

### THIRD AMENDMENT TO AGREEMENT OF LEASE

THIS THIRD AMENDMENT TO AGREEMENT OF LEASE, dated as of November 14, 2014 (this "Third Amendment"), between BATTERY PARK CITY AUTHORITY d/b/a HUGH L. CAREY BATTERY PARK CITY AUTHORITY ("Landlord"), a body corporate and politic constituting a public benefit corporation, having an office at One World Financial Center, 24<sup>th</sup> Floor, New York, New York 10281 (the "Landlord") and PIER A BATTERY PARK ASSOCIATES, LLC, a Delaware limited liability company having an office at 93 Pearl Street, New York, New York 10004 (the "Tenant").

#### WITNESSETH

WHEREAS, the Landlord and the Tenant have entered into that certain Agreement of Lease, dated as of March 9, 2011, as amended by the First Amendment, dated as of June 1, 2011, and the Second Amendment, dated as of August 1, 2013 (as amended, and as it may hereafter be amended, the "Operating Lease"), demising the premises known as "Pier A" at 22 Battery Place in the City, County and State of New York; and

WHEREAS, the Landlord and the Tenant desire to modify certain terms of the Operating Lease; and

WHEREAS, capitalized terms used but not defined in this Third Amendment shall have the respective meanings ascribed to such terms in the Operating Lease.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby covenant and agree as follows:

1. The Operating Lease is hereby amended as follows:

a. The following paragraph (C) is hereby added to the end of Article 4:

"Tenant's use of the Promenade shall provide for a ten-foot (10') wide contiguous, unobstructed pedestrian walkway throughout the entirety of the Promenade at all times during which the Promenade is open consistent with **Exhibit A (3)** attached hereto. Subject to all other laws, rules and regulations, as well as all other provisions in the Operating Lease, the Public Areas, including any outdoor seating provided by Tenant, shall be freely accessible to the general public at all times during which the Public Areas are open. No motorized vehicles shall be permitted on the Public Areas without Landlord's prior approval. Tenant shall be responsible for maintaining, repairing, storing and securing all seating, tables, furnishings and/or other equipment and accessories that Tenant uses and/or intends to use relating to the Public Areas License. Such responsibility shall include, to the extent possible, all reasonable and necessary measures to prevent any such seating, tables, furnishings and/or other equipment and accessories from moving beyond the areas designated and approved for Tenant's use of the Public Areas License."

b. The following paragraph (E) is hereby added to the end of Article 6:

“Tenant acknowledges that Tenant’s current Use Program assumes total Building occupancy and total Building-related occupancy levels (including outdoor dining in areas immediately adjacent to the Building) in excess of those previously requested by Tenant and approved by Landlord, to wit “in excess of 800 and could at times slightly exceed 1,000” people. Tenant may maintain its current Use Program assuming increased occupancy levels only for so long as Tenant: (1) strictly adheres to the load limits established for the Building and the Promenade as set forth in Exhibit D, including particular consideration to the loads imposed in certain sections of the Demised Premises designated for storage and the placement of equipment and prudent adjustments to live loading which may be necessary in those areas; (2) strictly adheres to all applicable zoning, fire safety and accessibility statutes, laws, rules and regulations; and (3) assumes the cost and responsibility for any loss of operating efficiency, effectiveness and comfort level, or the accumulation of excessive moisture and condensation, resulting from the additional occupancy levels, in accordance with best engineering practices. Should Landlord determine that there is a significant overtaxing or deterioration of the Building or its operating systems resulting from the additional occupancy levels based on the advice of its reasonably qualified consultants, Tenant shall, upon written notice from Landlord, limit occupancy levels to those reasonably acceptable to Landlord, but in no event shall the occupancy levels be less than the original occupancy levels requested by Tenant, as noted above. Landlord shall have no obligation to increase the capacities of the mechanical, electrical, plumbing, or other systems of the Demised Premises in order to accommodate the increased occupancy levels.”

- c. The following clause is hereby added to the end of Article 7(B)(vi):

“, and such snow shall not be deposited onto any other area of the Plaza or Promenade”.

- d. Article 11(C) is hereby deleted in its entirety and replaced with the following:

“It is understood that Tenant’s obligations to comply with all Requirements shall include, but not be limited to, compliance with all Requirements imposing a maximum space limitation on each establishment operating a restaurant or like establishment on an existing pier and ADA-related and environmental matters arising from Tenant’s Use, whether or not such Requirement would otherwise be the responsibility of Landlord under said laws, orders or regulations.”

- e. The following paragraphs are hereby added to the end of Section 4 of the “Rules and Regulations Attached To and Made Part of This Lease in Accordance with Article 61”:

“Notwithstanding anything to the contrary stated or suggested herein, if penetrations are necessary through the exterior walls or roofs for Tenant Improvements, then the interface between those elements (e.g. fasteners, conduit, junction boxes, etc.) shall be sealed with materials that are compatible with specific wall or roof assembly, which has been designed and installed to provide an unbroken vapor barrier throughout the Building’s entire exterior envelope. If a conduit must penetrate the exterior walls, where the conduit/fastener passes through any or all layers of the exterior wall, the penetration shall be sealed at every layer of the penetration. For example, where the conduit passes through the insulation, the

penetration must be sprayed with insulation compatible with the existing foam insulation. For the Building's insulation, either a spray-applied vapor barrier or other membrane/sealant must be installed from the interior wall outward to seal the hole at the line of the existing vapor barrier, and likewise on the exterior wall inward (under the exterior siding) the breathable air barrier must be maintained and sealed to the line of the existing breathable air barrier. Failure to adhere to these rules may contribute to a systemic failure of the Building's envelope system. Tenant shall document its adherence to these constraints and, upon request by Landlord, provide verification of compliance.

The shear walls are fundamental structural components of the Building and were modified to accommodate openings desired by the Tenant. Before modifying, altering and/or penetrating the shear walls, in any way, Tenant shall submit a written proposal, which shall include input from a structural engineer, and receive Landlord's specific written approval of each such proposed alteration, modification and/or penetration."

- f. The last sentence of the "Visitor Information Center" provision of Exhibit C is deleted in its entirety and replaced with the following:

"Tenant represents that the Alliance for Downtown New York, Inc. (the "Downtown Alliance") is expected to operate a portion of the Visitor's Information Center pursuant to a license agreement with Tenant, subject to Landlord's written approval. In the event that the Downtown Alliance will not operate within the Visitor's Information Center, Tenant shall coordinate with Landlord in selecting another operator for the Visitor's Information Center, and selection of such operator shall be subject to Landlord's written approval. In addition, Tenant shall coordinate all other Visitor's Information Center uses with Landlord, including any waterborne uses."

- g. The last sentence of the first paragraph of Exhibit D is hereby deleted in its entirety and replaced with the following:

"Tenant's current Use Program assumes a total Building-related occupancy limit (including outdoor seating in areas immediately adjacent to the Building) of 1,771 people, with total occupancy within the Building limited to 1,321 people. Tenant acknowledges that (a) such occupancy limits increase the previously requested occupancy limits of "in excess of 800 and could at times slightly exceed 1,000" people and (b) Landlord caused the design and construction of the Building's mechanical and operating systems based upon the previously requested occupancy limits."

- h. The last sentence of the fourth paragraph of the "Mechanical" provision of Exhibit D is hereby deleted in its entirety and replaced with the following:

"The stacks shall be cleaned no less frequently than twice per year in accordance with the maintenance plan attached hereto as Exhibit D (1). At Tenant's expense, Landlord shall conduct an annual inspection of the roof in order to determine whether the area surrounding the stacks must be cleaned due to the stack exhaust. In the event that Landlord determines that (a) more frequent cleaning of the stacks is required or (b) the roof requires cleaning as a result of stack exhaust, Landlord shall notify Tenant and Tenant shall submit a

preliminary maintenance plan to Landlord for its review and approval within fourteen (14) days. Once approved by Landlord, Tenant shall have thirty (30) days, or such extended amount of time as provided for within the approved plan, to perform the stack or roof cleaning, as applicable. Tenant acknowledges and agrees that access to the roof for cleaning purposes must be accomplished by man lift from the Promenade, as fall protection was not incorporated into the Building design for this kind of roof access.”

2. Tenant acknowledges and agrees that all of Landlord’s Punch List Items are complete, except for the hardware on the first floor and the commodore’s room terrace door. Notwithstanding the prior sentence, Landlord and Tenant acknowledge that there are open operational items relating to the Building’s HVAC system that must be investigated, and for which an allocation of responsibility must be finalized by December 15, 2014. Landlord and Tenant acknowledge that there is still an open reconciliation of various construction costs related to Landlord’s Work and Tenant’s Work that need to be agreed upon between the parties.
3. Tenant acknowledges and agrees that, before conducting/hosting any special event(s) on the Plaza, it must submit a detailed proposal to, and obtain written approval from, Landlord for each such event. Tenant’s initial proposal for use of the Plaza for any special events shall be due to Landlord by February 15, 2015 for Landlord’s review and approval. Tenant further acknowledges and agrees that Landlord may conduct, as well as permit third parties to conduct, special events on the Plaza upon advance notice to Tenant. No event shall interfere with the ingress/egress or operations of the Demised Premises, nor shall any event impact the hours of operation of the businesses located within the Demised Premises. Tenant and Landlord shall execute a further agreement detailing the proposal, notice and approval provisions governing the conduct of special events on the Plaza by February 15, 2015.
4. Landlord hereby acknowledges and agrees that Tenant is opening the ground floor of Pier A to the general public and the second and third floors for private events on or after November 14, 2014. Tenant shall notify Landlord of the planned opening of the second floor of the Building to the general public for non-private events at least thirty (30) business days prior to such opening. In addition, at least thirty (30) business days prior to such opening, Tenant shall provide final, detailed proposals relating to its outdoor equipment, furnishings, furniture, and table service, and its trash removal plan, security plan, and maintenance plan. Provided Landlord receives the requisite notice, Landlord shall provide written comments to all such final, detailed proposals at least five (5) business days prior to the opening date in Tenant’s notification.
5. Landlord hereby agrees to open substantially all of the Plaza area to the general public on November 14, 2014. A portion of the Plaza shall remain under construction and fenced in consistent with **Exhibit A (4)** attached hereto, and made a part of the Operating Lease.
6. The parties agree that they will negotiate the outstanding items noted in Sections 2, 3, and 4, as well as all amounts currently due and payable by Tenant to Landlord and by Landlord to Tenant under the Lease, in good faith and with expediency, beginning on November 18, 2014. The aforesaid reconciliation and payment of all amounts currently due and payable under the Lease shall be completed within thirty (30) days following the date of this Third Amendment. The parties further agree that the second floor of the Building will not be opened to the general

public prior to final, written resolution, signed by both parties, of the outstanding items in Sections 2, 3, and 4, the reconciliation of all amounts currently due and payable under the Lease, and payment by Tenant to Landlord of all such amounts less any credits due Tenant from Landlord.

7. Tenant agrees that it will remit one hundred thousand dollars (\$100,000) of the two hundred thousand dollar (\$200,000) 2014 installment of the Capital Reimbursement that is currently due pursuant to Section 38(B) of the Operating Lease on or before November 14, 2014.
8. Nothing herein shall be construed as amending any terms or conditions of the Operating Lease except as expressly provided for in this Third Amendment. As so amended, the Operating Lease is hereby ratified and confirmed. References in the Operating Lease to "this Lease Agreement" and words of similar import shall be construed as meaning the Operating Lease as amended by this Third Amendment.
9. Landlord and Tenant each represent, with respect to itself, that this Amendment has been duly authorized and that the person executing it on such party's behalf is authorized to act on behalf of and bind such party, and that upon its execution this Amendment is the valid, legal and binding obligation of such party and is enforceable with respect to such party in accordance with its terms.
10. This Amendment may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF the parties have caused this Third Amendment to be executed and delivered by their respective duly authorized officers as of the day and year first above written.

BATTERY PARK CITY AUTHORITY d/b/a  
HUGH L. CAREY BATTERY PARK CITY  
AUTHORITY

By: 

Name:

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

Name: Shari C. Hyman

Title:

Title: President / COO

PIER A BATTERY PARK ASSOCIATES, LLC

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

Name:

Title:

IN WITNESS WHEREOF the parties have caused this Third Amendment to be executed and delivered by their respective duly authorized officers as of the day and year first above written.

BATTERY PARK CITY AUTHORITY d/b/a  
HUGH L. CAREY BATTERY PARK CITY  
AUTHORITY

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

Name:

Title:

PIER A BATTERY PARK ASSOCIATES, LLC

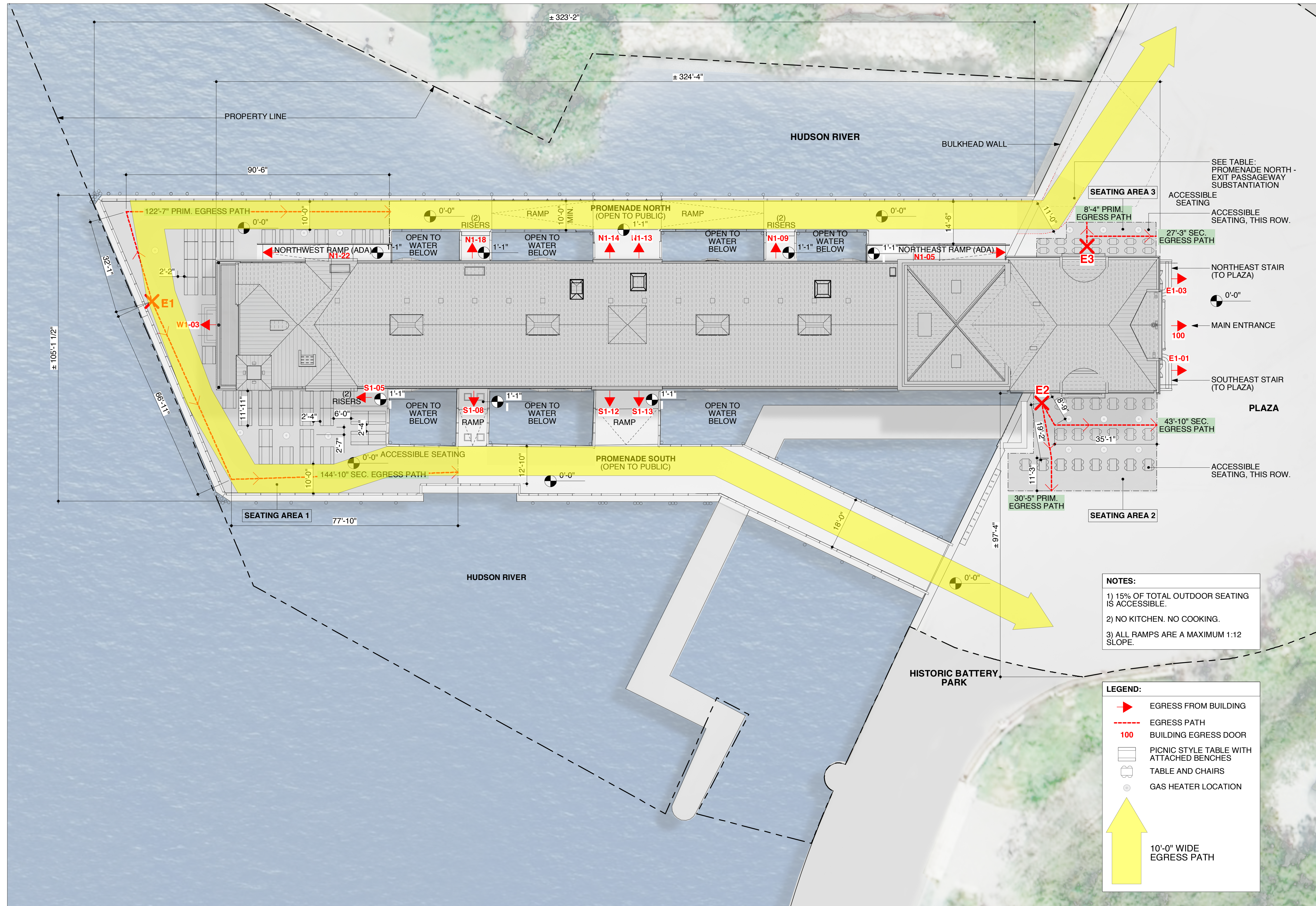
By: \_\_\_\_\_

Name:

Title:

Drew Spitler  
Authorized Signatory

**Exhibit A (3)**



**NOTES:**

- 1) 15% OF TOTAL OUTDOOR SEATING IS ACCESSIBLE.
- 2) NO KITCHEN. NO COOKING.
- 3) ALL RAMPES ARE A MAXIMUM 1:12 SLOPE.

**LEGEND:**

- ➔ EGRESS FROM BUILDING
- EGRESS PATH
- 100 BUILDING EGRESS DOOR
- ☐ PICNIC STYLE TABLE WITH ATTACHED BENCHES
- ☐ TABLE AND CHAIRS
- GAS HEATER LOCATION

10'-0" WIDE EGRESS PATH

ISSUED FOR  
CLIENT REVIEW

REVISION DATE DESCRIPTION

NOV. 4, 2014	CLIENT REVIEW
NOV. 3, 2014	BPCA REVIEW
MAY 7, 2014	DOB FILING
MAR. 12, 2014	DOB FILING
FEB. 27, 2014	CODE REVIEW

ISSUE DATE DESCRIPTION

GL ARCHITECTURE + INTERIOR DESIGN

44 W. 28th St, 8th Floor  
New York, NY 10001  
646 380 4845  
www.greenlightarchitecture.com

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DRAWING TITLE:  
DRAWING INDEX,  
LOCATION PLAN, SITE  
PLAN AND  
PROJECT DIRECTORY

DRAWN BY: DRAWING #:

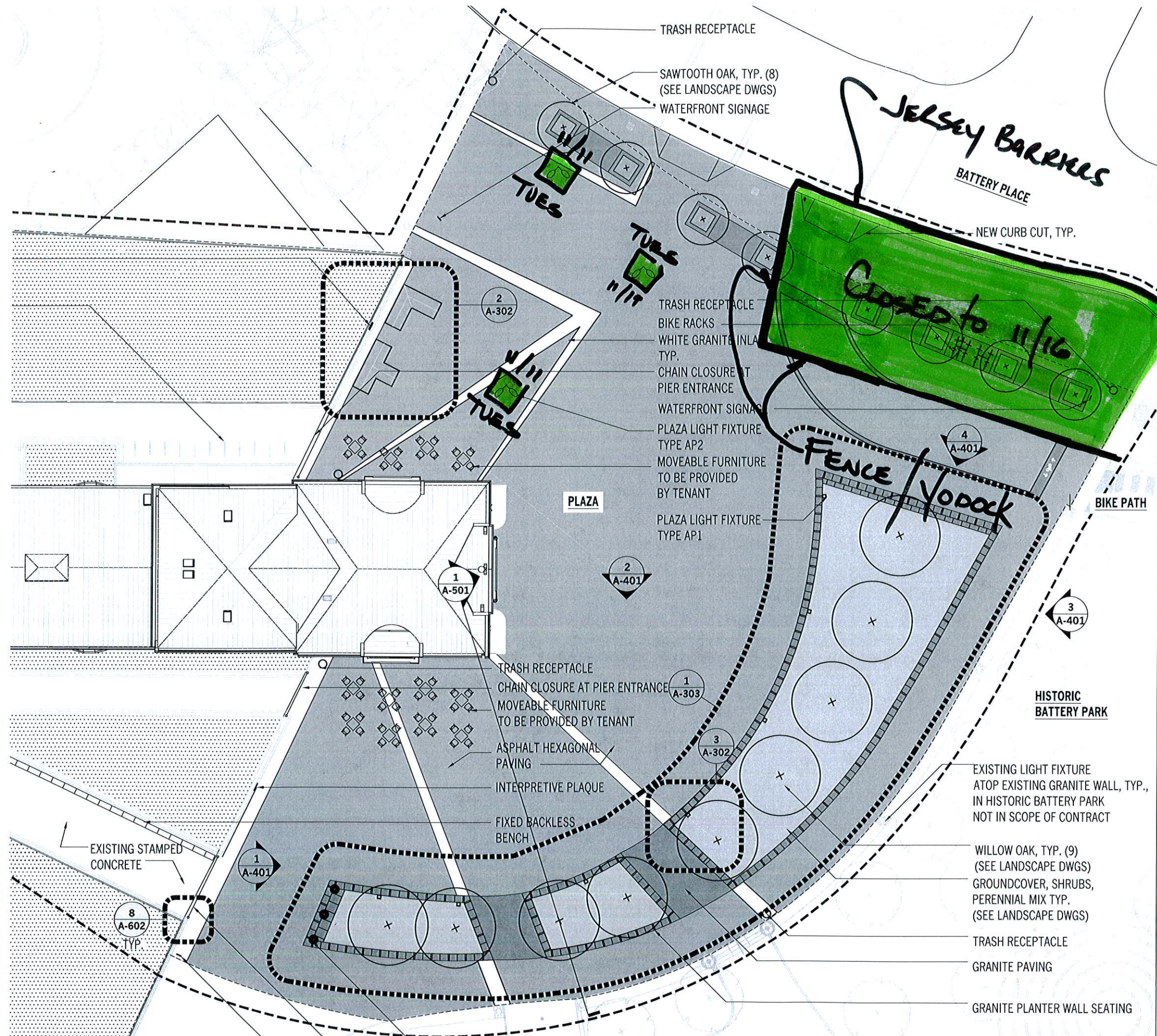
VB, ER PA-100.00

JOB #:

1111

PAGE 1 OF 1

**Exhibit A (4)**



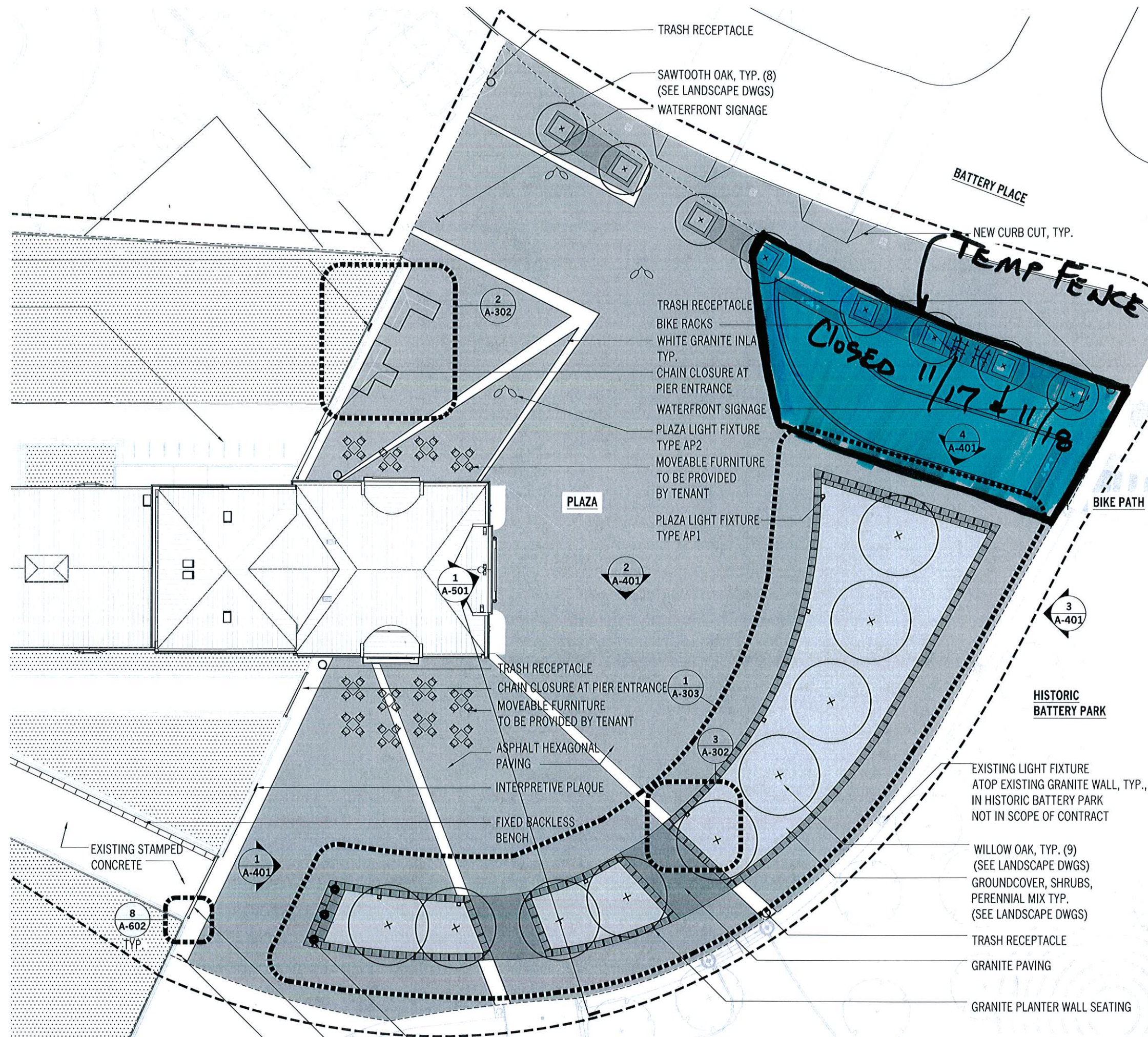
PIER A - 11/10/14  
1 of 2

1. POOR LIGHTS 11/11
2. SIDEWALK & CURB  
11/11 TO 11/16
3. REMOVE BARRIER  
11/16

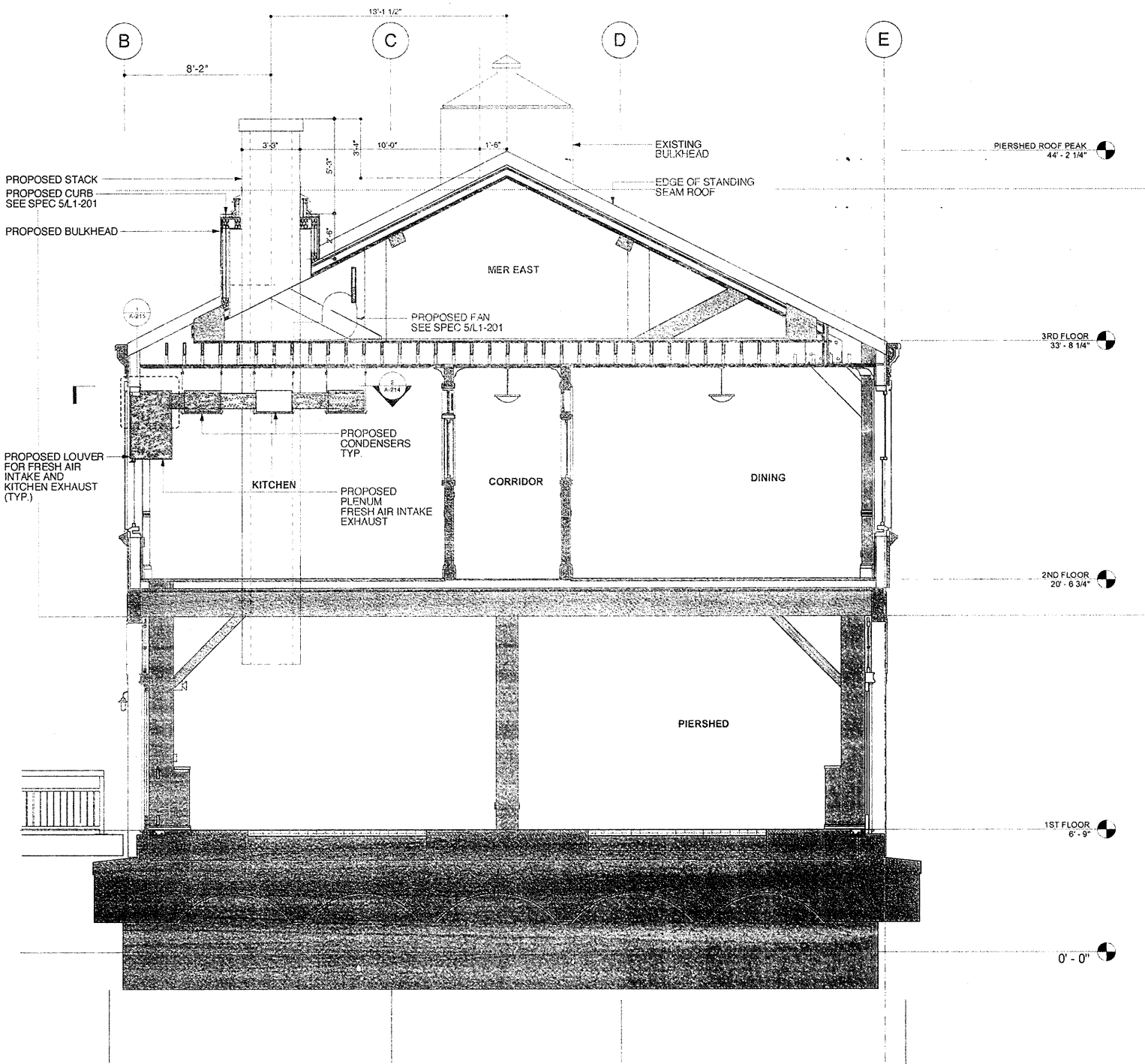
77 Nc T W  
R 14 NE 21  
S 15 NE 21  
Y 20 Elr T: ww  
N 18R 20 Nc 2K  
C  
H: B: C: Jc

PIER A - 11/10/14  
2 of 2

1. Cur in Bike  
path granite



**Exhibit D (1)**



3 BUILDING SECTION - AT KITCHEN EXHAUST  
SCALE: 1/4" = 1'-0"

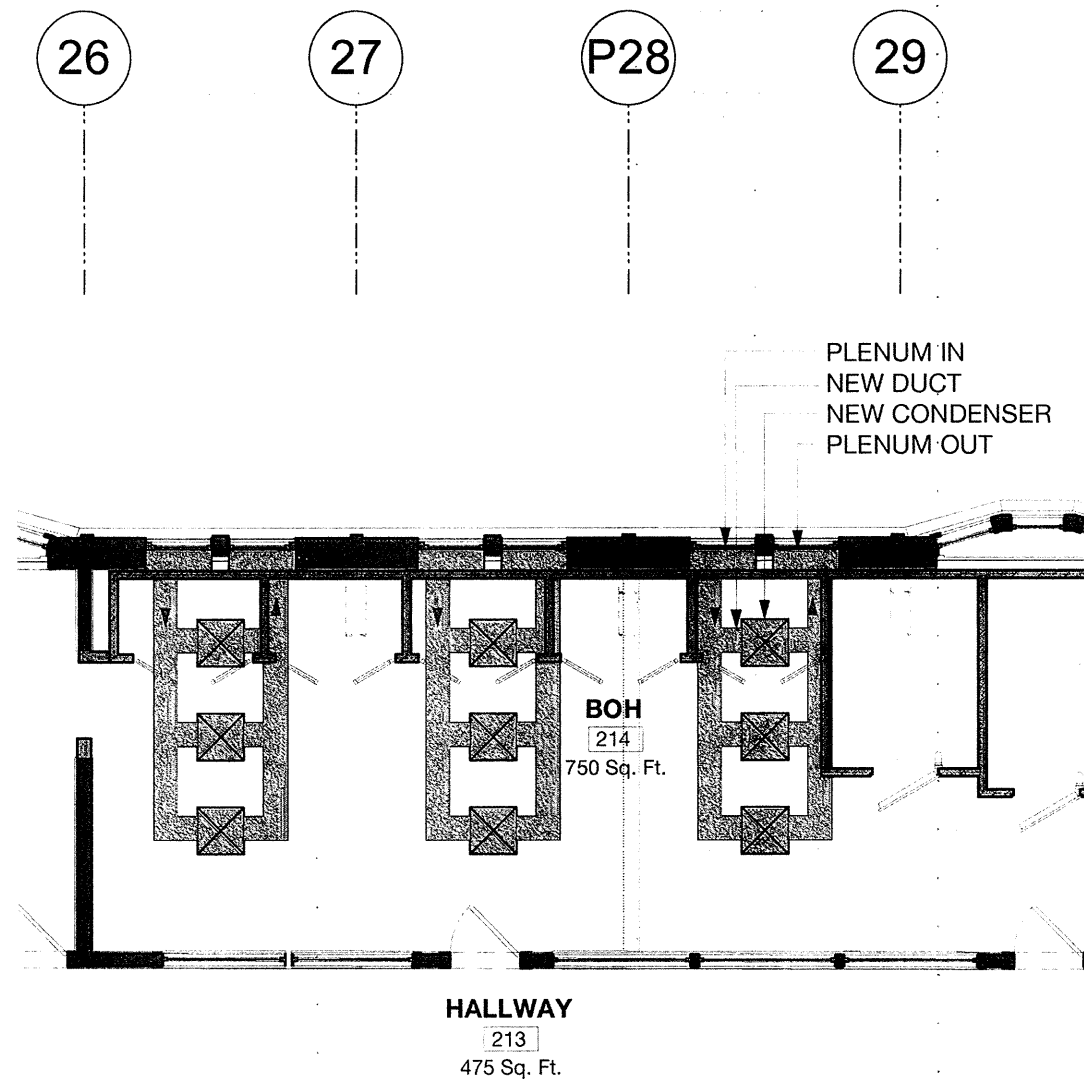
#### KITCHEN EXHAUST MAINTENANCE NOTE:

LISTED BELOW IS THE METHOD OF PROCEDURE FOR STACK CLEANING BY THE SCIENTIFIC FIRE PREVENTION COMPANY:

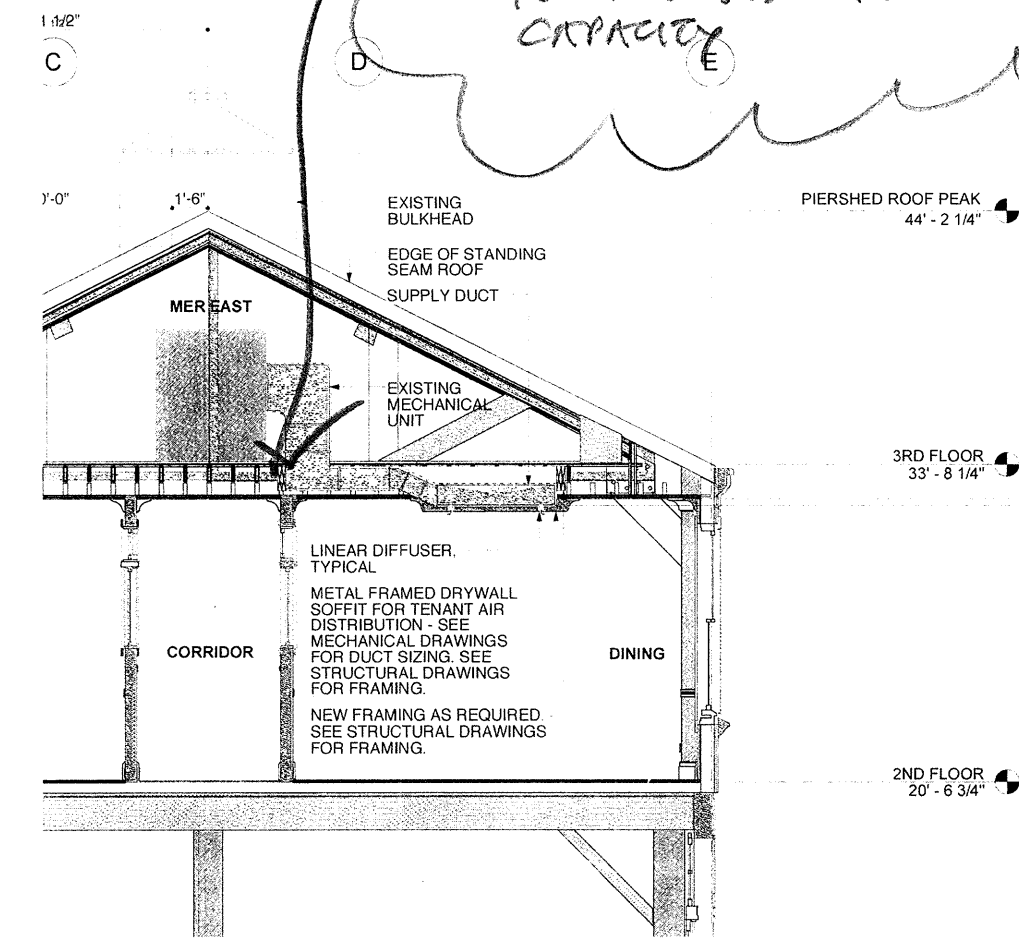
STACKS ARE CLEANED BY USING PRESSURE WASHERS, SPIN JETS AND WATER HOSES. NON CAUSTIC CHEMICAL IS SPRAYED INTO THE STACK. THE SPIN JET IS ATTACHED TO THE HOSE FROM THE PRESSURE WASHER AND LOWERED DOWN THE STACK. THE WATER IS COLLECTED AT THE BOTTOM OF THE STACK THROUGH AN ACCESS DOOR. IF AN ACCESS DOOR DOES NOT EXIST ONE WILL HAVE TO BE INSTALLED. IF THERE ARE ACCESS DOORS ON VARIOUS FLOORS, THE INTERIOR OF THE STACK WILL BE SCRAPPED CLEAN IN THOSE AREAS AND ADDITIONAL CHEMICAL WILL ALSO BE SPRAYED ONTO THE STACK INTERIOR.

BASED ON OUR PROFESSIONAL EXPERIENCE THE GREASE BUILD UP WILL OCCUR WITHIN THE FAN AND THE EXHAUST DUCT. GREASE WILL NOT OCCUR ON THE ROOF. THE FANS AND 1-1/2" EXHAUST DUCTS WILL BE CLEANED TWICE A YEAR BY OUR FIRM. IN THE UNLIKELY EVENT THAT GREASE DOES BUILD UP ON THE ROOF, A COST PROPOSAL WILL BE SUBMITTED AT THAT TIME.

PROVIDE CLEANING PROCEDURE TO BPCA REVIEW AGAINST COPPER ROOF WARRANTY



2 PLAN AT CONDENSERS  
SCALE: 1/4" = 1'-0"



1 BUILDING SECTION - 2ND FLOOR AIR DISTRIBUTION  
SCALE: 1/4" = 1'-0"

MANTAIN 2-1/2" RATED CEILING ASSEMBLY, - STRUCTURAL ENGINEERING DESIGN REQ'D WHERE CLG JOISTS ELIMINATED BECAUSE FLOOR JOISTS HAVE LIMITED CAPACITY

ISSUED FOR  
75% CONSTRUCTION SET

REVISION DATE DESCRIPTION

DEC. 19, 2012 75% CDs

NOV. 21, 2012 PRICING SET

MAR 30, 2012 DESIGN DEVELOPMENT

ISSUE DATE DESCRIPTION

GL ARCHITECTURE + INTERIOR DESIGN

37 W. 28th St. Suite 208  
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DRAWING TITLE:  
2ND FLOOR MECHANICAL DISTRIBUTION AND KITCHEN EXHAUST

DRAWN BY: VB, ER DRAWING #:

JOB #: 1111 A-214.00