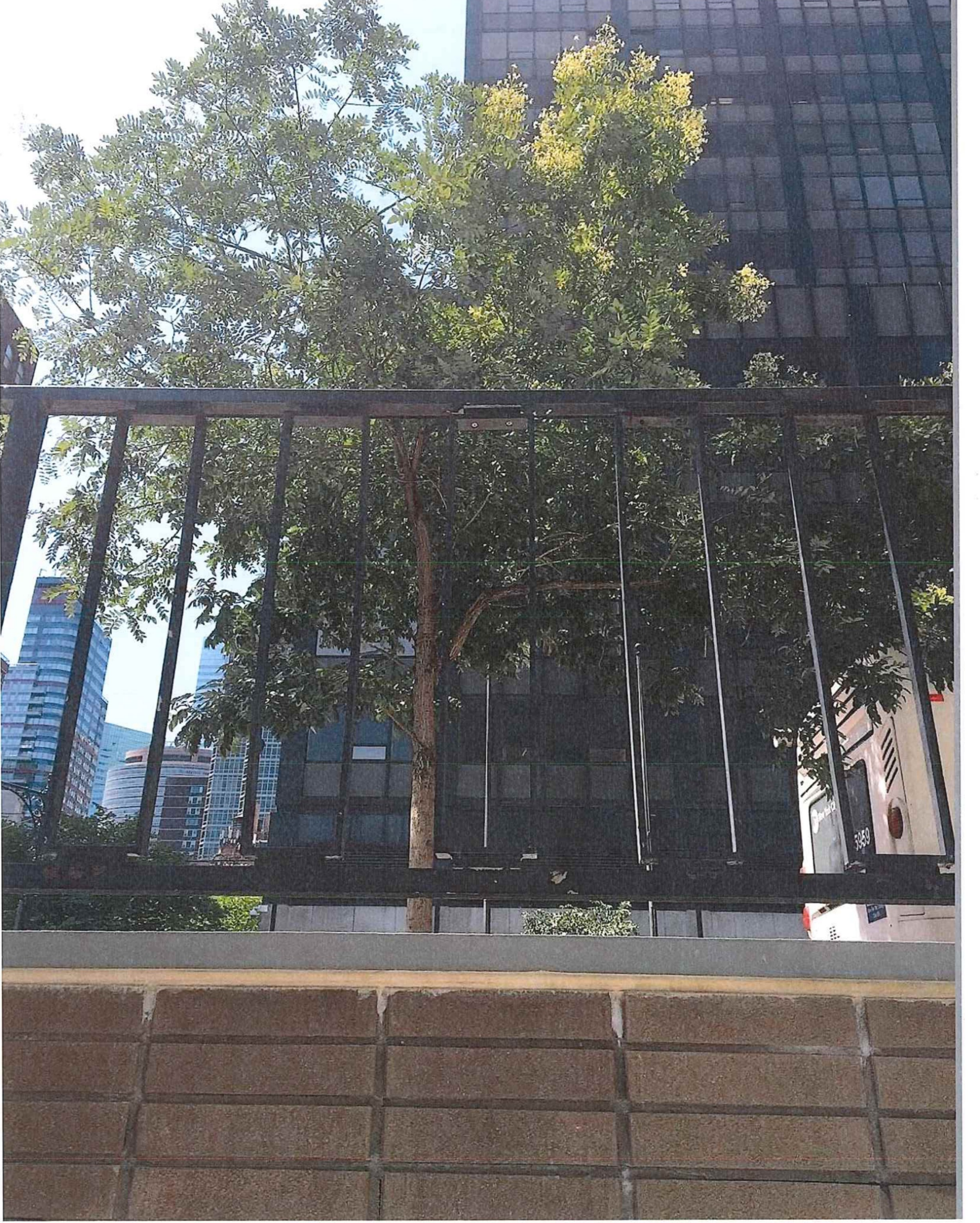








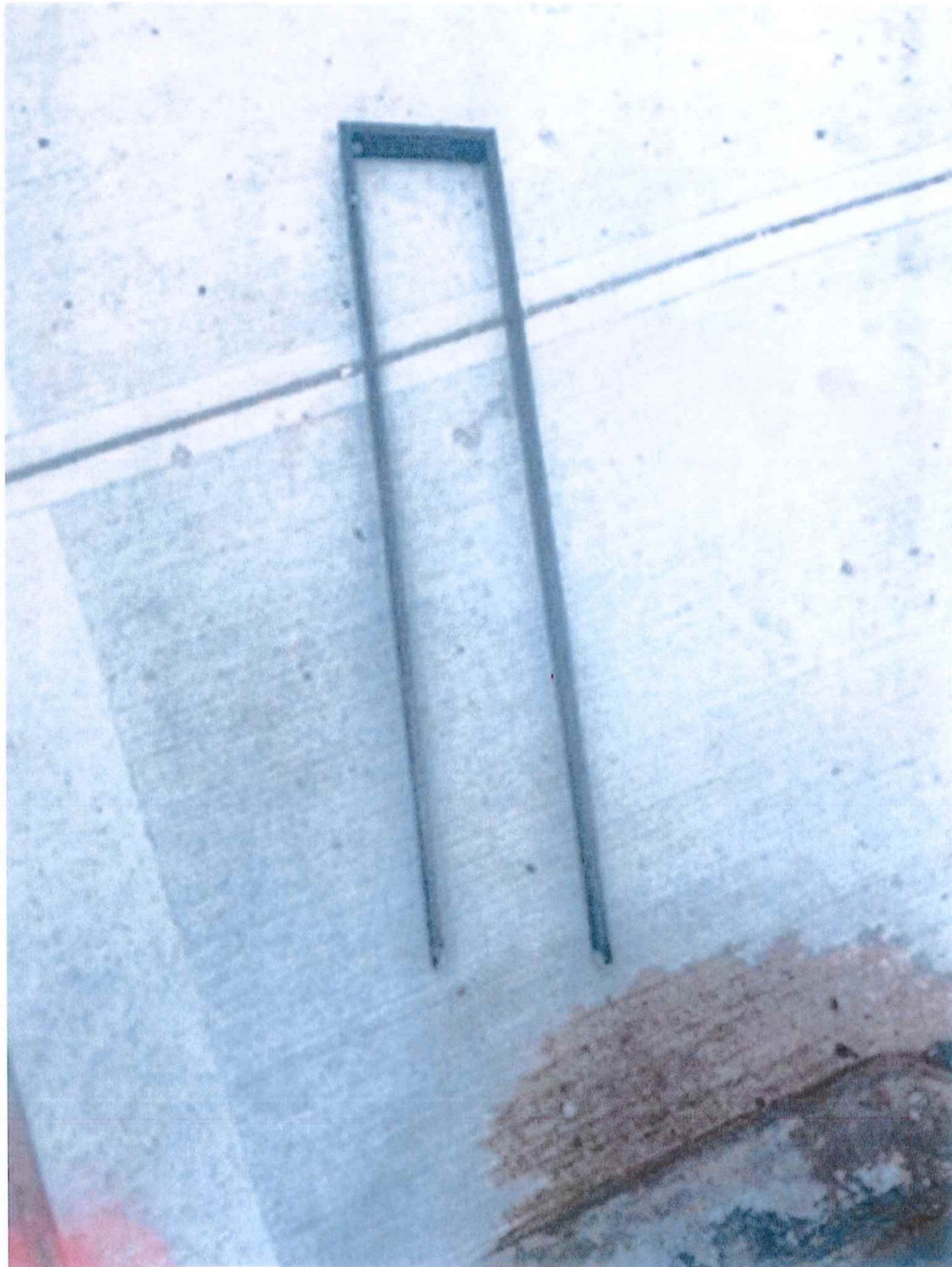












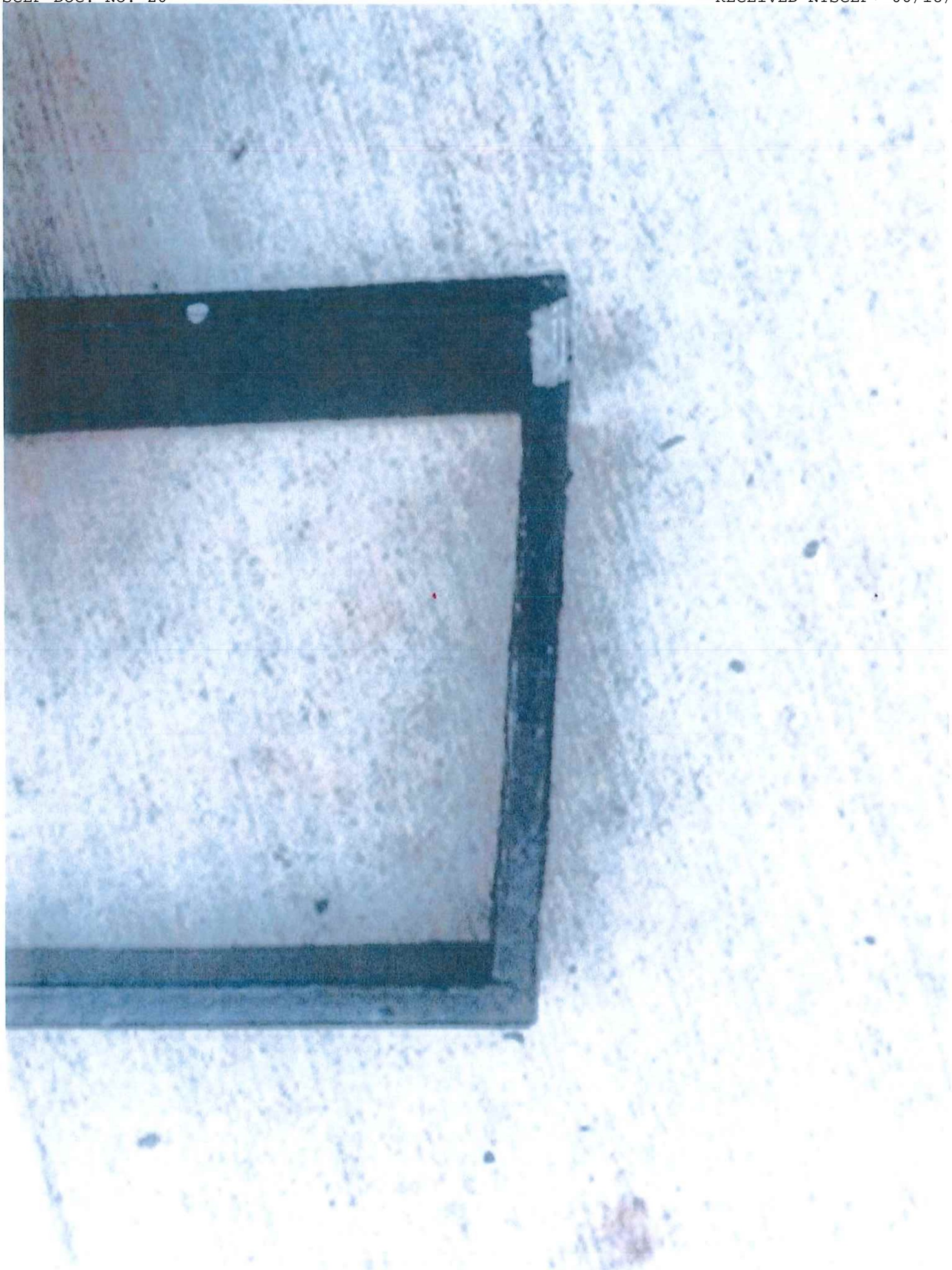


EXHIBIT B

10/25/2016

ACCIDENT REPORT 400 e 56 ST. NY

EMPLOYEE: Bruno Garcia

On October 25th, around 9: am Bruno was instructed to fix a tarp above the tool shed. He climb a wall next to the shed and was standing on a short ledge protruding from the wall. As he pulled the tarp he slip and felt down, his shoulder was hurting so Santiago the job foreman ask him if he wanted the ambulance, He responded no come with me and we can take a taxi.

They arrive at the Lenox Hill Hospital and Bruno was threated. He had and xray and doctor said his shoulder was dislocated and was place back by the doctor. He was giving regular Tylenol for the pain and was send home 3 hours later.

Octavio and Darwin picked him and Santiago at the hospital, Santiago return to the jobsite and Bruno was taken to the his house.

Was employee taken proper precaution.

Improper way of doing work: employee did not use ladder and follow safety procedure to perform action. He ignored supervisor direction on using a ladder to reach tarp.

Witnesses.: fedrico , ansveto, Santiago,

Reference Note:

Bruno Requested to be send home for two weeks of rest, during this time he ask to have DT Maintenance pay for the medical bills and 2 weeks lost of time. Owner agree with him and that he shall come back to work once he recovers.

As time pass by. Bruno was getting medical treatment and therapy DT maintenance was paying his weekly wage, Doctor Visit and therapy. As per Bruno on his weekly visit to the office he said he was getting better and soon will come back to work. We ask for a doctors note to see if he can come back to work working light duty as a flag person on the jobsite. He never provided the doctors note but he agreed to come back to work on 11/21/2016 we schedule him to go to a jobsite and he didn't showed. He said he needed more time off, so he schedule more therapy for the week and ask for weekly payment. We agree and approve it. Then he said he was good to start on Monday 11/28/2016 we schedule him to a jobsite and he didn't showed. He ask for another week and pay for time off, after picking up his weekly check on Saturday 12/03/2016, he agree to return to work on 12/05/2016 and was

schedule to a jobsite and he didn't show to the site. We called him the next day and today 12/07/2016 we received the call from workers comp that he had put claim. Verbal agreement was broken by employee.

EXHIBIT C

**Construction Subcontract
for Subcontracts**

Witness this agreement, made 8/3/16 400 EAST 56th STREET Job Number 16090

by SATO CONSTRUCTION CO INC DBA FLAG WATERPROOFING & RESTORATION CO

hereinafter called the Contractor, and DT MAINTENANCE, LLC

hereinafter called the Sub-Contractor agrees to furnish at his own expense, all the labor and materials necessary to do and perform in good and workmanlike, timely manner all the necessary installation described as follows:

Provide Labor, Material and Equipment to perform the work as per drawing and specification dated March 22, 2016, from Bone / Levine Architectures.

Please provide Job # 16090 on all correspondences, including invoice.

SATO CONSTRUCTION CO INC DBA FLAG WATERPROOFING & RESTORATION CO

In connection with the foregoing Subcontract, the parties hereto mutually agree as follows:

1. The Sub-Contractor shall furnish certificates of workman's compensation, public liability and property damage insurance for all operations upon signing contract, and agrees to indemnify and hold harmless SATO CONSTRUCTION CO INC DBA FLAG WATERPROOFING & RESTORATION AND OWNER. Find harmless against all claims for damage to persons and property. Said insurance will be evidenced by certificate filed with in the amounts and limits as set forth in the attached sample certificate.
2. To do all work in a first class and workmanlike manner and to the entire satisfaction of the Owner, Contractor, and Architect.
3. The Sub-Contractor agrees to promptly begin said work as soon as notified by said contractor and complete the above work as follows: START WORK IMMEDIATELY AFTER NOTIFICATION AND CONTINUE WITH SUFFICIENT MEN SO AS NOT TO DELAY THE PROGRESS OF THE JOB. ATTENTION IS HEREBY DIRECTED TO THE FACT THAT TIME IS OF THE ESSENCE IN THIS CONTRACT. ANY PENALTIES TO US DUE TO THE IMPROMPTNESS OF THE COMPLETION OF YOUR WORK WILL BE DEDUCTED FROM YOUR FINAL PAYMENT.
4. To remain constantly on the job during the progress of his work and have a competent foreman, approved by the Contractor on the job, and employ sufficient men to complete the above described work in the given time and maintain continuity of labor force.
5. To make no charges for change order for extras without consent and agreement of the Contractor, and directly to the Contractor.
6. Should the Sub-Contractor fail to employ sufficient competent help to complete the work in the given time, the Contractor may after giving forty-eight hours written notice, by letter or telegram mailed to the last known address of the Sub-Contractor, employ help to complete the work and charge the same to the Sub-Contractor account and/or charge Sub-Contractor any penalties due to their failure to complete on given date. If the cost of completing said work exceeds the contract price, the Sub-Contractor herein agrees to reimburse the contractor for any sums over and above the contract price. If the cost of completing the work does not exceed the contract price, any excess shall be paid to the Sub-Contractor. If the Contractor is assessed liquidated damages by the owner for failure to complete the work on time, and if the delay has been caused by the Sub-Contractor herein, the Sub-Contractor agrees to pay the portion of the liquidated damages caused by or attributed to his failure to complete his work on time and in accordance with the working schedule.
7. This contract shall not be assigned by the Sub-Contractor without the permission in writing from the Contractor.

8. Subcontractor expressly agrees to accept backcharges for all equipment, machinery, tools, scaffolding, motor vehicles, trailers, gang boxes, Debris removal and all associated costs, etc. provided by the contractor for the subcontractor to perform the work, at the prices listed on the purchase order issued by the contractor. Backcharges shall be removed as equipment is returned to the contractor in the same condition as when issued. Subcontractor shall provide garbage bags, small tools, etc.

9. With respect to paragraph #8, a 5% cost to the backcharges and paid by the subcontractor to the contractor to cover clerical and other costs. All deliveries made by Flag will have a \$135 delivery fee, whether or not materials are part of subcontract or not.

10. To the fullest extent permitted by law, Sub-contractor hereby agrees to indemnify, defend, and hold harmless Sato Construction Co, Inc, DBA Flag Waterproofing & Restoration Company (Contractor), the owner, and all other indemitees, together with its employees, agents, and authorized representatives, and the Engineer, together with its employees, agents, and authorized representatives, from and against any and all losses, suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest legal fees, costs, and expenses of whatsoever kind or nature whether arising before or after completion of the work hereunder and in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, by reason of any action, omission, fault, or negligence whether active or passive of sub-contractor, or of anyone acting under its direction or control or on its behalf in connection with or incidents to the performance of this contract and excluding only the liability created by Contractor's

The Sub-contractor shall provide, maintain, and pay for the following insurance, which shall be placed with such insurance company or companies and in such form as may be acceptable to the Contractor:

Commercial General Liability Insurance written on an "occurrence" basis protecting the Sub-Contractor, their respective servants, agents, or employees against damages arising from bodily injury (including death) and from claims for property damage which may arise directly or indirectly out of the operations of the Sub-Contractor, their subcontractors, servants, agents, or employees under this Contract. Such insurance shall be for an amount acceptable to the Contractor and shall in any event be not less than \$1,000,000 per occurrence/\$2,000,000 general aggregate. Separate \$1,000,000 per occurrence/\$2,000,000 aggregate shall apply to product/completed operations. Coverage's shall apply on a PRIMARY AND NON-CONTRIBUTORY BASIS.

The policy of insurance shall cover: all liability arising out of products whether manufactured or supplied by the Sub-Contractor; completed operations via gen CG20-10 (11/85 addition or equivalent); personal injury; Broad Form Property Damage including all-explosions, collapse, and underground hazards; independent contractors; and liability assumed by the sub-contractor under and applicable to this Contract (contractual liability) and shall include the Contractor as an additional insured; coverage for completed operations must remain in force for two years after Total Performance of all work and shall have an A.M. best rating of A-VII or better. Business Automobile Liability Insurance on the sub-contractor's owned, non-owned, and hired vehicles, protecting the subcontractor and the Contractor against damages arising from bodily injury (including death) and from claims for property damage arising out of their use on the operations of the sub-contractors or of agents under this contract.

This insurance shall be for an amount acceptable to the Contractor and shall in any event be not less than \$1,000,000 inclusive of any one accident.

Sub-Contractor shall maintain Worker's Compensation and Employer's Liability insurance with statutory limits, worker's compensation and short-term disability insurance with no less than statutory limits required by the state in which the work is performed.

"It is agreed that in no event shall this insurance company have any right to recovery against the Contractor, and owner. Prior to commencing the work and prior to receiving payment on Substantial and Total Performance of the work, the sub-contractor shall provide evidence of compliance with the requirements of the State of the place of the work with respect to workers' compensation insurance including payments due thereafter.

Sub-Contractor shall maintain Commercial Umbrella or Excess Liability with an occurrence limit of not less than \$5,000,000 with such coverage being excess over primary GL, Auto and Employers Liability.

All insurance policies shall be obtained by the sub-contractor and shall be agreed upon by the Contractor prior to the commencement of the work. During the term of the agreement, the sub-contractor must promptly produce on demand of Contractor evidence of the required insurance coverage and payment of premiums thereon unless Contractor assumes responsibility for payment of such premium. If not so produced, the Contractor shall have the immediate right to procure the required insurance on behalf of the sub-contractor, and to charge and deduct the cost thereof from the within price, but Contractor shall not be under any obligation to do so.

The Contractor and owner shall be named additional insured on the Commercial General Liability and Business Automobile Liability policies. The Contractor is to receive 30 days' notice of cancellation or non-renewal of coverage and/or changes in limits of coverage, additional insured status for ongoing and completed operations required by CG2010 (1/85) addition or equivalent. The subcontractor shall be required to name all of the additional insured on their insurance.

The sub-contractor shall secure, pay for, and maintain whatever insurance they may deem necessary for protection against loss of owned or rented capital equipment and tools, including any tools owned by mechanics, any tools, equipment, staging, towers, and forms owned or rented by their subcontractors or agents under this Contract. The requirement to secure and maintain such insurance is solely for the benefit of the sub-contractor. Failure of the sub-contractor to secure such insurance or to maintain adequate levels of coverage shall not obligate the Contractor, the Engineer, or their agents and employees for any losses or owned or rented equipment. If the sub-contractor secures such insurance, the insurance policy shall include a waiver of subrogation as follows:

"It is agreed that in no event shall this insurance company have any right to recovery against the Contractor and/or the Engineer."

The sub-contractor agrees to cooperate fully with the insurance company or companies in carrying out the provisions and conditions of all policies applicable to work to be done, as well as all rules and recommendations of such company or companies in regard to accident prevention, reports, and audits. The sub-contractor further agrees that notice of every accident will be reported immediately to the Contractor, and also to such insurance company or companies.

The sub-contractor agrees not to subcontract any part of the work called for by this contract or permit the further subcontractor of any part thereof, without prior notice to the Contractor, and only with the written consent of the Contractor. If the Contractor consents to such subcontracting or further subcontractor, then every such contract or subcontract shall contain complete provisions identical to paragraphs included herein for the benefit, protection, and indemnification of the Contractor, and the Engineer.

The Contractor shall be furnished immediately after the execution of each such contract with a certification of the contractor issuing the contract that such clauses are continued in the contract.

All insurance companies providing the insurance protection set forth above shall have a minimum A.M. Best rating of A-VII or better. Preferably, the carrier will also be licensed in the State where the sub-contractor is domiciled. Insurance Addendum P1 & P2 (Attached) shall be part of this subcontract.

The subcontractor shall be responsible for all loss or damage to the work, including the sub-contractor's materials delivered to site for incorporation therein and all property issued to the subcontractor by the Contractor for use in incorporation in the work.

IN CONSIDERATION WHEREOF, the said Contractor agrees to pay to the said Sub-Contractor the sum of \$ 90,000.00

The final payment of (see above) which the said Contractor will pay to the said Sub-Contractor 30-days after final acceptance by owner provided the Sub-Contractor shall have completed his work to the full satisfaction of said Contractor, Owner and Architect.

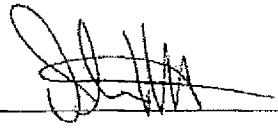
IN WITNESS WHEREOF, the parties have hereunto set their hands and seals.

DT MAINTENANCE, LLC

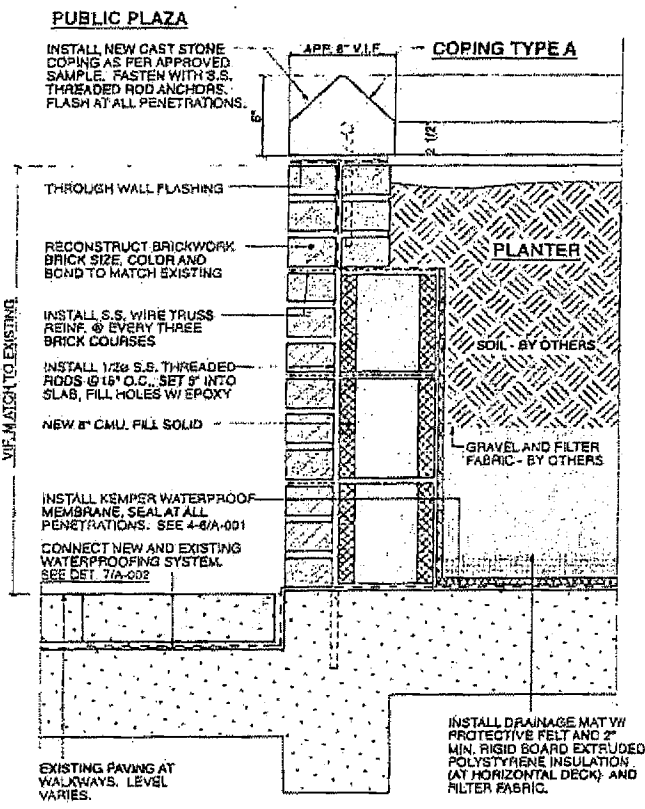
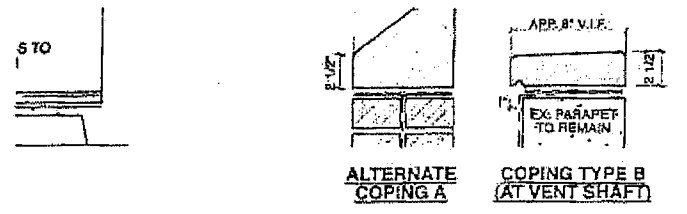
SATO CONSTRUCTION CO INC
DBA FLAG WATERPROOFING & RESTORATION CO

Sub-Contractor

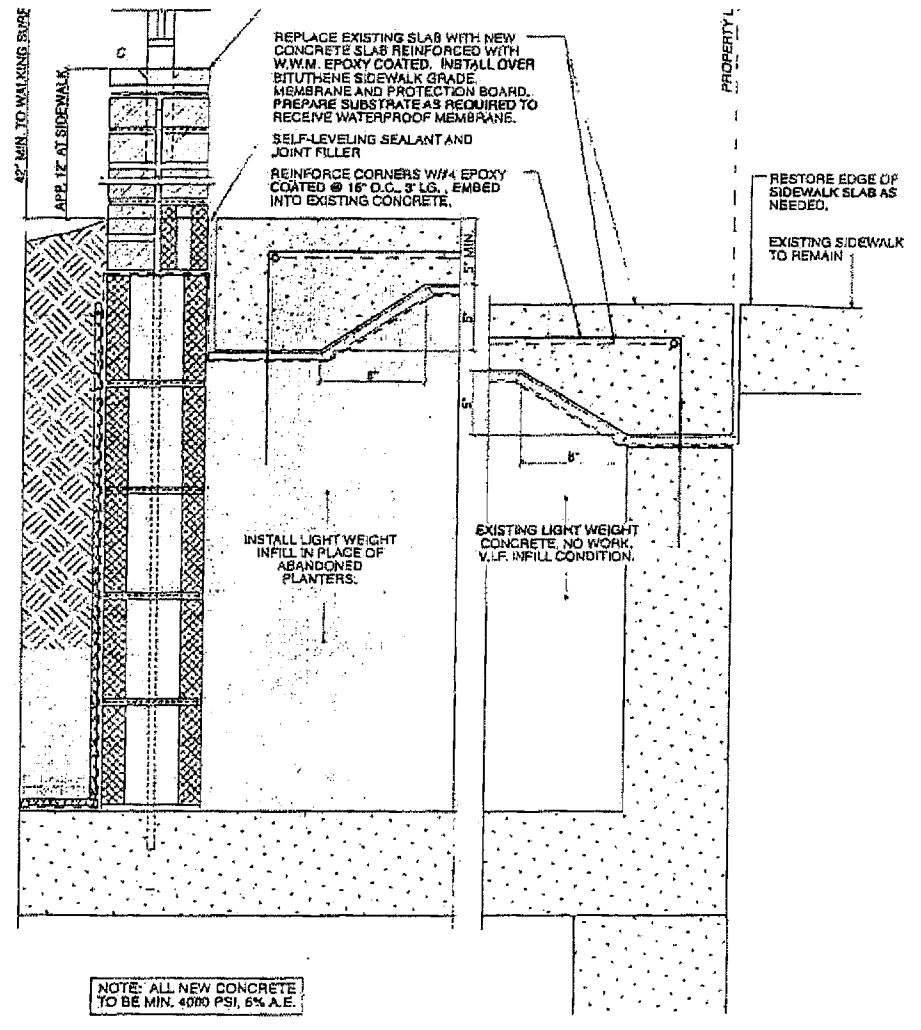
Contractor



Details DR.



4 **SECT. AT PLANTER WALL TO PLAZA**
 A-002 SCALE: 1-1/2" = 1'-0"



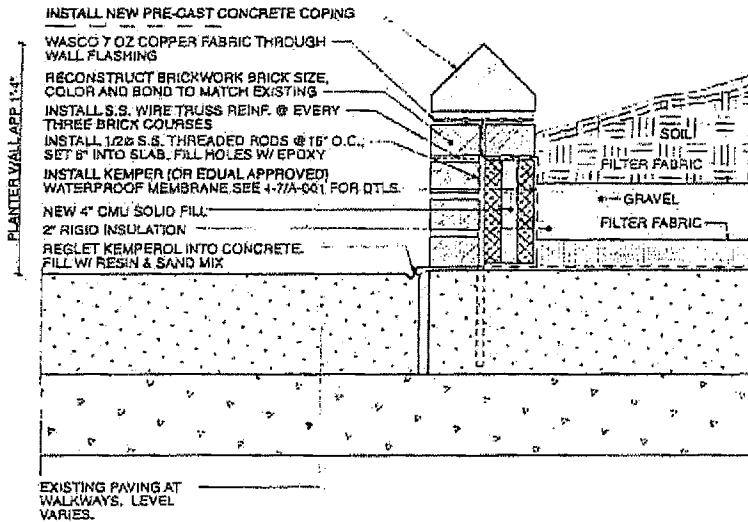
5 **SECTION AT PLANTER WALL TO WALKWAY**
 A-002 SCALE: 1-1/2" = 1'-0"

Details. DR.

PLAZA

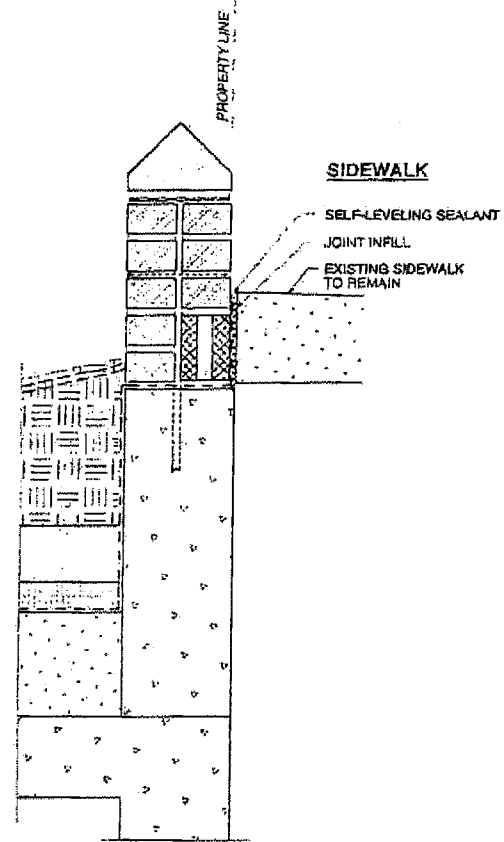
PLANTER

SIDEWALK



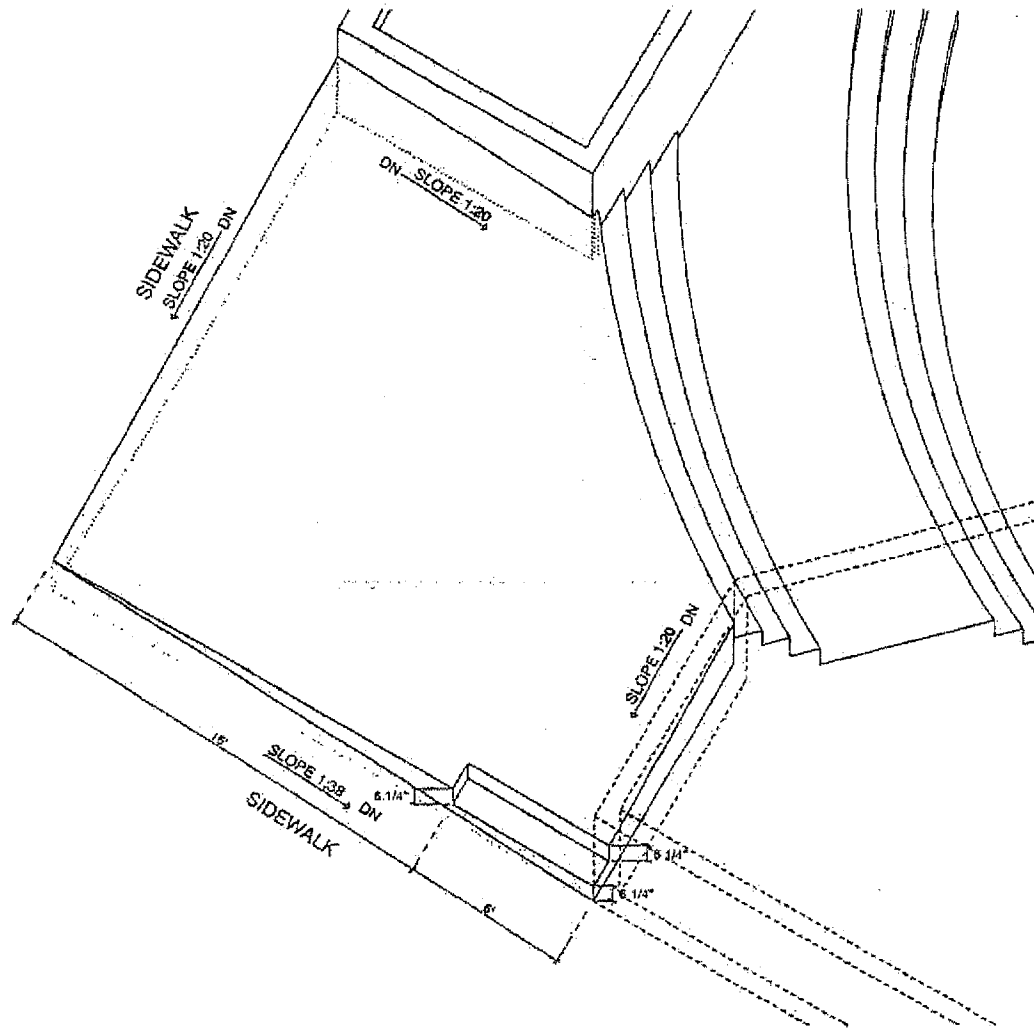
2 SECT. AT PLANTER WALL TO PLAZA

A-002 SCALE: 1-1/2" = 1'-0"

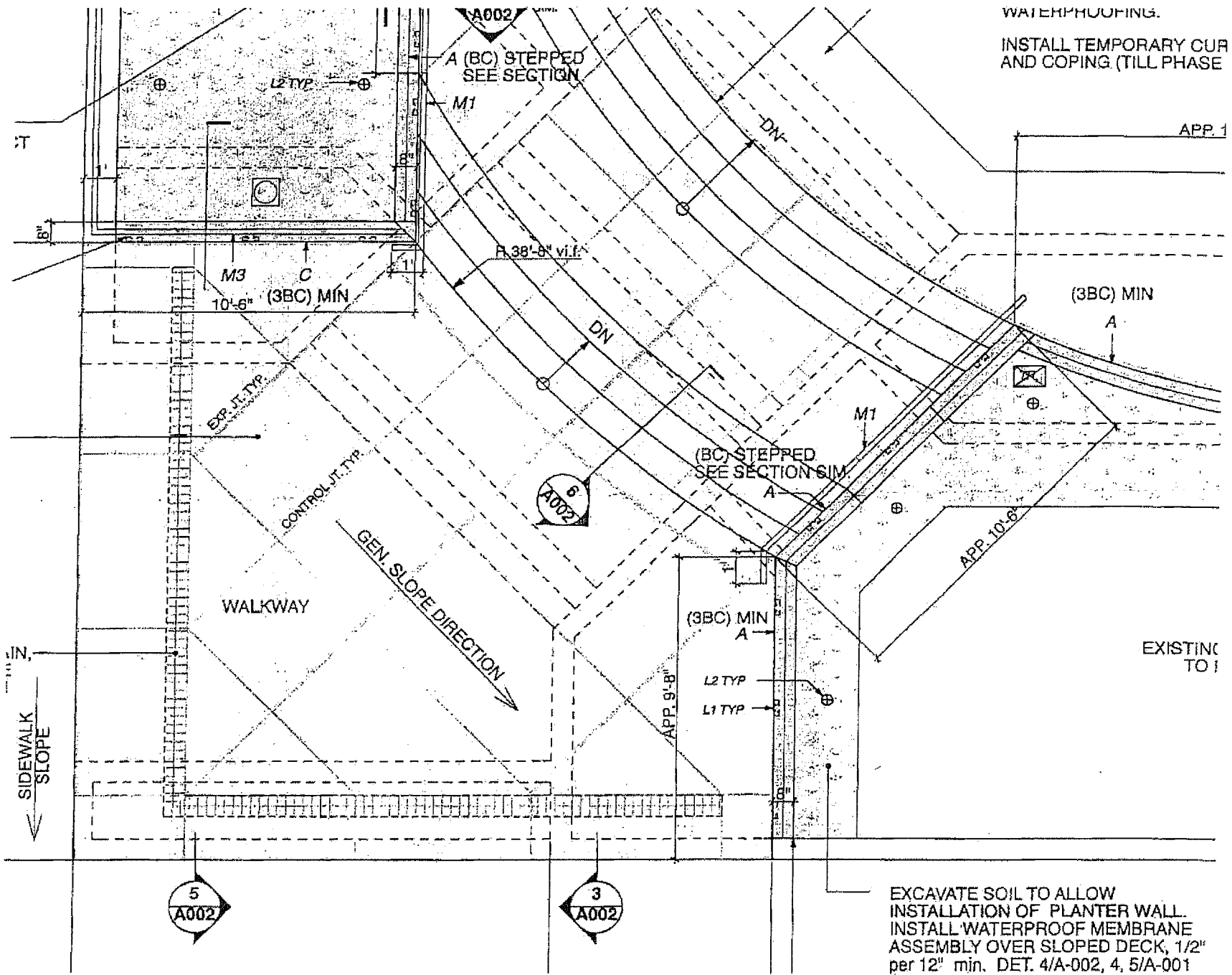


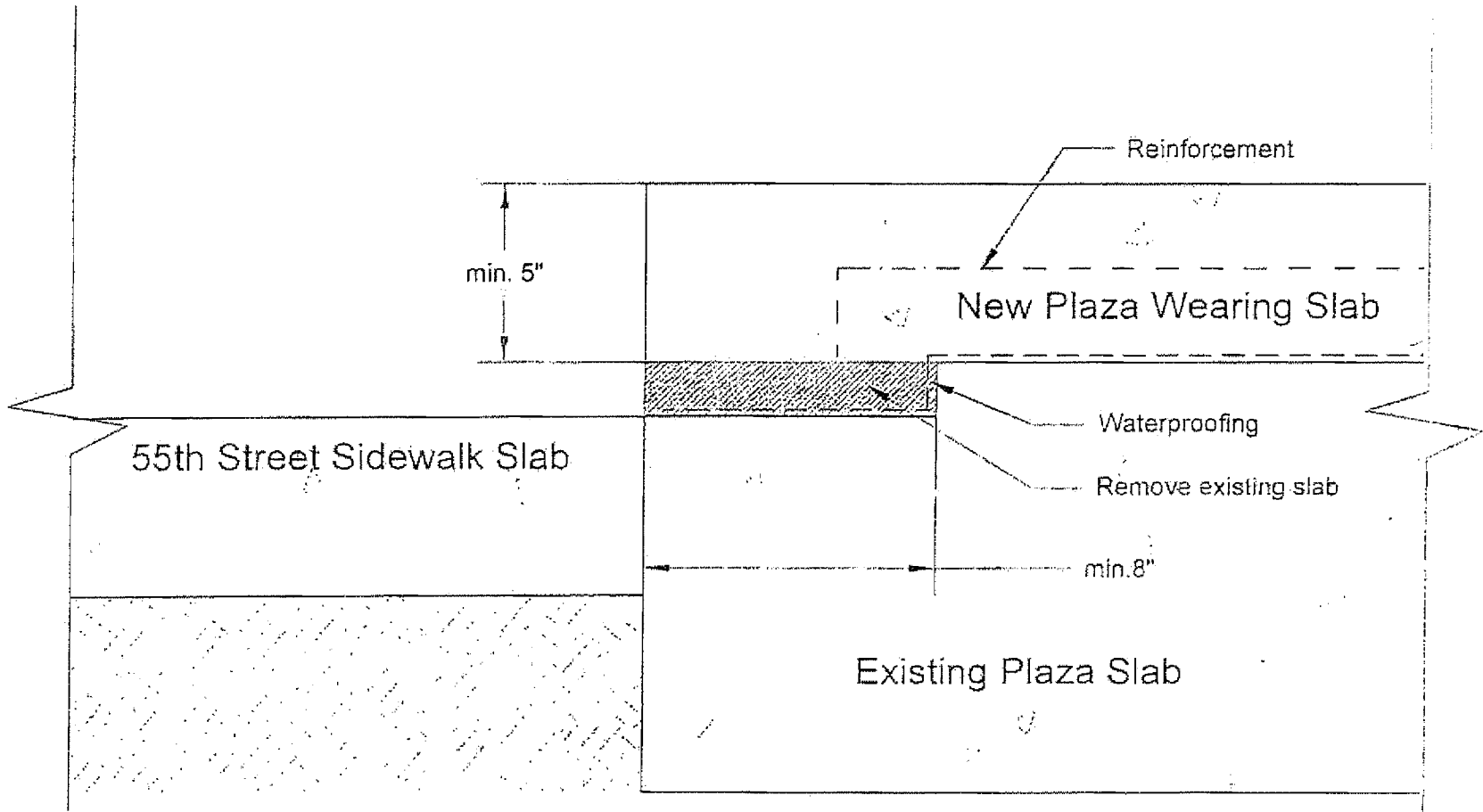
3 SECTION AT PLANTER WALL TO SIDEWALK

A-002 SCALE: 1-1/2" = 1'-0"

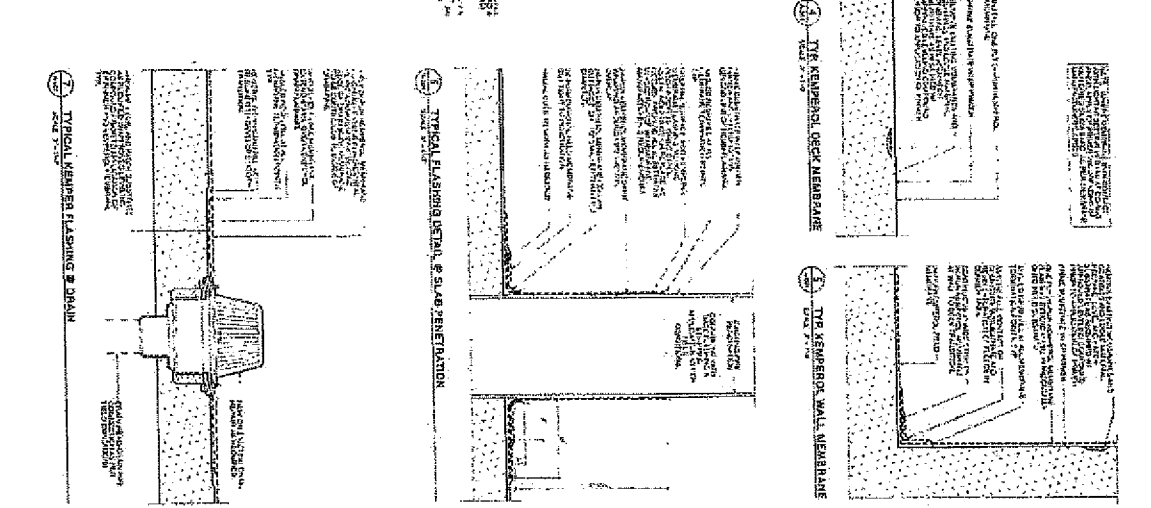
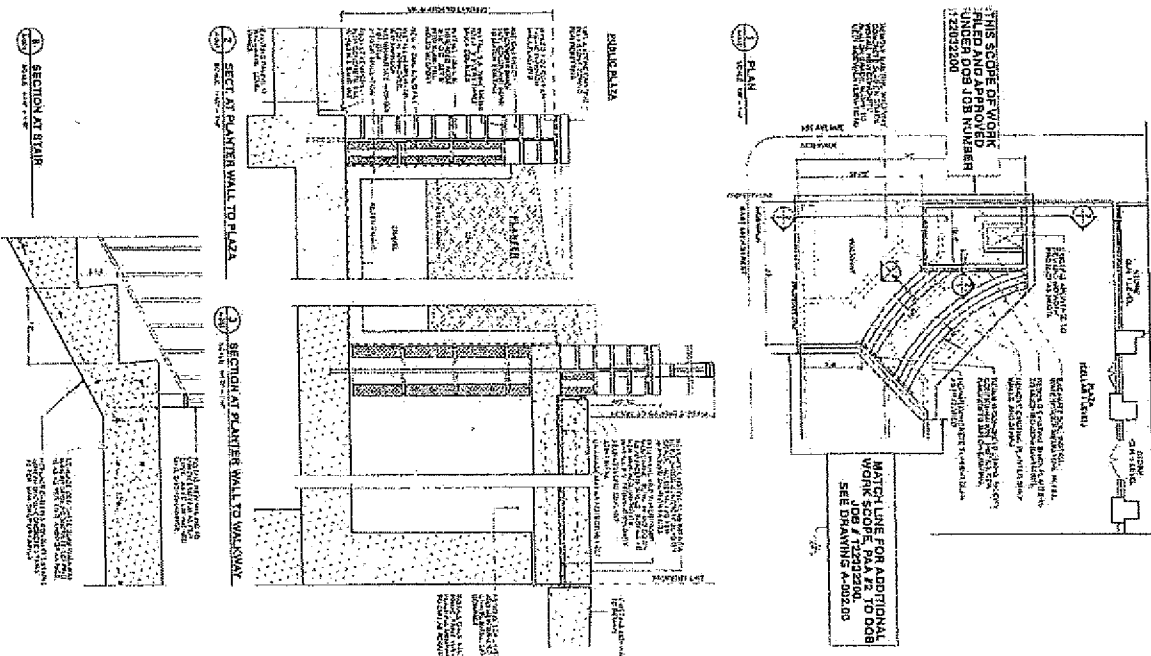


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|--------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|------------------------------------------------------|-----------|-------------------------------|-------|
| BONE / LEVINE ARCHITECTS 561 BROADWAY No. 8D NEW YORK, NY 10012 TEL: 212 - 219 - 1038 FAX: 212 - 228 - 8056 | PROJECT NAME 400 EAST 56TH STREET SW PLAZA REPAIRS | DRAWING TITLE SW PLAZA ENTRY STAIRS - AXON SKETCH | REVISIONS | SCALE AS NOTED | SK-17 |
| | | | 1 2 | 11-08-18 DATE DRAWN BY: | |





| | | | |
|--------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|--|----------------|
| BONE / LEVINE ARCHITECTS 561 BROADWAY No. 8D NEW YORK, NY 10012 TEL: 212 - 219 - 1038 FAX: 212 - 226 - 8056 | Southwest plaza 400 east 56th Street | | DATE 11/7/15 |
| | PROJECT NAME Plaza-sidewalk section | | REVISIONS 1 |
| | DRAWING TITLE Plaza-sidewalk section | | 2 |



GENERAL NOTES

1. The contractor shall be responsible for obtaining all necessary permits and approvals from the Department of Buildings (DOB) and the Department of Environmental Conservation (DEC).
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ABBREVIATED SCOPE OF WORK

The contractor shall be responsible for obtaining all necessary permits and approvals from the Department of Buildings (DOB) and the Department of Environmental Conservation (DEC).

LIST OF DRAWINGS

| NO. | DESCRIPTION | DATE |
|-----|-------------------------------------------|------------|
| 1 | GENERAL NOTES | 06/18/2018 |
| 2 | PLAN | 06/18/2018 |
| 3 | SECTION A-A | 06/18/2018 |
| 4 | SECTION B-B | 06/18/2018 |
| 5 | TYPICAL MEMBER DECK MEMBRANE | 06/18/2018 |
| 6 | TYPICAL FLASHING METAL & SLAB PENETRATION | 06/18/2018 |
| 7 | TYPICAL MEMBER FLASHING & DRAIN | 06/18/2018 |

REVISIONS

| NO. | DESCRIPTION | DATE |
|-----|-------------|------------|
| 1 | REVISION 1 | 06/18/2018 |
| 2 | REVISION 2 | 06/18/2018 |

AMENDMENT #2 TO DOB JOB NUMBER 120013200

AS INDICATED BY DKV, DVD

6/20/18

ADD EAST 50TH STREET REPAIRS TO PLAZA PLANTERS

PLAZA PLANTERS GENERAL NOTES, PLAN DETAILS

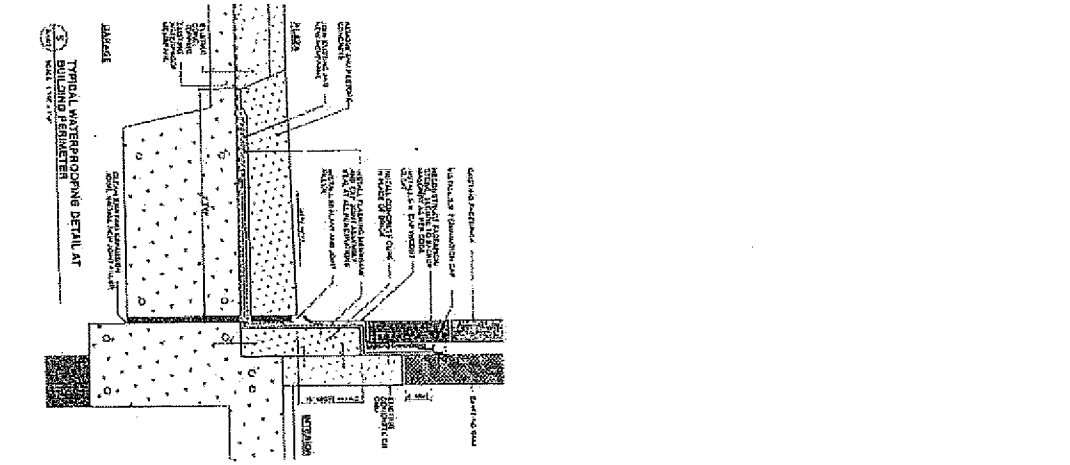
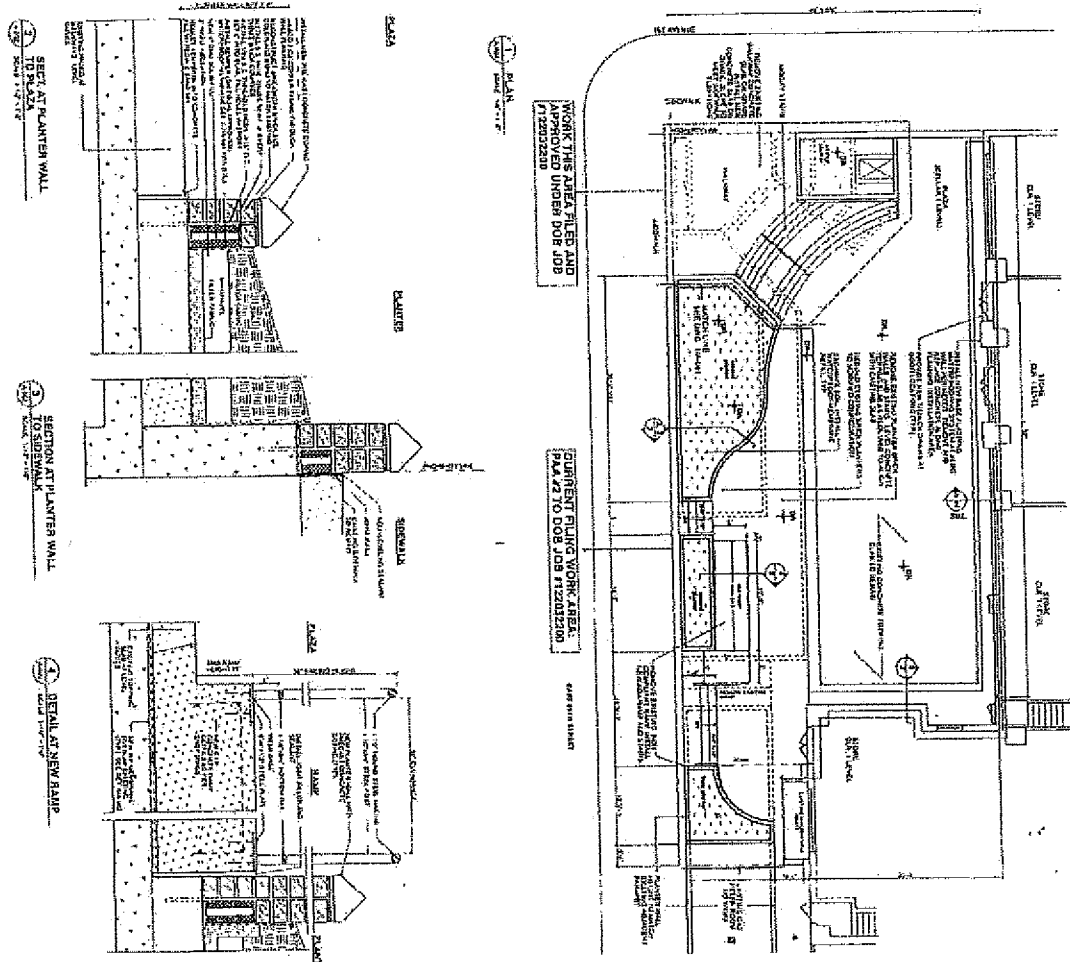
BONE / LEVINE ARCHITECTS

100 EAST 50TH STREET

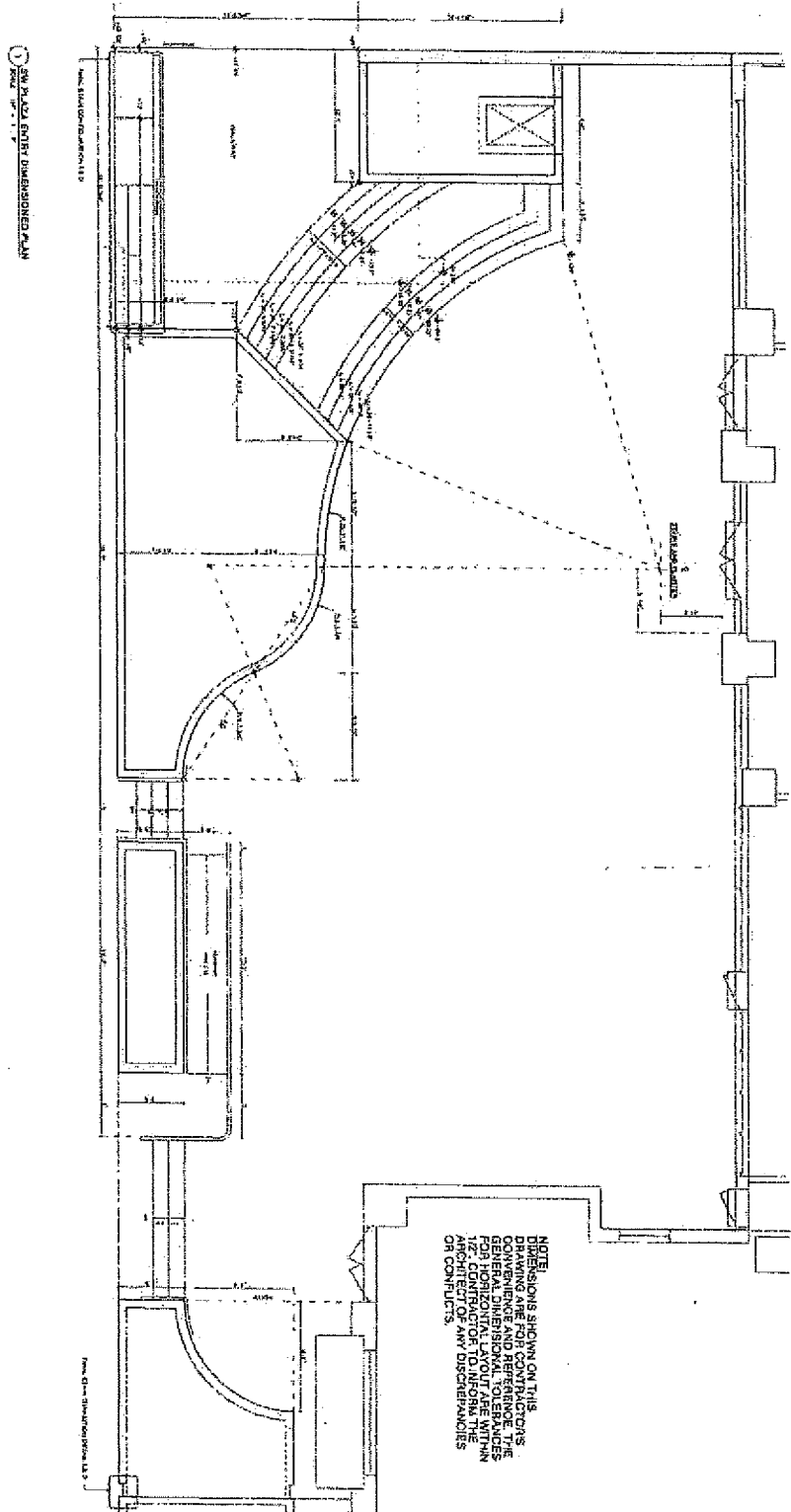
NEW YORK, NY 10022

TEL: 212-312-1234 FAX: 212-312-1234

A-001.02

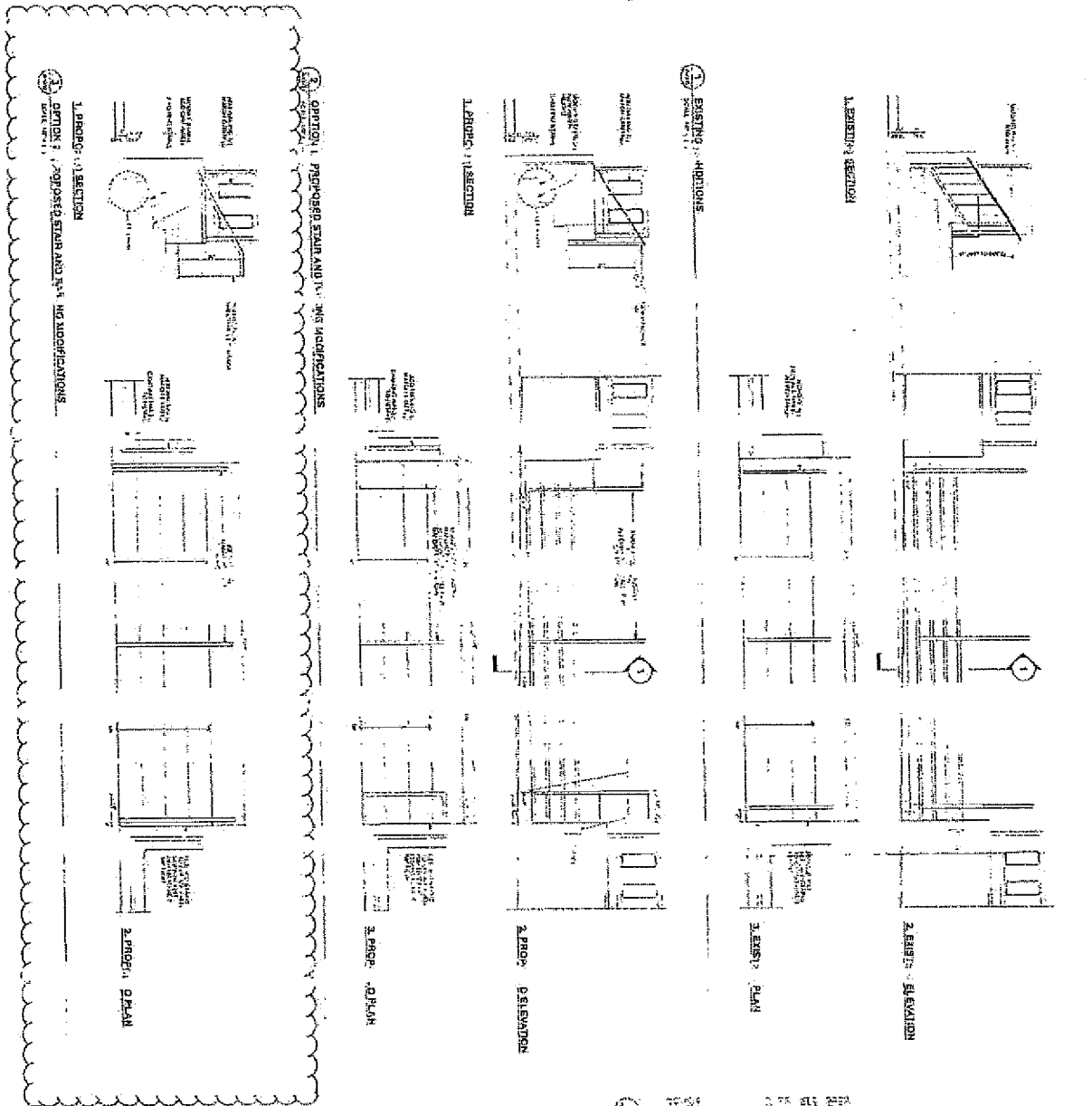


| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| LEGEND [Symbol] AS INDICATED [Symbol] EXISTING CONDITIONS [Symbol] NEW WORK | |
| NOTES 1. SEE ALL NOTES ON DRAWING. 2. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND REGULATIONS. 3. ALL MATERIALS SHALL BE APPROVED BY THE ARCHITECT. 4. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME. 5. ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE DOB. | |
| PROJECT: 400 EAST 83RD STREET PLAZA REPAIRS | CLIENT: BNY BROUWER |
| DESIGNER: BONE / LEVINE ARCHITECTS 100 WEST 40TH STREET, 10TH FLOOR NEW YORK, NY 10018 | DATE: 06/18/2018 |
| PROJECT NO.: A-002.00 | SCALE: AS SHOWN |



NOTE:
 DIMENSIONS SHOWN ON THIS
 DRAWING ARE FOR CONTRACTORS
 GENERAL DIMENSIONAL TOLERANCES
 FOR HORIZONTAL LAYOUT ARE WITHIN
 1/8" UNLESS NOTED OTHERWISE. THE
 CONTRACTOR SHALL VERIFY THE
 DIMENSIONS AND REPORT ANY DISCREPANCIES
 OR CONFLICTS.

| | |
|-------------------------------------------------------------------------------------------------------------------------|----------------------------|
| SW PLAZA ENTRY DIMENSIONED PLAN 400 EAST 84TH STREET REPAIRS TO PLAZA PLANTERS | |
| AS INDICATED 3094 LINC. JAL | 06/18/18 3094 LINC. JAL |
| BONE / LEVINE ARCHITECTS 400 BROOKLYN AVE 2ND FLOOR NEW YORK, NY 10013 TEL: 212-713-1058 FAX: 212-251-8208 | |
| 9109 | |



406 EAST 56TH STREET
 REPAIRS TO PLAZA PLANTERS
 12 AND STAIR MODIFICATION
 BOONE / LEVINE ARCHITECTS
 301 GRAND AVENUE
 NEW YORK, NY 10018
 A-003 03
 AS NOTED
 06/18/18



AIA[®] Document A107[™] – 2007

Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope

AGREEMENT made as of the Twenty-ninth day of June in the year Two Thousand Sixteen
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Plaza 400 Owners Corp.
400 East 56th Street
New York, NY 10022

and the Contractor:
(Name, legal status, address and other information)

Sato Construction, Co., Inc.
D/B/A Flag Waterproofing & Restoration Co.
10-40 Borden Avenue
Long Island City, NY 11101
Telephone Number: 718.784.8111
Fax Number: 718.784.8115

for the following Project:
(Name, location and detailed description)

Repairs to Plazas, Phase I
SW Corner
400 East 56th Street
New York, NY 10022

The Architect:
(Name, legal status, address and other information)

Bone/Levine Architects
561 Broadway, No. 8D
New York, NY 10012
Telephone Number: 212.219.1038
Fax Number: 212.226.8056

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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User Notes:

(858481195)

TABLE OF ARTICLES

- 1 THE WORK OF THIS CONTRACT
- 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 3 CONTRACT SUM
- 4 PAYMENT
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ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

August 1, 2016 or earlier depending on receipt of DoB Permits.

Init.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Fifty (50) working (Monday – Friday except Holidays) days from the date of commencement, or as follows: (Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

| | |
|-----------------|-----------------------------|
| Portion of Work | Substantial Completion Date |
|-----------------|-----------------------------|

, subject to adjustments of this Contract Time as provided in the Contract Documents. (Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following: (Check the appropriate box.)

- Stipulated Sum, in accordance with Section 3.2 below
- Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below
- Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be One Hundred Eighty-nine Thousand One Hundred Ninety-two Dollars and Zero Cents (\$ 189,192.00), subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner: (State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

As per FLAG Waterproofing & Restoration Bid Form dated Clarified May 31, 2016.

§ 3.2.2 Unit prices, if any: (Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)

| Item | Units and Limitations | Price Per Unit (\$0.00) |
|--------------------------------------------------------------------------------|-----------------------|-------------------------|
| As per FLAG Waterproofing & Restoration Bid Form dated Clarified May 31, 2016. | | |

§ 3.2.3 Allowances included in the stipulated sum, if any: (Identify allowance and state exclusions, if any, from the allowance price.)

| Item | Allowance |
|------|-----------|
| None | |

Init.

(Paragraphs deleted)
(Table deleted)
(Paragraphs deleted)
(Table deleted)
(Paragraphs deleted)

ARTICLE 4 PAYMENTS

§ 4.1 PROGRESS PAYMENTS

§ 4.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

First Payment: \$17,027.28 (10% Contract Sum Less 10% Retainage) Due for Mobilization upon Contract signing. Thereafter payments shall be based upon receipt of approved Application and Certificate for Payment.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the Fifth day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the Fifth day of the following month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 4.1.4 Retainage, if any, shall be withheld as follows:

10% Retainage shall be withheld from each Application and Certificate for Payment. Retainage shall be released within thirty (30) days of completion of all punch list items.

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

7.00 % per annum

§ 4.2 FINAL PAYMENT

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a guaranteed maximum price; and
- .3 a final Certificate for Payment has been issued by the Architect.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

ARTICLE 5 DISPUTE RESOLUTION

§ 5.1 BINDING DISPUTE RESOLUTION

For any claim subject to, but not resolved by, mediation pursuant to Section 21.3, the method of binding dispute resolution shall be as follows:

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(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.)

- Arbitration pursuant to Section 21.4 of this Agreement
- Litigation in a court of competent jurisdiction
- Other (Specify)

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 6.1.1 The Agreement is this executed AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

§ 6.1.2 The Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|----------|-------|------|-------|
|----------|-------|------|-------|

§ 6.1.3 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Project Manual for Repairs to Plazas, Phase I dated March 22, 2016 prepared by Bone/Levine Architects

| Section | Title | Date | Pages |
|-------------------|----------------------------------------|-----------------|---------|
| Division 1 | General Requirements | 03-22-16 | |
| A. | Instructions to Bidders | | 005-010 |
| B. | Bid Form | | 011-016 |
| C. | General Requirements | | 017-026 |
| D. | Alternates | | 027-029 |
| E. | Project Close Out | | 030-032 |
| Division 2 | Existing Conditions – N/A | 03-22-16 | |
| Division 3 | Concrete | 03-22-16 | |
| Section 030000 | Concrete | | 033-039 |
| Section 0321440 | Stone Paving | | 040-045 |
| Division 4 | Masonry | 03-22-16 | |
| Section 049000 | Masonry Repairs | | 046-057 |
| Division 5 | Metals – N/A | 03-22-16 | |
| Division 6 | Wood and Plastics – N/A | 03-22-16 | |
| Division 7 | Thermal and Moisture Protection | 03-22-16 | |
| Section 076200 | Sheet Metals | | 058-062 |
| Section 075600 | Fluid Applied Waterproofing Membrane | | 063-093 |
| Section 076500 | Flexible Flashing | | 094-096 |
| Section 076526 | Self-Adhering Sheet Flashing | | 097-100 |
| Section 079200 | Joint Sealers | | 101-106 |
| Division 8 | Openings – N/A | 03-22-16 | |

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| | | | |
|----------------|----------|----------|---------|
| Division 9 | Finishes | 03-22-16 | |
| Section 099000 | Painting | | 107-114 |

§ 6.1.4 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)
 Repairs to Plaza Planters

| Number | Title | Date |
|----------|-----------------------------------------|----------|
| A-001 | General Information, Plans | 03-22-16 |
| A-002.00 | SW Plaza Sections, Details | 03-22-16 |
| A-003.00 | 1 st Ave. Stair Modification | 03-22-16 |

§ 6.1.5 The Addenda, if any:

| Number | Date | Pages |
|--------|------|-------|
|--------|------|-------|

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are enumerated in this Article 6.

§ 6.1.6 Additional documents, if any, forming part of the Contract Documents:

- .1 Exhibit A, Determination of the Cost of the Work, if applicable.
- .2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
- .3 Other documents:
(List here any additional documents that are intended to form part of the Contract Documents.)

FLAG Waterproofing and Restoration Bid Form dated Clarified May 31, 2016.
 Rider dated as of the date hereof annexed hereto and made part hereof.

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

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§ 7.4 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 7.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 7.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 7.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmission, unless otherwise provided in the Agreement or in the Contract Documents.

ARTICLE 8 OWNER**§ 8.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

§ 8.1.1 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.2 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 8.1.3 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.2 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 8.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner, without prejudice to any other remedy the Owner may have, may correct such deficiencies and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the Contractor.

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ARTICLE 9 CONTRACTOR**§ 9.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.1, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 9.2 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 9.3 LABOR AND MATERIALS

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification.

§ 9.4 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage.

§ 9.5 TAXES

The Contractor shall pay sales, consumer, use and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

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§ 9.6 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 ALLOWANCES

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Allowance amounts shall not include the Contractor's costs for unloading and handling at the site, labor, installation, overhead, and profit.

§ 9.8 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect.

§ 9.9 SUBMITTALS

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.10 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 9.11 CUTTING AND PATCHING

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ 9.12 CLEANING UP

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material from and about the Project.

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§ 9.13 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 9.14 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 9.15 INDEMNIFICATION

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10 ARCHITECT

§ 10.1 The Architect will provide administration of the Contract and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 10.2 The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 10.4 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

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§ 10.5 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.6 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.7 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 10.8 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 10.9 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of the Subcontractors or suppliers for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such claim as provided in Article 21.

§ 12.2 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

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ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor and Architect, or by written Construction Change Directive signed by the Owner and Architect.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

§ 13.3 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Substantial Completion is the date certified by the Architect in accordance with Section 15.4.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine, subject to the provisions of Article 21.

ARTICLE 15 PAYMENTS AND COMPLETION**§ 15.1 APPLICATIONS FOR PAYMENT**

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values, allocating the entire Contract Sum to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used in reviewing the Contractor's Applications for Payment.

§ 15.1.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress

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payments already received by the Contractor, less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 15.1.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.1.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 15.2 CERTIFICATES FOR PAYMENT

§ 15.2.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 15.2.3.

§ 15.2.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 15.2.3 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 15.2.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 15.2.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 15.2.4 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

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§ 15.3 PROGRESS PAYMENTS

§ 15.3.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in similar manner.

§ 15.3.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 15.3.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 15.4 SUBSTANTIAL COMPLETION

§ 15.4.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 15.4.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.4.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion, establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.4.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 15.5 FINAL COMPLETION AND FINAL PAYMENT

§ 15.5.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.5.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.5.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 15.5.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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§ 15.5.4 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3, except for damage or loss attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 HAZARDOUS MATERIALS

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay and start-up.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 16.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

ARTICLE 17 INSURANCE AND BONDS

§ 17.1 The Contractor shall purchase from, and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations and completed operations under the Contract, whether such operations be by the

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Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations under Section 9.15. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. The Contractor shall cause the commercial liability coverage required by the Contract Documents to include: (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 17.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 17.3 PROPERTY INSURANCE

§ 17.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance on an "all-risk" or equivalent policy form, including builder's risk, in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 15.5 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 17.3.1 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and sub-subcontractors in the Project.

§ 17.3.2 The Owner shall file a copy of each policy with the Contractor before an exposure to loss may occur. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 17.3.3 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 12, if any, and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section 17.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 12, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 17.3.4 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-subcontractors in similar manner.

§ 17.4 PERFORMANCE BOND AND PAYMENT BOND

§ 17.4.1 Contractor shall not procure and provide any bonds.

§ 17.4.2 Contractor shall not procure and provide any bonds.

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ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, unless compensable under Section A.2.7.3 in Exhibit A, Determination of the Cost of the Work.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.4.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS**§ 19.1 ASSIGNMENT OF CONTRACT**

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located, except, that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.4.

§ 19.3 TESTS AND INSPECTIONS

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating the costs to the Contractor.

§ 19.4 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 19.4.

ARTICLE 20 TERMINATION OF THE CONTRACT**§ 20.1 TERMINATION BY THE CONTRACTOR**

If the Architect fails to certify payment as provided in Section 15.2.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 20.2 TERMINATION BY THE OWNER FOR CAUSE

§ 20.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 20.2.2 When any of the above reasons exists, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' written notice, terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 20.3 TERMINATION BY THE OWNER FOR CONVENIENCE

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Architect but excluding those arising under Section 16.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 21.8 and Sections 15.5.3 and 15.5.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution.

§ 21.2 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.3 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is

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stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.4 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 21.5 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 21.6 Any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.

§ 21.7 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 21.8 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.8 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

ARTICLE 22 OTHER CONDITIONS

§ 22.1 Contractor must coordinate access into the building with the designated building representative. Working hours shall be between 8:45 AM and 4:45 PM. The Contractor shall engage only in quiet work between the hours of 8:00 AM and 9:00 AM. No work on weekends or holidays without the Owner's approval. If such approval is given, it is the Contractor's responsibility to acquire necessary permits, with the cost of those permits to be paid for by the Owner.

§ 22.2 Contractor's Insurance Company must submit a Certificate of Insurance naming the following as "Primary Additional Insured" prior to commencement of work:

- A. Plaza 400 Owners Corp. (Certificate Holder)
400 East 56th Street
New York, NY 10022
- B. Plaza 400 Owners Corp. Directors, Officers, Employees, Agents, Successors and/or Assignees
- C. Bone/Levine Architects

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Original Certificates must be submitted to the Architect.

§ 22.3 Owner is responsible for New York State sales tax unless, if applicable, a Certificate of Capital Improvement Form is submitted to the Contractor by the Owner or the Owner's Management. Tax is not included in the contract price. The Contractor, their agents, servants and/or employees must advise the Owner and Architect in writing of the need for any additional Certificates of Capital Improvements relating to services to be provided or other purchases in relation to this construction project. Such notice shall be provided at sufficient period of time before the services and/or purchases are contracted or performed.

§ 22.4 The Contractor is required to complete all punch list work within Thirty (30) days of the date of substantial completion as indicated in the contract. If work is not completed within this time the costs of the architectural services required for the administration of the work, including punch list items and project close-out shall be the responsibility of the Contractor and shall be paid directly by the Contractor to the Architect with no additional charge to the Owner. Final payment to the Contractor will not be made until all such accounts are settled. Additional services will be billed at the Architect's hourly rate.

§ 22.5 Contractor must submit a schedule for work along with signed contracts and other required documents. Updated schedules must be submitted along with each ACP.

§ 22.6 Contractor shall notify Owner and Architect at least two weeks prior to expiration of insurance and permits and advise of any impediments regarding renewal.

§ 22.7 Contractor is responsible for posting required permits at the building at all times including maintaining a set of the DOB approved drawings at the building.

§ 22.8 The Contractor does not intend to use any subcontractors, vendors and suppliers in connection with the Work under this Agreement and shall not engage any subcontractor, vendor or supplier without the prior written consent of Owner in each instance. If Contractor uses any subcontractors, vendors and suppliers, Contractor will provide Owner with a verified list of subcontractors, vendors and suppliers used or employed in connection with the Work and written evidence satisfactory to Owner that any indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered has been paid or otherwise satisfied, which written evidence shall include "Contractor's Affidavit of Payment of Debts and Claims" and "Contractor's Affidavit Release of Lien" respectively, and the supporting documents mentioned therein, and Contractor shall have delivered to Owner all required lien waivers; all final drawings, diagrams, legend sheets, instructions and other materials required to be delivered pursuant to the Specifications; and any and all certificates or permits required by the Specifications and by any governmental department or agency to indicate the Work has been completed in accordance with law.

This Agreement entered into as of the day and year first written above.

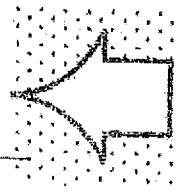
Jacob Dimant
OWNER (Signature)

Jacob Dimant, MD, Board President
(Printed name and title)

Anthony Colao
CONTRACTOR (Signature)

Anthony Colao, Sr., President
(Printed name and title)

7/6/16



Additions and Deletions Report for

AIA[®] Document A107[™] - 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:48:10 on 06/29/2016.

PAGE 1

AGREEMENT made as of the Twenty-ninth day of June in the year Two Thousand Sixteen

...

Plaza 400 Owners Corp.
400 East 56th Street
New York, NY 10022

...

Sato Construction Co., Inc.
D/B/A Flag Waterproofing & Restoration Co.
10-40 Borden Avenue
Long Island City, NY 11101
Telephone Number: 718.784.811
Fax Number: 718.784.8115

...

Repairs to Plazas, Phase 1
SW Corner
400 East 56th Street
New York, NY 10022

...

Bone/Levine Architects
561 Broadway, No. 8D
New York, NY 10012
Telephone Number: 212.219.1038
Fax Number: 212.226.8056

PAGE 2

August 1, 2016 or earlier depending on receipt of DoB Permits.

PAGE 3

§ 2.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Fifty (50) working (Monday - Friday except Holidays) days from the date of commencement, or as follows:

...

Stipulated Sum, in accordance with Section 3.2 below

...

§ 3.2 The Stipulated Sum shall be One Hundred Eighty-nine Thousand One Hundred Ninety-two Dollars and Zero Cents (\$ 189,192.00), subject to additions and deductions as provided in the Contract Documents.

...

As per FLAG Waterproofing & Restoration Bid Form dated Clarified May 31, 2016.

...

As per FLAG Waterproofing &
Restoration Bid Form dated Clarified May
31, 2016.

...

None

~~§ 3.3 COST OF THE WORK PLUS CONTRACTOR'S FEE~~

~~§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.~~

~~§ 3.3.2 The Contractor's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)~~

~~§ 3.4 COST OF THE WORK PLUS CONTRACTOR'S FEE WITH A GUARANTEED MAXIMUM PRICE~~

~~§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.~~

~~§ 3.4.2 The Contractor's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)~~

~~§ 3.4.3 GUARANTEED MAXIMUM PRICE~~

~~§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed (\$), subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. (Insert specific provisions if the Contractor is to participate in any savings.)~~

~~§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:~~

~~§ 3.4.3.3 Unit Prices, if any:~~

~~(Identify and state the unit price, and state the quantity limitations, if any, to which the unit price will be applicable.)~~

| Item | Units and Limitations | Price Per Unit (\$0.00) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-------------------------|
| § 3.4.3.4 Allowances included in the Guaranteed Maximum Price, if any: (Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.) | | |

| Item | Allowance |
|--------------------------------------------------------------------------------|-----------|
| § 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based: | |

PAGE 4

First Payment: \$17,027.28 (10% Contract Sum Less 10% Retainage) Due for Mobilization upon Contract signing. Thereafter payments shall be based upon receipt of approved Application and Certificate for Payment.

...

§ 4.1.3 Provided that an Application for Payment is received by the Architect not later than the Fifth day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the Fifth day of the following month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment.

...

10% Retainage shall be withheld from each Application and Certificate for Payment. Retainage shall be released within thirty (30) days of completion of all punch list items.

...

7.00 % per annum

PAGE 5

Litigation in a court of competent jurisdiction.

...

Project Manual for Repairs to Plazas, Phase 1 dated March 22, 2016 prepared by Bone/Levine Architects

...

| | | | |
|-----------------------|-----------------------------------|-----------------|----------------|
| <u>Division 1</u> | <u>General Requirements</u> | <u>03-22-16</u> | |
| <u>A.</u> | <u>Instructions to Bidders</u> | | <u>005-010</u> |
| <u>B.</u> | <u>Bid Form</u> | | <u>011-016</u> |
| <u>C.</u> | <u>General Requirements</u> | | <u>017-026</u> |
| <u>D.</u> | <u>Alternates</u> | | <u>027-029</u> |
| <u>E.</u> | <u>Project Close Out</u> | | <u>030-032</u> |
| <u>Division 2</u> | <u>Existing Conditions -- N/A</u> | <u>03-22-16</u> | |
| <u>Division 3</u> | <u>Concrete</u> | <u>03-22-16</u> | |
| <u>Section 030000</u> | <u>Concrete</u> | | <u>033-039</u> |

| | | | |
|------------------------|---------------------------------------------|-----------------|----------------|
| <u>Section 0321440</u> | <u>Stone Paving</u> | | <u>040-045</u> |
| <u>Division 4</u> | <u>Masonry</u> | <u>03-22-16</u> | |
| <u>Section 049000</u> | <u>Masonry Repairs</u> | | <u>046-057</u> |
| <u>Division 5</u> | <u>Metals – N/A</u> | <u>03-22-16</u> | |
| <u>Division 6</u> | <u>Wood and Plastics – N/A</u> | <u>03-22-16</u> | |
| <u>Division 7</u> | <u>Thermal and Moisture Protection</u> | <u>03-22-16</u> | |
| <u>Section 076200</u> | <u>Sheet Metals</u> | | <u>058-062</u> |
| <u>Section 075600</u> | <u>Fluid Applied Waterproofing Membrane</u> | | <u>063-093</u> |
| <u>Section 076500</u> | <u>Flexible Flashing</u> | | <u>094-096</u> |
| <u>Section 076526</u> | <u>Self-Adhering Sheet Flashing</u> | | <u>097-100</u> |
| <u>Section 079200</u> | <u>Joint Sealers</u> | | <u>101-106</u> |
| <u>Division 8</u> | <u>Openings – N/A</u> | <u>03-22-16</u> | |
| <u>Division 9</u> | <u>Finishes</u> | <u>03-22-16</u> | |
| <u>Section 099000</u> | <u>Painting</u> | | <u>107-114</u> |

PAGE 6

Repairs to Plaza Planters

...

| | | |
|-----------------|-----------------------------------------------|-----------------|
| <u>A-001</u> | <u>General Information, Plans</u> | <u>03-22-16</u> |
| <u>A-002.00</u> | <u>SW Plaza Sections, Details</u> | <u>03-22-16</u> |
| <u>A-003.00</u> | <u>1st Ave. Stair Modification</u> | <u>03-22-16</u> |

...

FLAG Waterproofing and Restoration Bid Form dated Clarified May 31, 2016.
Rider dated as of the date hereof annexed hereto and made part hereof.

PAGE 16

~~§ 17.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Contractor shall not procure and provide any bonds.~~

~~§ 17.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. Contractor shall not procure and provide any bonds.~~

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ARTICLE 22 OTHER CONDITIONS

§ 22.1 Contractor must coordinate access into the building with the designated building representative. Working hours shall be between 8:45 AM and 4:45 PM. The Contractor shall engage only in quiet work between the hours of 8:00 AM and 9:00 AM. No work on weekends or holidays without the Owner's approval. If such approval is given, it is the Contractor's responsibility to acquire necessary permits, with the cost of those permits to be paid for by the Owner.

§ 22.2 Contractor's Insurance Company must submit a Certificate of Insurance naming the following as "Primary Additional Insured" prior to commencement of work:

- A. Plaza 400 Owners Corp. (Certificate Holder)
400 East 56th Street
New York, NY 10022
- B. Plaza 400 Owners Corp. Directors, Officers, Employees, Agents, Successors and/or Assignees
- C. Bone/Levine Architects

Original Certificates must be submitted to the Architect.

§ 22.3 Owner is responsible for New York State sales tax unless, if applicable, a Certificate of Capital Improvement Form is submitted to the Contractor by the Owner or the Owner's Management. Tax is not included in the contract price. The Contractor, their agents, servants and/or employees must advise the Owner and Architect in writing of the need for any additional Certificates of Capital Improvements relating to services to be provided or other purchases in relation to this construction project. Such notice shall be provided at sufficient period of time before the services and/or purchases are contracted or performed.

§ 22.4 The Contractor is required to complete all punch list work within Thirty (30) days of the date of substantial completion as indicated in the contract. If work is not completed within this time the costs of the architectural services required for the administration of the work, including punch list items and project close-out shall be the responsibility of the Contractor and shall be paid directly by the Contractor to the Architect with no additional charge to the Owner. Final payment to the Contractor will not be made until all such accounts are settled. Additional services will be billed at the Architect's hourly rate.

§ 22.5 Contractor must submit a schedule for work along with signed contracts and other required documents. Updated schedules must be submitted along with each ACP.

§ 22.6 Contractor shall notify Owner and Architect at least two weeks prior to expiration of insurance and permits and advise of any impediments regarding renewal.

§ 22.7 Contractor is responsible for posting required permits at the building at all times including maintaining a set of the DOB approved drawings at the building.

§ 22.8 The Contractor does not intend to use any subcontractors, vendors and suppliers in connection with the Work under this Agreement and shall not engage any subcontractor, vendor or supplier without the prior written consent of Owner in each instance. If Contractor uses any subcontractors, vendors and suppliers, Contractor will provide Owner with a verified list of subcontractors, vendors and suppliers used or employed in connection with the Work and written evidence satisfactory to Owner that any indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered has been paid or otherwise satisfied, which written evidence shall include "Contractor's Affidavit of Payment of Debts and Claims" and "Contractor's Affidavit Release of Lien" respectively, and the supporting documents mentioned therein, and Contractor shall have delivered to Owner all required lien waivers; all final drawings, diagrams, legend sheets, instructions and other materials required to be delivered pursuant to the Specifications; and any and all certificates or permits required by the Specifications and by any governmental department or agency to indicate the Work has been completed in accordance with law.

PAGE 20

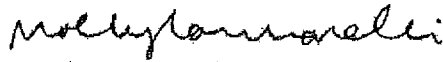
Jacob Dimant, MD, Board President

Anthony Colao, Sr., President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:45:31 on 06/29/2016 under Order No. 5444338541_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A107™ – 2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

office manager

(Title)

6.29.16

(Dated)

RIDER TO AGREEMENT
BETWEEN
PLAZA 400 OWNERS CORP., AS "OWNER"
AND
SATO CONSTRUCTION CO., INC., AS "CONTRACTOR"

This Rider amends and forms a part of that certain Agreement dated as of June 29, 2016 by and between Plaza 400 Owners Corp. ("Owner") and Sato Construction Co., Inc. ("Contractor") for the repair project of the Plazas, Phase I, SW Corner for the building located at 400 East 56th Street, New York, NY (the "Project"). This Rider amends the Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope (AIA Form A107-2007), which is referred to as the "Agreement." To the extent that the Rider is inconsistent with the Agreement, the provisions of this Rider shall govern. Words and phrases defined in the Agreement have the same meanings in this Rider unless otherwise specified.

THE OWNER AND THE CONTRACTOR AGREE AS FOLLOWS:

ARTICLE 1
THE CONTRACT DOCUMENTS

1.01 In the event there is any conflict or inconsistency between the terms of this Agreement and/or Contract Documents, Architect shall be asked for written clarification and the Architect's and Owner's determination shall be final and binding on the parties hereto. Work shown on one document/drawing but not on others shall be included in this Agreement as if shown in all such places.

1.02 Contractor has reviewed and is fully familiar with the Contract Documents and fully understands the design intent shown therein.

ARTICLE 2
THE WORK

2.01 The Contractor shall perform all the Work required by the Contract Documents for the completion of the Project in a good and workmanlike manner in strict conformance with the Contract Documents (hereafter referred to as the "Work").

2.02 Any work required, which is not included in the Contract Documents shall be considered Extra Work. If the Contractor claims that any instructions, orders, or directions of the Architect or the Owner involve Extra Work for which the Contractor may claim additional compensation the Contractor shall, within five (5) days after the receipt of such instructions, orders or directions and, in any event, before proceeding to execute the work, file with the Architect written notice of its intention to make a claim for extra compensation stating in such notice the amount of such extra compensation and the character of the work which Contractor deems should be treated as Extra Work and its reasons therefore. The Contractor shall also comply with the terms of the Agreement with regard to all Change Orders. The Contractor shall not be compensated for Extra Work unless a Change Order is completed and executed by the Architect, Owner and Contractor.

2.03 Contractor agrees that the question as to whether or not any work is to be considered Extra Work, or as to whether or not the Contractor is entitled to compensation therefore, shall be determined by the Architect, Owner and Contractor.

2.04 Contractor shall not use any Subcontractors for the Work without Owner's prior written consent. Prior to the commencement of the Work, Contractor shall provide a list to Owner of all Subcontractors, if any, for the Project.

2.05 Notwithstanding anything to the contrary in this Agreement or the Contract Documents, any claims for changes in the Work or claims for extensions of time must be sent to the Owner and Architect within twenty-one (21) days after the occurrence of the event giving rise to such claim or within twenty-one (21) days after Contractor first recognizes (or should have recognized) the condition giving rise to such claim, whichever is later. Any claim by Contractor for (a) an adjustment in the Contract Sum for changes in the Work, or (b) for an increase in the Contract Time, shall be waived if not provided to Architect and Owner in writing within the time frame of this Section.

ARTICLE 3 COMMENCEMENT AND COMPLETION

3.01 The commencement date of the Work shall be the date provided for in Section 2.1 of the Agreement (the "Commencement Date") and the Work shall be completed on or before the date that is fifty (50) working days from the Commencement Date (the "Completion Date"). Contractor is to make all efforts to complete the Work as expeditiously as possible, but not later than the Completion Date. Unnecessary interruption in the Work or failure to supply enough crews to adequately complete the Work with diligence will permit the Owner to have the right to seek any redress available under the terms of this Agreement or as are available in law or equity.

3.02 Subject to Section 6.01 of this Rider, the Work shall be deemed completed upon full completion of the Work, and any authorized Extra Work, and all debris shall have been removed from the Project site by the Contractor.

ARTICLE 4 CONTRACT SUM

4.01 The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents. Owner shall deliver a Capital Improvement Certificate, if applicable, upon execution of this Agreement.

4.02 Contractor shall pay all Subcontractors, if any, and shall provide full lien waivers from each.

4.03 The Contract Sum includes all applicable sales and use taxes, subject to additions and deductions by Change Order as provided in the Contract Documents.

ARTICLE 5
PAYMENTS

5.01 Notwithstanding the foregoing contained in the Agreement, all Extra Work shall be paid in the same manner that payment for the Work is made pursuant to the Agreement.

5.02 Nothing in this Agreement shall be construed to limit Owner's rights respecting any errors or omissions on the part of Architect.

5.03 The Contract Sum includes the cost of all labor, materials, permits, inspections and insurance required for the Work. It is expressly understood by the Contractor that the total cost of the Work to the Owner will in no event exceed the Contract Sum unless Change Orders are agreed upon by the Owner and executed pursuant to this Agreement. Notwithstanding anything herein to the contrary, Contractor agrees to waive any claim for additional cost or delay of any kind related to any error or omission in the Contract Documents that reasonably should have been observed by Contractor prior to commencing the Work.

5.04 The Owner in executing this Agreement has relied upon Contractor's warranty and representations that it is fully familiar with the patent conditions of the building and the requirements of all public agencies having jurisdiction thereof.

5.05 Payment may be withheld on account of (i) defective Work not remedied, (ii) failure of the Contractor to make payments properly to Subcontractors, if any, for labor, materials or equipment, (iii) reasonable evidence that the Work cannot be completed, (iv) reasonable evidence that the Work will not be completed on or prior to the Completion Date unless extended by mutual agreement of Owner and Contractor and that the unpaid balance would not be adequate to cover actual damages for the anticipated delay (based upon the Owner's or Architect's reasonable judgment), or (v) persistent failure to carry out the Work in accordance with this Agreement.

5.06 The Contractor shall provide lien waivers from Contractor and Subcontractors, if any, as a precondition for the receipt of each payment. Contractor shall hold harmless and indemnify the Indemnified Parties (as hereinafter defined) from and against all liability, costs and fees (including reasonable attorneys' and court costs and fees) relating to all payments made in which lien waivers were or should have been obtained, whether or not provided.

5.07 Payments received by the Contractor shall be deemed to be held in trust for the payment of sums due to any Subcontractors, workmen and materialmen for work and materials supplied or delivered to the Project site.

ARTICLE 6
FINAL PAYMENT

6.01 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor within thirty (30) days after the final completion of the Work in accordance with the Contract Documents and after all of the following has occurred:

- (a) the Contractor has certified to the Owner in writing that all Work and

Extra Work has been completed in accordance with the Contract Documents (including the Specifications) and completion has been confirmed in writing by the Architect;

(b) all inspections, certifications, and approvals of any and all municipal authorities and governmental agencies having jurisdiction over the Work performed by the Contractor on the building have been obtained and presented to and approved by the Architect, including but not limited to certificates from the Department of Buildings;

(c) the Contractor has satisfactorily complied with all of the provisions of this Agreement, completed the Work and Extra Work in good workmanlike manner and in compliance with the requirements of applicable governmental authorities and that no defects have appeared in the Work or the Extra Work;

(d) the Contractor delivers to the Owner an affidavit from Contractor and each Subcontractor, if any, acknowledging payment in full (relating to the Work and any Extra Work) and releasing Owner from any liability thereto;

(e) all final lien waivers or releases or other satisfactory evidence that upon disbursement of the final payment, the Project will be fully paid for (including those from the Subcontractors, if any);

(f) the issuance of any contractor's or manufacturer's warranty or guaranty that is called for under this Agreement, if any;

(g) all damage to the building caused by the Contractor or the Contractor's agents, employees and/or Subcontractors has been repaired;

(h) all debris has been removed from the Project site;

(i) all punch-list items have been completed; and

(j) all violations with respect to the Work caused by Contractor (or any Subcontractor) have been resolved and dismissed of record.

ARTICLE 7 PROCEDURE

7.01 Inspections by Contractor: Contractor represents to Owner that the Contractor has inspected the building, reviewed all pertinent information and conditions, and verified all dimensions and measurements to Contractor's own satisfaction. The Contractor shall thoroughly inspect and thereafter review on an ongoing basis the Work herein specified to assure that all defects in the Work are discovered and repaired pursuant to the Drawings and Specifications and field conditions. The Contractor shall promptly advise the Owner of any conflicts or unforeseen conditions which may require alternate, different or Extra Work and/or require modification of any part of the Drawings and Specifications, and obtain appropriate field directions before proceeding. Contractor shall verify all locations, dimensions, and spatial relationships contained in the Drawings and Specifications and any appended drawings or sketches for correctness and applicability before proceeding.

7.02 Unexpected Conditions: Unforeseen or unforeseeable conditions, or conditions not previously observed by the Architect and/or the Contractor may arise while the Work is in progress. Work in connection with such conditions, as and if discovered, shall be subject to field determination and direction by the Architect; and no Work and/or additional costs are, nor are to be construed as, authorized by Owner except as per written Change Order signed by Owner, Architect and Contractor.

7.03 Certificates; Schedule of Work:

(a) The Contractor shall supply a schedule of Work to which Contractor shall adhere. Such schedule shall conform to the time limitations set forth in paragraph 3.01 above. If the schedule of Work is not acceptable to Owner, the Owner, Architect and Contractor shall promptly implement a mutually agreeable schedule.

(b) The Work shall be undertaken at the building only between the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday. Contractor will not be permitted to perform work which produces unreasonably excessive noise or is otherwise unreasonably disturbing to building occupants. The Owner shall be the sole arbiter should there be any doubt as to noise levels which may be disturbing. The Contractor shall not work on the building on legal holidays or weekends without Owner's prior written consent, and subject to such conditions as Owner shall require. All overtime or other extra charges incurred in connection with the Work shall be paid by Contractor unless specifically requested by Owner.

7.04 Storage; Scaffolding; Protection:

(a) If Owner provides space within the building or courtyard(s) for the storage of Contractor's materials and tools, Contractor agrees that Owner shall have no obligations or liability for theft, damage, or loss. Contractor agrees to perform no Work in such space and to keep such space neat and broom clean and to remove each day all construction debris and garbage. Staging areas shall require the Owner's prior consent.

(b) Contractor shall take all steps necessary to protect workers, the public, and tenants and residents in the building from personal injury or property damage, including, without limitation, the erection of warning signs and roping off of all areas (including courtyards and sidewalks) affected by the Work.

(c) Storage of materials in the building will be limited to areas designated by the Owner. No rubbish accumulation is permitted. No storage of flammable materials or caustic chemicals is permitted in the building. Contractor shall leave all portions of the building free of debris, and these areas shall be broom cleaned at the end of each workday. Damages caused by Contractor shall be repaired promptly by the Contractor at its sole expense as directed by the Owner.

(d) The Contractor agrees to cover adequately and fully all common areas of the building, that are needed for access or are part of the Project site, and to protect them fully against damage and defacement of any sort; and Contractor shall report any damage which the Contractor or its employees or agents may have caused to same and restore the same promptly to their original condition at no charge or cost to Owner.

(e) If sidewalk bridging is to be used and/or is required, same shall be provided, installed and maintained by the Contractor in accordance with the Contract Documents.

(f) The Contractor shall coordinate with building's personnel in scheduling the protection of apartments. The Contractor will protect and seal off all apartments in the Work area as directed by the Owner and shall be responsible for any damage (interior or exterior) as a result of Contractor's fault, negligence or failure to follow Owner's or Architect's directions. The Owner or its representatives shall promptly notify the Contractor after its receipt of notice of such damages.

7.05 Mechanic's Liens:

(a) Provided Contractor does not have a legitimate claim for non-payment pursuant to this Agreement, at no time shall Contractor allow or file, or cause to be filed, any mechanic's or materialmen's lien against the Owner or the building. In addition, Contractor shall remove or cause to be removed, either by the payment of money, bonding or otherwise, all mechanics' liens improperly filed against Owner by Contractor and/or its Subcontractors arising under or in connection with this Agreement or the Work being performed hereunder. If Contractor improperly files a mechanic's lien against the Owner or the property, notwithstanding all other rights Owner may have under this Agreement, Contractor shall be obligated to reimburse Owner for all costs and expenses (including legal fees) incurred in connection with the removal of the mechanic's lien(s).

(b) Contractor shall, simultaneously with receipt of each payment and upon completion of all Work, certify to Owner that it has paid all monies due employees and met all obligations incurred to its suppliers and/or permitted Subcontractors whose services or materials are or have been employed or used on or in this Work, and that it has paid all such taxes as may be due upon such labor and/or materials. Owner shall, before final payment is made, receive from the Contractor written notarized releases and/or affidavits from Subcontractors releasing Owner from all claims with respect to such payments and/or obligations. Contractor hereby indemnifies and agrees to hold harmless the Indemnified Parties from and against any loss, cost or expense arising out of any mechanic's lien or claim being filed or made against Owner, its agents and/or employees or against the building or the land under the building arising out of the Work or alleged to arise out of the Work. Such indemnity shall include (without limitation) court cost and attorneys' fees.

7.06 Compliance with Codes:

(a) Notwithstanding anything in the this Agreement or the Contract Documents which may be or subsequently become a part hereof, Contractor shall at all times comply with the City of New York Noise Control Code and the Administrative Code of the City of New York, in its current form, the Building and Construction Code of the City of New York, the New York City Landmarks Law and all other laws, codes, rules or regulations having jurisdiction, including without limitation, the Occupational Safety and Health Act, the Environmental Protection Act and related regulations of the Federal government. Contractor shall promptly upon becoming aware, advise Owner of any conflict between such laws, codes,

rules and regulations and the Contract Documents or this Agreement.

(b) The Contractor shall indemnify and hold harmless the Indemnified Parties from and against any and all costs and expenses including, but not limited to, fines, penalties, attorneys' fees and expenses, work stoppages and corrective measures that may result from the acts or omissions of the Contractor, its Subcontractors, materialmen, agents, employees, and assigns in failing to comply with the aforesaid laws, rules and regulations or the other safety requirements set forth herein. The amount of such costs and expenses shall be charged to the Contractor's account.

7.07 Written Modifications: No modification, addition, deletion, or change of any of the Specifications or scope of Work herein shall be deemed authorized unless it is in writing signed by the Owner and the Architect.

7.08 Qualified Employees: Contractor, in bidding upon and contracting for the Work herein specified, agrees and certifies that he will not employ any person who, because of age, immigration status, or otherwise, is not permitted by applicable statute and/or regulations to do any or all of the Work herein specified.

7.09 Employee Safety; Building Safety:

(a) Contractor agrees that it is solely responsible and liable for the safety of its employees, agents, Subcontractors and/or their employees or agents, at all times during the performance of the Work at the Project site, whether specified herein or not. Any safety related requirements, suggestions or comments made by or in behalf of Owner, its agents or employees shall not constitute or be construed to constitute assumption of responsibility or liability for such safety by the Owner, its agents or employees.

(b) Contractor shall at all times be aware of the building generally, and the area of Work specifically, may be occupied while work is proceeding and that such premises may contain resident's personal property. Contractor's employees shall be clearly identifiable. Owner may also require each employee of contractor to sign in and to sign out when entering and leaving the building. Contractor shall advise Owner immediately of any changes in supervisory personnel designated to work on the Project at the site and Owner shall have the right to disapprove the change.

7.10 Owner's Agents: Owner hereby notifies Contractor that the Owner's resident manager and employees are not authorized to make any decisions on behalf of Owner, consent to any changes in the scope of Work, bind Owner in any way or waive any rights of Owner.

7.11 Payments Not Acceptance or Waiver: The payment of any portion of the Contract Sum shall not be deemed acceptance of the Work or any additional or optional Work or any part thereof or approval of the manner in which the Work was performed. All payments are made on account of all Work and any Extra Work to be performed pursuant to this Agreement are allocated to specific items of Work or Extra Work performed pursuant to this Agreement.

7.12 Completion of Punch List Items: Notwithstanding the final payment provisions recited hereinabove in this Agreement, if, on or before the tenth (10th) day prior to the date on

which such payment shall be due pursuant to said provisions, Owner shall furnish Contractor with a so-called "punch list," then, Owner shall be entitled to withhold the final payment until the punch list items have been completed.

7.13 Permits: Contractor shall be solely responsible for obtaining any required permits including, without limitation, all building permits, for the Work to be performed and/or equipment or protection means to be used or erected. Contractor shall keep such permits valid and in force throughout the Project period. The costs or charges and fees are included for all such permits as an integral part of the Contract Sum. Unless otherwise directed, the Contractor shall be responsible for the filing of Building Notices with the Buildings Department and for the Certificates of Controlled Inspections required pursuant to such Building Notices.

ARTICLE 8 INSURANCE

8.01 Prior to commencement of any Work, and before any materials or equipment are delivered to the Project site, Contractor (and any subcontractor) must provide insurance of the types and in not less than the amounts set forth below with a company or companies satisfactory to the Owner and licensed to do business in the State of New York. All such policies shall name the Owner, its Board of Directors and managing agent and the Architect as additional insureds. No diminution of the limits of insurance will be permitted. Contractor agrees to maintain such insurance in force at its expense during the term of this Agreement. All insurance carried by Contractor must also comply with the General and Supplementary Conditions of this Agreement. Such insurance shall include:

*WORKER'S COMPENSATION & EMPLOYERS LIABILITY as required by all applicable Federal, State or other laws, including Employers Liability in accordance with the statutory requirements of the State of New York together with Disability Benefits Insurance required by the State of New York.

*COMMERCIAL GENERAL LIABILITY OR COMPREHENSIVE GENERAL LIABILITY: \$1,000,000 combined single limit bodily injury and property damage per occurrence, with a \$2,000,000 aggregate for any single occurrence with a minimum of \$1,000,000 for property damage. If an aggregate limit applies it shall be solely and fully for the location where the Work is to be performed.

*AUTOMOBILE LIABILITY: \$1,000,000, combined single limit bodily injury and property damage covering any auto (owned, non-owned and hired).

*UMBRELLA CATASTROPHE LIABILITY. In an amount not less than \$10,000,000 and to be in excess of the comprehensive general liability or commercial general liability, and automobile liability.

If umbrellas are written in more than one company, any layers above the first one shall follow the form of the Primary Umbrella.

8.02 Prior to the commencement of any Work hereunder, detailed certificates of

insurance shall be furnished to the Owner showing that such insurance is in full force and that the premiums due hereunder have been paid. Such certificates shall provide that the said insurance may not be canceled, terminated or modified without thirty (30) days written prior notice thereof to the Owner. The Contractor shall promptly furnish the Owner with copies of any endorsements subsequently issued amending insurance coverage or limits.

8.03 In the event of the failure of the Contractor to furnish and maintain such insurance, the Owner shall have the right at its option at any time (a) to revoke permission to perform the Work and to deny entry into the building of all workers, except that if such workers are escorted by a member of the building's staff, they shall be permitted to remove their tools and supplies, and/or (b) to take out and maintain the said insurance for and in the Owner's name and the name of the Contractor. The Contractor agrees to pay the cost thereof and to furnish all necessary information and consents to permit the Owner to take out and maintain such insurance for the Owner's account. Compliance with the foregoing requirements to carry insurance and furnish certificates shall not relieve the Contractor from any liability assumed under any provisions of this Agreement.

8.04 Nothing in this Section shall constitute a waiver of or limitation of any other rights or remedies the Owner may have for consequential damages or otherwise.

8.05 The Contractor agrees not to make any claim against or seek to recover from any of the Indemnified Parties for any damage to persons or property by the perils within the scope of the insurance policies required herein.

8.06 Insurance shall be underwritten by companies having a rating by Standard & Poors, Moody's or Weiss of A or better and licensed and authorized to do business in the State of New York. In the event any insurer selected by Contractor fails to meet such requirements, the insurer shall be changed within five (5) days after Contractor learns that the insurer does not meet such requirements. Owner shall have the right to terminate this Agreement if Contractor changes the insurance without Owner's consent or the insurance terminates for any reason.

8.07 General Aggregate in the General Liability policy shall apply per project, not per policy.

8.08 Liability underwriters shall agree that Contractor's insurance is primary, and non-contributory to the insurance taken out by Additional Insureds. This insurance is primary to any other insurance or self-insurance carried by the Additional Insureds whether or not such other insurance or self-insurance is primary, contributory or excess. This must be referenced on the Certificate of Insurance.

8.09 Contractor shall agree to waive subrogation against the Additional Insureds under the General Liability and Worker's Compensation policies. This must be referenced on the Certificate of Insurance.

ARTICLE 9 SUPERVISION

9.01 The Contractor shall supervise and direct the Work, using the Contractor's best

skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement.

9.02 The Contractor shall enforce good order among the Contractor's employees and other persons carrying out this Agreement.

9.03 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

9.04 Contractor shall be solely responsible at all times for safeguarding and securing the building against damage, accidents or injury of any kind in connection with the Work to be performed under the Drawings and Specifications. Such responsibility shall include, but shall not be limited to securing all openings, incomplete Work, and/or building components or areas against damage, reasonably foreseeable contingency of leakage of water or dust infiltration into the interior of the building, both during the work day as well as while the building is unattended by Contractor and during off hours and on weekends or holidays.

9.05 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger and/or cautionary signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent facilities and utilities.

9.06 The Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by Contractor or, any Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable and for which the Contractor is responsible.

ARTICLE 10 WARRANTIES

10.01 All materials and equipment shall be as required by the Contract Documents and shall be new and of acceptable quality and condition. Unless elsewhere specified herein, the Contractor guarantees all workmanship and materials provided by or on behalf of Contractor relating to same to be merchantable and free from latent and other defects for the period of time as provided in the Contract Documents, to commence from date of final completion as determined by the Architect. If it is defective in any respect, Contractor warrants that Contractor shall, at its own expense, repair or replace any and all equipment, parts or structure (including material and labor) promptly after notification by the Owner or its representative, but in all events within forty-eight hours of such notice (or sooner in the event of an emergency), subject to governmental approval. Contractor shall assign to the Owner any manufacturer's warranty.

10.02 No material, supplies, or equipment for the Work shall be purchased by the Contractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier of such material, supplies or equipment. The Contractor warrants good title to all materials, supplies, and equipment installed or incorporated in the Work and agrees upon completion of all Work to

deliver the premises, together with all improvements and appurtenances constructed or placed thereon by him, to the Owner free from any claims, liens, or charges, and further agrees that neither Contractor nor any person, firm or entity furnishing any material or labor for any Work covered by this Agreement shall have any right to lien the premises or any improvements or appurtenances thereon. The Contractor shall only use new material and material in first class condition. No action taken by the Contractor shall adversely affect any manufacturer's warranty and no action taken by anyone authorized or engaged by Contractor shall adversely affect any contractor's warranty.

10.03 The Contractor shall not at any time suffer or permit any lien, attachment, or other encumbrance under the laws of New York by any persons whomsoever to remain on file against any money due or to become due for any Work done by Contractor or materials furnished under this Agreement or by reason of any other claim or demand against the Contractor. Such lien, attachment, or other encumbrance until it is removed shall preclude any payment due from Owner to Contractor and any and all claims or demands for any payment under and by virtue of this Agreement up to the amount of such claim, demand or lien plus fifteen (15%) percent.

10.04 The Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, and other facilities and services necessary for the proper execution and completion of the Work.

10.05 Contractor represents and warrants that neither Contractor, nor any officer, agent, employee or representative of Contractor, has made or agreed to make any payment or delivered any other consideration to receive the contract to do the Work. This representation shall survive the completion or termination of this Agreement. In the event it is subsequently determined by a court of competent jurisdiction that Contractor did make or agree to make a payment or deliver other consideration to receive this Agreement, Contractor shall return to Owner any payment Contractor has received from Owner or on Owner's behalf under this Agreement and Contractor shall forfeit the right to receive any future payment from or on behalf of the Owner.

ARTICLE 11 CLEANING UP AND REPAIR

11.01 Contractor shall leave all work areas clean and free of any garbage or debris or materials, whether used or new, upon completion of the Work. During the period while Work is ongoing, Contractor shall remove all debris from all interior parts of the building on a daily basis pursuant to the direction of Owner. Removal of debris shall be such as not to be detrimental to tenants or occupants. Emergency exits, doorways and halls shall not be obstructed at any time. Hazardous or flammable materials shall not be stored or accumulated at any time, except during periods of actual use, and then only if appropriate or required safeguards are employed, including but not limited to the use of appropriate containers, fire extinguishers and like safety measures, and upon the prior written notice to and consent of Owner. During such periods of time that flammable material is stored in the building, the building's superintendent shall be advised and provided weekly with a written inventory of the flammable material stored at the building.

11.02 Contractor shall provide appropriate containers for the accumulation of construction debris, and shall cause same to be removed or emptied, all in accordance with all

requirements of government bodies having jurisdiction and/or other requirements. Contractor shall obtain all permits and pay all fees incident to the use of such containers and/or arrange for disposal of construction debris, and it shall hold harmless the Indemnified Parties from and against all proceedings, or fines which may result from the accumulation, storage, and/or disposal of construction debris.

11.03 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up, the Owner may clean up and charge the cost thereof to the contractors responsible therefore.

ARTICLE 12 INDEMNIFICATION

12.01 To the fullest extent permitted by law, Contractor shall indemnify, defend, reimburse and hold harmless Owner, Architect, Owner's Board of Directors, officers, shareholders, residents, occupants and the employees and agents (including Owner's managing agent) of any of the above-mentioned parties (collectively the "Indemnified Parties") from and against any and all loss, cost, damage, demand, claim, cause of action, penalty, injury (including death), liability and/or expense paid or incurred by any of the Indemnified Parties, or asserted against any of them (including reasonable attorneys' fees, court costs and disbursements) caused by, arising directly or indirectly out of, or resulting from or related to, in whole or in part: (1) the Work performed hereunder, (2) Contractor's breach of the Contract Documents and/or this Agreement and/or (3) the act or omission of Contractor, a Subcontractor or any individual, partnership, joint venture or corporation (a) directly or indirectly employed by Contractor or a Subcontractor or (b) for whose acts or omissions Contractor or a Subcontractor may be liable. The obligations of Contractor under this indemnification shall apply to all matters except those arising solely from the negligence or willful misconduct of Owner.

12.02 Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense, shall assume on behalf of Owner and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to Owner; provided, that Owner shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided further, that if the defendants in any such action include both Contractor and Owner, and Owner shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to Contractor, Owner shall have the right to select separate counsel to participate in the defense of such action on its own behalf at Contractor's expense. In the event of failure by Contractor to fully perform in accordance with this Section, Owner, at its option, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses so incurred by Owner in that event shall be reimbursed by Contractor to Owner, together with interest on the same from the date any such expense was paid by Owner until reimbursed by Contractor, at the rate of interest provided to be paid on judgments, by the law of the jurisdiction to which the interpretation of this Agreement is subject.

12.03 In claims against any of the Indemnified Parties by the Contractor or by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or

anyone for whose acts or omissions they may be liable, the indemnification obligation under this Article 12 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefits acts, or other employee benefit acts.

12.04 The obligations of Contractor under this Section shall survive the completion, expiration, cancellation or termination of this Agreement.

ARTICLE 13 DELAY

13.01 Notwithstanding anything to the contrary contained in the Agreement:

13.01.1 Contractor shall be entitled to extensions of time for Excusable Delays only, subject to compliance with the conditions and requirements of this Section 13.01. Contractor may request an increase in the Contract Time by giving a written notice to Owner and/or Architect which briefly describes the delay and estimates the duration of the delay (a "Delay Notice") within twenty-one (21) days after Contractor receives notice or otherwise becomes aware that the Excusable Delay (defined in Section 13.01.4) has commenced or can be expected to commence. A Delay Notice shall specify in as much detail as reasonably practicable: (a) the date when the delay began; (b) the cause of delay; (c) the estimated duration of the delay and its effect on the construction schedule; and (d) actions taken or to be taken by Contractor to mitigate the delay. Subject to the foregoing, if Contractor is entitled to a requested extension of time, Owner shall issue a Change Order within ten (10) days after receipt of the Delay Notice (if timely given under this Section) specifying the duration of the permitted extension.

13.01.2 A Delay Notice shall include all documents and other information then in Contractor's possession which Contractor deems relevant to the request for extension. If a delay continues after the giving of a Delay Notice, Contractor shall keep Owner reasonably apprised of the status of the matter and shall furnish to Owner any documents or information available to Contractor as Owner may reasonably request from time to time.

13.01.3 Contractor shall take appropriate actions within Contractor's reasonable control to minimize and ameliorate loss of time due to delays. In this Agreement, "delay" means any and every delay, obstruction, hindrance, interference, loss of productivity, or inefficiency of any kind.

13.01.4 "Excusable Delay" means any delay, obstruction, or interference in the Work resulting from any cause after the date of the Agreement and before Substantial Completion if such cause is beyond Contractor's reasonable control and was not caused by Contractor's error, fault, or negligence.

13.01.5 If acts or omissions of Owner or Architect that constitute an Excusable Delay cause Contractor to experience Excusable Delays prior to Substantial Completion (such delays, "Sec. 13.01.5 Delays") exceeding seven (7) days in the aggregate; and if, by reason of such Sec. 13.01.5 Delays, Contractor incurs additional

out-of-pocket costs for labor, materials and/or third-party services which Contractor would not have incurred but for such Sec. 13.01.5 Delays; and if Contractor has given Owner Delay Notices within the time specified in Section 13.01.1 describing the acts or omissions of Owner or Architect which caused the respective Sec. 13.01.5 Delay(s); then Owner shall reimburse Contractor for the reasonable actual additional direct out-of-pocket costs of labor, materials and/or third-party services incurred by Contractor by reason of such Sec. 13.01.5 Delays exceeding seven (7) days in the aggregate. Contractor agrees that Contractor has experienced no Sec. 13.01.5 Delays prior to the signing of this Agreement.

13.01.6 Subject to Section 13.01.5 above, except for extensions of time under this Article 13: (a) Contractor alone hereby specifically assumes the risk of all delays in the Work (or the performance thereof) of any kind or duration; and (b) Contractor agrees to make no claim for damages for delay in the Work (or the performance thereof) of any kind whatsoever, regardless of cause and agrees that any such claim shall be compensated for solely by an extension of time to complete performance of the Work. Contractor shall have no right to rescind or terminate this Agreement by reason of any delay of any kind or duration whatsoever.

ARTICLE 14

TERMINATION FOR CONVENIENCE

14.01 Notwithstanding anything to the contrary contained herein, and in addition to Owner's other termination rights in this Agreement, Owner shall have the right, at any time, to terminate this Agreement, at Owner's convenience, without cause and for any reason whatsoever, upon providing the Contractor with ten (10) days prior written notice. In the event of any such termination, Owner will pay to Contractor the portion of the Contract Sum properly allocable to the Work duly and properly performed by Contractor prior to the date of such termination, less the aggregate amount of all payments theretofore made to Contractor and any other sums that may be due and owing by Contractor to Owner. This paragraph shall not affect Owner's rights to terminate this Agreement for cause in accordance with the terms of this Agreement.

ARTICLE 15

GENERAL PROVISIONS

15.01 Notwithstanding anything to the contrary in the Contract Documents, no disputes under the Contract Documents shall be submitted to arbitration or mediation. Any references to mediation or arbitration in the Contract Documents are deemed deleted.

15.02 The statutory limitations for the bringing of legal proceedings under this Agreement shall be as established by applicable law.

15.03 In the event of any legal proceeding between the parties concerning the Contract Documents (or any matter pertaining to or arising under the Contract Documents) which results in a determination final beyond appeal, the prevailing party shall be entitled to reimbursement from the losing party, upon demand, for all fees and costs (including reasonable attorney's fees) of such legal proceeding paid or incurred by the prevailing party.

15.04 Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

15.05 This Agreement shall bind and inure to the benefit of the parties hereto, and their respective successors and assigns.

15.06 This Agreement may be executed in any number of counterparts, and each such counterpart shall for all purposes be deemed to be an original, and all such counterparts together constitute but one and the same agreement.

15.07 This Agreement embodies the entire Agreement and understanding between the parties with respect to the subject matter hereof and supersedes and cancels all prior agreements and understandings, whether oral or written, relating to the same subject matter hereof.

15.08 This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

OWNER:

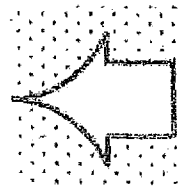
PLAZA 400 OWNERS CORP.

By: Jacob Dimant
Name: Jacob Dimant, MD
Title: Board President

CONTRACTOR:

SATO CONSTRUCTION CO., INC.

By: Anthony C. Leo & Co.
Name: Anthony C. Leo & Co.
Title: President
7/6/16



HERE

AFFIDAVIT OF SERVICE

MARA MOMMAAS, being duly sworn deposes and says, that deponent is not a party to this action, is over 18 years of age and resides in the County of Queens, State of New York.

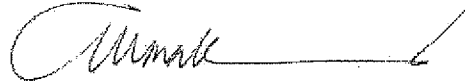
That on the 8th day of May, 2018, deponent served a true copy of the within:

RESPONSE TO PRELIMINARY CONFERENCE ORDER DATED APRIL 9, 2018

UPON:

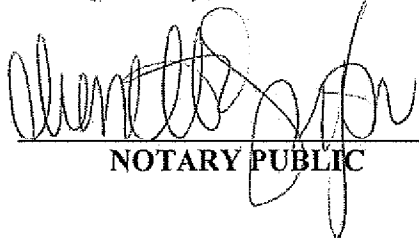
GINARTE, GALLARDO, GONZALEZ, & WINOGRAD, LLP
Michael L. Edelman, Esq.
Attorneys for Plaintiff
BRUNO GARCIA
225 Broadway, 13th Floor
New York, New York 10007

at the address(es) designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postage-paid, properly addressed wrapper, VIA U.S. MAIL, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.



MARA MOMMAAS

Sworn to before me this
8th day of May, 2018.



NOTARY PUBLIC

CHANTEL DRAYTON
NOTARY PUBLIC-STATE OF NEW YORK
No. 01DR6324209
Qualified in Bronx County
My Commission Expires May 04, 2019