

**ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36  
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW**

THIS INDENTURE made this 4<sup>th</sup> day of June, 2010, between

Owner(s) WWP Associates, LLC, a New York Limited Liability Corporation, having an office at C/O Rivercrest Realty Associates, LLC, 8816 Six Forks Road, Suite 201, Raleigh, North Carolina, (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

**WHEREAS**, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and of ensuring the potential restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

**WHEREAS**, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

**WHEREAS**, Grantor, is the owner of real property located at the address of 1650 Richmond Avenue, Staten Island, in the Borough of Staten Island, County of Richmond, City and State of New York, known and designated on the tax map of the Richmond County Clerk as tax map parcel numbers: Block 2236 Lot 125, being the same as that property conveyed to Grantor by bargain and Sale Deed dated October 25, 2004 and recorded on October 25, 2004 in Book 19240 at page 29 of deeds, comprising of approximately 172,750 Sq. Ft., and hereinafter more fully described in the ALTA/ACSM Land Title Survey dated February 1, 2010, prepared by Otis V. Voils, Wohl & O'Mara, LLP ., and corresponding Schedule "A" property description, both documents are attached hereto and made a part hereof (the "Controlled Property"); and

**WHEREAS**, the Commissioner does hereby acknowledge that the Department accepts this Environmental Easement in order to ensure the protection of human health and the environment and to achieve the requirements for remediation established at this Controlled Property until such



time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

**NOW THEREFORE**, in consideration of the covenants and mutual promises contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number: W2-1040-05-01, Grantor grants, conveys and releases to Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The following controls apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property:

A. The Controlled Property may be used for commercial use as described within 6 NYCRR Part 375- 1.8 (g) (2) (iii), as long as the following long-term engineering controls are employed and the land use restrictions specified below are adhered to:

The Controlled Property has two primary Engineering Controls as follows:

- (i) Composite Cover System
- (ii) Monitored Enhanced Natural Attenuation

Institutional Controls consist of the following:

All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

All Engineering Controls must be inspected and certified at a frequency and in a manner as specified in the SMP;

Groundwater, soil vapor, and other environmental or public health monitoring must be performed as defined in the SMP;

Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP.

On-Site environmental monitoring devices, including but not limited to, groundwater monitor wells and soil vapor probes, must be protected and replaced as necessary to ensure continued functioning in a manner specified in the SMP;

The use of the groundwater underlying the property is prohibited without treatment rendering it safe for its intended use;

B. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the Site Management Plan ("SMP") that the Department has approved for the Controlled Property and all Department-approved amendments to that SMP.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated November, 2009. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system on the Controlled Property, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. Upon notice of not less than thirty (30) days the Department in exercise of its discretion and consistent with applicable law may revise the SMP. The notice shall be a final agency determination. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Regional Hazardous Waste  
NYSDEC - Region 2  
Division of Environmental Remediation  
One Hunter's Point Plaza  
47-40 21<sup>st</sup> Street  
Long Island City, NY 11101-5407  
Phone: (718) 482-4995 fax: (718) 482-6358

or Site Control Section  
Division of Environmental Remediation  
NYS DEC  
625 Broadway  
Albany, New York 12233  
Phone: (518) 402-9553 fax: (518) 402-9595

C. The Controlled Property may not be used for a higher level of use such as unrestricted or restricted residential use and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

D. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an Environmental Easement held by the New York State Department of Environmental Conservation pursuant of Title 36 to Article 71 of the Environmental Conservation Law.**



E. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

F. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Controlled Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person intentionally violates this Environmental Easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 56, Title 5 or ECL Article 27 Title 14 with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or



suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach. Grantor shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar its enforcement rights in the event of a subsequent breach of or noncompliance with any of the terms of this Environmental Easement.

6. Notice. Whenever notice to the State (other than the annual certification) or approval from the State is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information: County, NYSDEC Site Number, NYSDEC Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: C 243033  
Department of Environmental Enforcement  
Office of General Counsel  
NYSDEC  
625 Broadway  
Albany New York 12233-5500

Such correspondence shall be delivered by hand, or by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. This Environmental Easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Grantor's Name: WWP Associates, LLC

By: [Signature]  
Stanley Werb - Manager

Title: Manager Date: 5-20-2010

Grantor's Acknowledgment

~~STATE OF NEW YORK~~ )  
NORTH CAROLINA ) ss:  
COUNTY OF Wake )

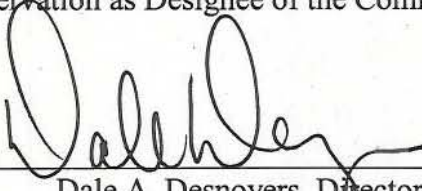
On the 20 day of May, in the year 2010, before me, the undersigned, personally appeared Stanley Werb, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]  
Notary Public - State of ~~New York~~  
NORTH CAROLINA





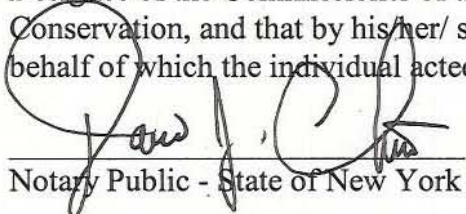
**THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,**

By:   
Dale A. Desnoyers, Director  
Division of Remediation

**Grantee's Acknowledgment**

STATE OF NEW YORK    )  
  ) ss:  
COUNTY OF                    )

On the 4<sup>th</sup> day of June, in the year 2010, before me, the undersigned, personally appeared Dale Desnoyers personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public - State of New York

**David J. Chiusano**  
**Notary Public, State of New York**  
**No. 01CH5032146**  
**Qualified in Schenectady County**  
**Commission Expires August 22, 2016**

**SCHEDULE "A" PROPERTY DESCRIPTION**

Address : 1650 Richmond Avenue, Staten Island

Tax Map: Block : 2236 Lot(s): 125

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Staten Island, County of Richmond, City and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Richmond Avenue distant 245.56 feet northerly from the corner formed by the intersection of the westerly side of Richmond Avenue and the northerly side of Victory Boulevard: the coordinates of which point of BEGINNING are South 18238.108 West 33253.389:

RUNNING THENCE North 78 degrees 11 minutes 10 seconds West 148.66 feet to a point;

RUNNING THENCE South 11 degrees 57 minutes 53 seconds West 111.39 feet to a point;

RUNNING THENCE North 78 degrees, 02 minutes, 07 seconds West 8.80 feet to a point,

RUNNING THENCE South 06 degrees, 02 minutes, 05 seconds East 190.15 feet to a point on the Northerly side of Victory Boulevard;

RUNNING THENCE along the northerly side of Victory Boulevard South 80 degrees, 42 minutes, 55 seconds West 158.50 feet to a point;

RUNNING THENCE and continuing along the northerly side of Victory Boulevard South 81 degrees, 15 minutes, 24 seconds West 7.70 feet to a point;

RUNNING THENCE North 02 degrees 20 minutes, 19 seconds West 247.58 feet to a point;

RUNNING THENCE North 77 degrees 40 minutes 21 seconds West 261.50 feet to a point;

RUNNING THENCE North 12 degrees 07 minutes 12 seconds East 277.38 feet to a point;

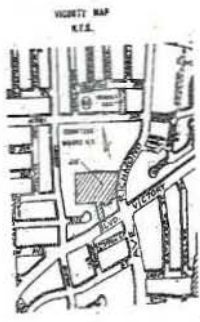
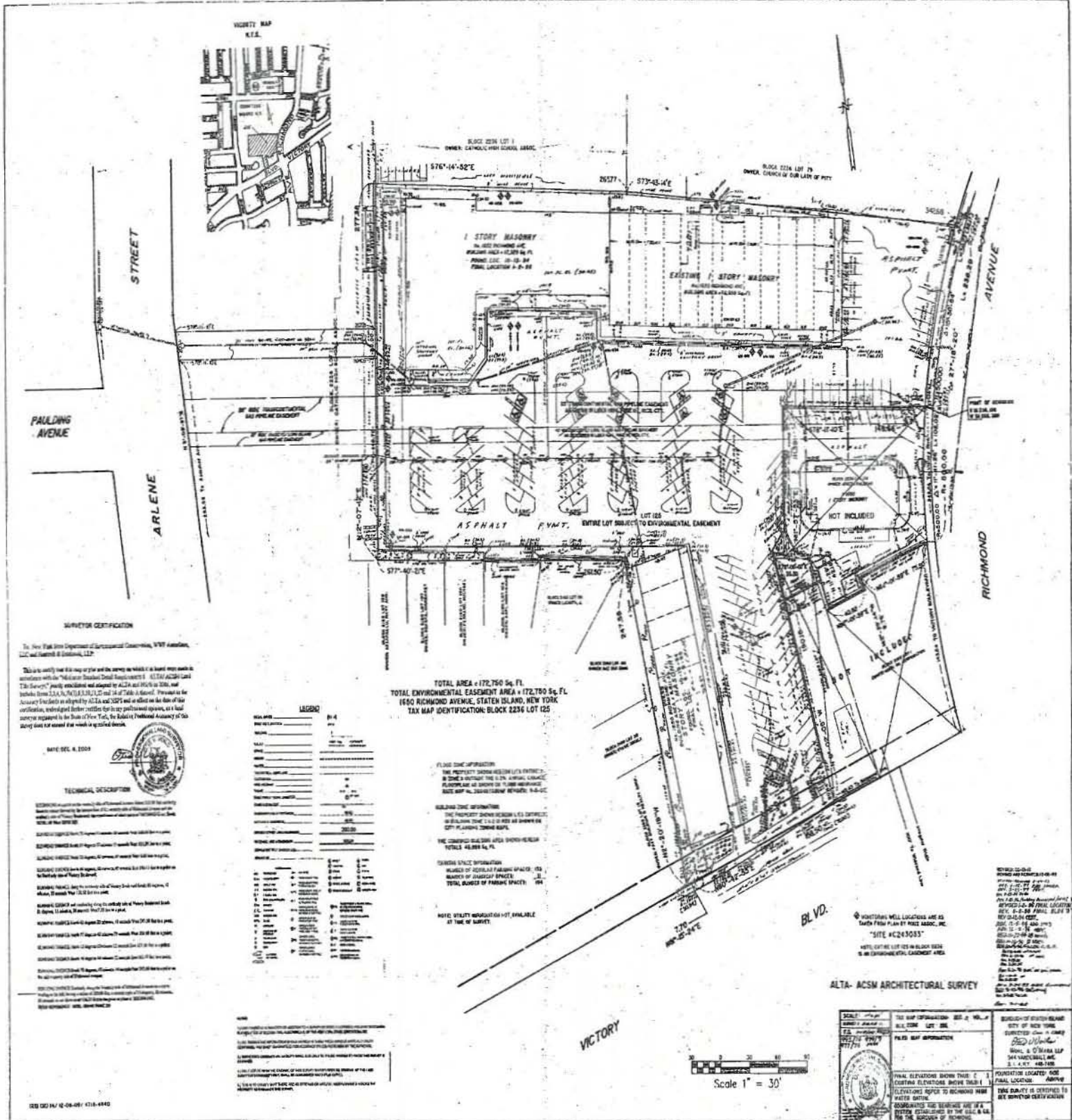
RUNNING THENCE South 76 degrees 14 minutes 52 seconds East 265.77 feet to a point;

RUNNING THENCE South 73 degrees, 43 minutes 14 seconds East 342.68 feet to a point on the said westerly side of Richmond Avenue;

RUNNING THENCE Southerly along the Westerly side of Richmond Avenue on a curve bearing to the left, having a radius of 500.00 feet, a central angle of 15 degrees, 36 minutes, 54 seconds an arc distance of 136.27 feet to the point or place of BEGINNING.



**SURVEY**



TOTAL AREA = 172,760 Sq. Ft.  
 TOTAL ENVIRONMENTAL EASEMENT AREA = 172,760 Sq. Ft.  
 1600 RICHMOND AVENUE, STATEN ISLAND, NEW YORK  
 TAX MAP IDENTIFICATION: BLOCK 2236 LOT 125

**PLANS AND APPROVALS**  
 THE PROJECT SUBMITTED TO THE CITY OF RICHMOND FOR REVIEW AND APPROVAL IN CONNECTION WITH THE 2014 ANNUAL LANDMARK DESIGNATION OF THE RICHMOND AVENUE HISTORIC DISTRICT. THE PROJECT IS SUBJECT TO THE 2014 ANNUAL LANDMARK DESIGNATION REVIEW BOARD'S REVIEW AND APPROVAL.

**LEGEND**

SYMBOL	DESCRIPTION
(Symbol)	1st Floor
(Symbol)	2nd Floor
(Symbol)	3rd Floor
(Symbol)	4th Floor
(Symbol)	5th Floor
(Symbol)	6th Floor
(Symbol)	7th Floor
(Symbol)	8th Floor
(Symbol)	9th Floor
(Symbol)	10th Floor
(Symbol)	11th Floor
(Symbol)	12th Floor
(Symbol)	13th Floor
(Symbol)	14th Floor
(Symbol)	15th Floor
(Symbol)	16th Floor
(Symbol)	17th Floor
(Symbol)	18th Floor
(Symbol)	19th Floor
(Symbol)	20th Floor
(Symbol)	21st Floor
(Symbol)	22nd Floor
(Symbol)	23rd Floor
(Symbol)	24th Floor
(Symbol)	25th Floor
(Symbol)	26th Floor
(Symbol)	27th Floor
(Symbol)	28th Floor
(Symbol)	29th Floor
(Symbol)	30th Floor
(Symbol)	31st Floor
(Symbol)	32nd Floor
(Symbol)	33rd Floor
(Symbol)	34th Floor
(Symbol)	35th Floor
(Symbol)	36th Floor
(Symbol)	37th Floor
(Symbol)	38th Floor
(Symbol)	39th Floor
(Symbol)	40th Floor
(Symbol)	41st Floor
(Symbol)	42nd Floor
(Symbol)	43rd Floor
(Symbol)	44th Floor
(Symbol)	45th Floor
(Symbol)	46th Floor
(Symbol)	47th Floor
(Symbol)	48th Floor
(Symbol)	49th Floor
(Symbol)	50th Floor

MONITORING WELL LOCATIONS ARE AS SHOWN FROM PLAN BY POSE ASSOC. INC. "SITE #C243033".  
 HOTEL CENTRE LOT 125 IN BLOCK 2236 IS AN ENVIRONMENTAL EASEMENT AREA.

ALTA - ACSM ARCHITECTURAL SURVEY

<p>SCALE: 1" = 30'</p> <p>DATE: 08/14/2014</p> <p>PROJECT: 1600 RICHMOND AVENUE</p> <p>CLIENT: POSE ASSOC. INC.</p> <p>DESIGNER: ALTA - ACSM ARCHITECTURAL SURVEY</p>	<p>THE SURVEY INFORMATION IS THE PROPERTY OF ALTA - ACSM ARCHITECTURAL SURVEY. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED IN THE SURVEY INSTRUMENTS. ANY REUSE OR MODIFICATION OF THIS INFORMATION WITHOUT THE WRITTEN CONSENT OF ALTA - ACSM ARCHITECTURAL SURVEY IS PROHIBITED.</p>	<p>BUREAU OF GEODETIC SURVEYS        CITY OF NEW YORK        SURVEYED: 08/14/2014        BY: [Signature]        TITLE: [Title]</p>
<p>FINAL ELEVATIONS SHOWN ON THIS SURVEY REFER TO BENCHMARK POINTS SHOWN ON THE SURVEY INSTRUMENTS.</p> <p>COMPARING THE RESULTS ARE IN A SYSTEM ESTABLISHED BY THE U.S. G.S. AND THE BUREAU OF GEODETIC SURVEYS.</p>	<p>FOUNDATION LOCATED: SEE FINAL LOCATIONS APPROP.</p> <p>THIS SURVEY IS IDENTIFIED TO THE SURVEYOR'S CLIENT RECORD.</p>	

Scale 1" = 30'