



NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION

MEETING OF THE DIRECTORS

To Be Held at
Empire State Development - New York City Offices
633 Third Avenue – 37th Floor Conference Room
New York, New York 10017

Wednesday

January 24, 2024 – 2:00 p.m.

AGENDA

I. FOR INFORMATION

A. President's Report – Oral Report

II. CORPORATE ACTIONS

A. Compensation for Outside Counsel – Authorization to Increase Compensation Rates for Outside Legal Counsel

III. FOR CONSIDERATION

A. New York Convention Center Development Corporation ("CCDC") (New York County) – Jacob K. Javits Convention Center ("Javits") – Renovation and Expansion Civic and Land Use Improvement Project – Grant of Certain Easement and Restriction to The City of New York - Authorization to Enter Into Easement and Restriction with The City of New York; Determination of No Significant Effect on the Environment; and Authorization to Take Related Actions

Item II. A.



FOR CONSIDERATION

January 24, 2024

TO: The Directors

FROM: Rebecca Pellegrini

SUBJECT: New York Convention Center Development Corporation (“CCDC”) (New York County) – Compensation for Outside Counsel to Provide Legal Services

REQUEST FOR: Authorization to Increase Compensation Rates for Outside Legal Counsel; and Authorization to Take Related Actions

I. Background

On September 21, 2023, the Directors of Empire State Development (“ESD”) approved an increase to the rate of compensation paid for outside legal counsel as set forth below. As a subsidiary of ESD, CCDC utilizes ESD’s pre-qualified list of legal firms authorized to perform outside legal counsel services and adheres to ESD’s approved compensation rate structure for legal counsel. This requested authorization would approve CCDC adopting the higher rates of outside legal counsel compensation established by ESD on September 21, 2023, including approving the application of the higher rates retroactively to any currently outstanding legal invoices for legal services rendered to CCDC from that date through the present.

From 2016 to September 2023, ESD compensated its outside pre-qualified legal counsel at the top rate of \$600.00 per hour for partners, \$550.00 per hour for senior associates, \$500.00 per hour for mid-level associates, \$425.00 for junior associates, \$325.00 per hour for law clerks and \$150.00 per hour for legal assistants¹. Those rates applied unless a firm’s regular billing rates would yield lower overall bills. The prior rates were considerably lower than the going rates for many of the law firms utilized by the Corporation, particularly those firms located in New York City.

Since ESD’s last rate increase in April of 2016, the hourly billing rates of many of the firms with which ESD and its subsidiaries work have increased substantially and an increasing number of these firms are beginning to decline to be considered for ESD work because, in their judgment, the Corporation’s rates are simply too low. Firms that previously agreed to accept these rates

¹ Senior associates have at least four years experience, Mid-level associates have three or four years experience, Junior associates are admitted to practice but have less than three years experience and law clerks are law student interns for first year associates who are not yet admitted to practice.

also expressed reservation about them as well. While the overall quality of the Corporation’s representation has remained acceptable, ESD staff was concerned that quality representation will become increasingly difficult to procure absent a rate increase.

II. Adopting the Increased Rates

In view of the foregoing, ESD senior management determined that ESD should increase its rate of compensation for outside legal counsel, which became effective for ESD outside legal services only upon approval by the ESD Directors on September 21, 2023. ESD’s outside counsel rate structure consists of six categories of legal service provider, and, on staff recommendation, the ESD Directors increased the rates of compensation in accordance with the following:

	<u>Prior ESD Maximum Rate Structure (per hr)</u>	<u>Current ESD Maximum Rate Structure (per hr)</u>
Partner / Of Counsel	\$600.00	\$800.00
Senior Associate	\$550.00	\$700.00
Mid-Level Associate	\$500.00	\$625.00
Junior Associate	\$425.00	\$525.00
Law Clerk	\$325.00	\$400.00
Legal Assistant / Paralegal	\$150.00	\$190.00
Note: Firms will continue to be limited to the lesser of the hour rate normally charged by the firm to its government clients and the applicable ESD maximum hourly rate.		

ESD Staff proposed this rate structure after researching the outside counsel rates paid by other New York State public benefit corporations (PBCs) and authorities and finding that the Corporation’s current maximum rates were significantly lower than others. Additionally, ESD staff was advised by staff from other PBCs and authorities that those entities had raised their maximum rates after encountering the same issues ESD has been facing. Like ESD, the proposed rate structure would bring CCDC within the range of maximum rates paid by others.

On occasion, it may also be advisable to compensate firms at a blended rate, whereby all attorneys are paid at the same rate per hour, regardless of their status as a partner, of counsel or associate. This structure is occasionally necessary as a way of attracting top-flight law firms to work on specific matters where the firm’s billing structure makes our rates uneconomic for the firm. The ESD Directors approved blended rates, up to \$700 per hour, if determined to be

necessary in the discretion of ESD's General Counsel or his/her designee(s). The blended rate would not apply to the billing categories of Law Clerk or Legal Assistant/Paralegal, which categories would be bills at the proposed rates listed above. ESD staff stated that the need for such special billing arrangements will be reduced by the proposed rate structure. The CCDC Directors are also being asked to approve the blended rates of up to \$700 per hour, if determined to be necessary in the discretion of ESD's General Counsel or his/her designee(s).

Consistent with ESD policy, CCDC will permit a firm to charge its normal rates for legal services and expenses in those instances in which CCDC will be fully reimbursed for such costs by a third party or where the legal expertise sought is unique and unavailable at pre-qualified counsel rates.

III. Environmental Review

ESD staff, on behalf of CCDC, has determined that the approval of increased hourly rates for outside legal counsel does not constitute an action as defined by the New York State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

IV. Non-Discrimination and Contractor and Supplier Diversity

ESD's Office of Contractor and Supplier Diversity has determined that the approval of increased hourly rates for outside legal counsel does not constitute an action as defined by New York State Executive Law Articles 15-A and 17-B, and the implementing regulations of the New York State Division of Minority and Women Business Development and Division of Service-Disabled Veterans' Business Development. No further review is required in connection with this authorization.

V. Requested Action

The Directors are requested to 1) authorize CCDC to modify its outside counsel maximum compensation rate schedule as set forth in these materials and consistent with the approval granted by the ESD Directors on September 21, 2023, 2) authorize applying the new maximum compensation rate schedule retroactively to any currently outstanding legal invoices for legal services rendered for CCDC on September 21, 2023 forward, and 3) to amend existing legal retainer agreements accordingly.

Attachment
Resolution

January 24, 2024

NEW YORK CONVENTION CENTER DEVELOPMENT CORPORATION (NEW YORK COUNTY) —
Compensation for Outside Counsel – Authorization to Increase Compensation Rates for Outside
Legal Counsel

BE IT RESOLVED, that on the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, and effective immediately, the Corporation is hereby authorized to increase its maximum compensation rates for outside pre-qualified legal counsel as follows:

Maximum Rate Structure for Outside Counsel (Per Hour)

Partner / Of Counsel	\$800.00
Senior Associate	\$700.00
Mid-level Associate	\$625.00
Junior Associate	\$525.00
Law Clerk	\$400.00
Legal Assistant	\$190.00; and be it further

RESOLVED, that the Corporation is further authorized to apply the new maximum compensation rate schedule presented in the Materials on a retroactive basis to any currently outstanding legal invoices for legal services rendered for CCDC on September 21, 2023 through the present; and be it further

RESOLVED, that the President and Chief Executive Officer and General Counsel of the Corporation or their designee(s) be, and each of them hereby is, authorized, as determined to be necessary in his or her discretion, to enter into alternative compensation rates up to \$700.00 per hour for all attorneys (excluding Law Clerks); and be it further

RESOLVED, that the President and Chief Executive Officer and General Counsel of the Corporation or their designee(s) be, and each of them hereby is, authorized to execute amendments to the Corporation’s existing legal retainer agreements to modify the applicable compensation rates to those approved at this meeting.

* * *

Item III. A.



FOR CONSIDERATION

January 24, 2024

TO: The Directors

FROM: Rebecca Pellegrini

SUBJECT: New York Convention Center Development Corporation (“CCDC”) (New York County) – Jacob K. Javits Convention Center (“Javits”) – Renovation and Expansion Civic and Land Use Improvement Project – Grant of Certain Easement and Restriction to The City of New York

REQUEST FOR: Authorization to Enter Into Easement and Restriction with The City of New York; Determination of No Significant Effect on the Environment; and Authorization to Take Related Actions

I. Background

The City of New York (“NYC”) owns vacant and undeveloped real property located at 495 11th Avenue (on the southwest corner of 40th Street and 11th Avenue; Manhattan Tax Block 685, Lot 38; the “NYC Premises”). On its western border, the NYC Premises are directly contiguous with CCDC’s recently completed Expansion Project. See map attached as Exhibit A. The footprint of the NYC Premises totals approximately 24,690 square feet (125 feet east-west by 197 feet 6 inches north-south). NYC plans to develop the NYC Premises, inclusive of a convention center hotel. NYC seeks certain light and air easements and access rights from CCDC in order to accommodate such proposed development.

Specifically, NYC seeks from CCDC: (1) a light and air easement west of the NYC Premises beginning at or above the highest point of the Expansion Project’s new Truck Marshalling Facility, which is the roofline of the Javits Greenhouse(the “Easement”), and the horizontal dimensions of the Easement measuring 60 feet in depth and 197 feet in width; and (2) a declaration that CCDC will not develop a 30-foot at-grade portion of the former 39th Street south of the NYC Premises (the “Restriction”). Currently, CCDC owns the proposed Easement area and controls, pursuant to legislation, the proposed Restriction area.

Pursuant to the Easement, CCDC would commit not to build in the easterly-most 60-by-197 foot 6 inch area above the current highest point of the Truck Marshalling Facility (including the roof of Greenhouse). See map attached as Exhibit B. This would still leave the westerly-most 615 feet (91%) of the Truck Marshalling Facility’s total 675-foot east-west length free for CCDC overbuild if future circumstances warrant.

Pursuant to the Restriction, CCDC would commit not to build in a 30-by-125 foot area at grade directly south of the NYC Premises, an area which is currently (and expected in the future to remain) undeveloped. See map attached as Exhibit C. Developer of the NYC Premises would be allowed to use this Restriction space only for access to the proposed development and for an open space plaza available to the public, CCDC, and CCOC. In consideration for CCDC's granting this Restriction, the Developer will indemnify CCDC and CCOC for all claims related to the maintenance and repair of the open space plaza.

If the hotel is not completed by a date to be agreed between CCDC, NYC, and the Developer, the Easement and the Restriction will automatically terminate.

II. Summary

Property:	Two areas within CCDC's Expansion Project site footprint, both contiguous with the NYC Premises: (1) a 60-by-197 foot area above the easterly-most current highest point of the Truck Marshalling Facility; and (2) a 30-by-125 foot area at grade directly south of the NYC Premises.
Purchase Price:	CCDC would receive no direct monetary compensation.
ESD Obligation:	Grantor for Easement and Restriction
ESD Funding:	None
Appraisal:	The Fair Market Value ("FMV") of the Easement is appraised at \$500,000. The FMV of the Restriction is appraised at a negligible value (\$0).
Grantee:	The City of New York ("NYC")
Construction Contemplated:	Neither ESD nor CCDC would undertake any construction related to the Easement or the Restriction. In the Easement area, no construction is contemplated. In the Restriction area, only open space plaza street improvements would be constructed by NYC's designated developer.
Brokerage Fee:	None

II. Proposal

CCDC would grant the Easement and the Restriction to NYC without compensation as an accommodation to assist in the development of the NYC Premises. The current development plan for the NYC Premises proposes two towers over a multi-story podium. Proposed uses include permanently affordable residential units, office, retail, a police garage and an up to 755 key convention center hotel.

III. Public Authorities Law (“PAL”) Compliance

Pursuant to the Public Authorities Law (the “PAL”), CCDC is required to dispose of “property” (which includes easements) through a competitive bid process for not less than fair market value, absent specific statutory exception. PAL 2897(6)(c)(v) provides an exception to the requirement of public advertising for bids by permitting disposition of property by negotiation under circumstances permitted by PAL 2897(7). PAL 2897(7) permits property disposal without bids and for less than fair market value if either: (i) “transferee is a government or other public entity”; or (ii) “the purpose of the transfer is within [the agency’s] purpose, mission or governing statute”. Both the proposed Easement and the proposed Restriction meet these two criteria.

First, transferee/grantee NYC is a municipal corporation and a government entity under the laws of the State of New York.

Second, Section 2 of the UDC Act notes that ESD was created “to promote the sound growth and development of our municipalities” through, among other things, redevelopment of underutilized or vacant properties, including through “the undertaking of ... private improvement programs related thereto”. The proposed Easement and Restriction will further these corporate statutory goals by assisting in the development of an underutilized site proximate to both West 42nd Street and Hudson Yards, thereby creating employment opportunity and enhancing the tax base. Further, pursuant to Section 1 of CCDC’s 1979 enabling legislation, CCDC exists (for among other reasons) to renovate and expand Javits “including the development of one or more hotels adjacent to the expanded facility” which is deemed to be “advantageous to the economy of the city and state of New York and is in the public interest”. The Easement and Restriction will contribute to the development of hotel accommodations adjacent to the recent Javits expansion. Therefore, the purpose of the proposed dispositions is consistent with the purpose, mission and governing statute of both ESD and CCDC.

No entity beyond an immediately contiguous adjoining land owner could utilize, or find value in, the proposed Easement or Restriction, and NYC is the only available such entity. Therefore, no competition is feasible under the circumstances.

In these circumstances, PAL Section 2897(7)(b) requires disclosure of the following information:

(i) full description of property:

Easement: a 60-foot light and air easement west of the NYC Premises beginning above the highest point of the Expansion Project’s new Truck Marshalling Facility.

Restriction: a 30-foot at-grade portion of the former 39th Street south of the NYC Premises

(ii) appraisal:

CCDC staff commissioned an independent appraisal of the Restriction and Declaration from Goodman-Marks, Inc. The Easement was appraised at a value of \$500,000, and the Restriction was appraised at a negligible value (\$0).

(iii) purpose of transfer; statement of public benefit:

The purpose of the transfer is to assist NYC in the development of underutilized property, which will result in benefits to the public, including increased employment opportunities, increased residential housing opportunities; and an enhanced tax base. Further, a convention center hotel adjacent to Javits will provide to Javits and to the public as set forth in the CCDC enabling legislation quoted above. Hence, both proposed transfers are in furtherance of the corporate mission of both ESD and CCDC. The Easement and the Restriction terminate absent hotel completion by a date to be determined by CCDC, NYC, and Developer.

(iv) value to be received:

ESD and CCDC would not receive any direct monetary compensation from the proposed transfers. However, ESD and CCDC would receive the public benefits described above.

(v) private participants and value to be received:

The Easement and Restriction would be executed by CCDC and NYC, not a private party. However, NYC's designated developer would benefit from the Easement and the Restriction.

(vi) other offers:

No other offer was solicited or received. As noted, other than NYC, there is no immediately contiguous adjoining land owner which could utilize, or find value in, the proposed Easement or Restriction.

Accordingly, for the reasons set forth herein, and as required by the PAL, staff recommends that the Directors: (1) adopt a resolution authorizing the Corporation to grant the proposed Easement and Restriction to NYC for nominal consideration; and (2) make a determination that there exists no reasonable alternative to CCDC's proposed grant of the Easement and Restriction disposition that would result in the same benefits to the public or achieve the same purpose as the proposed grant.

IV. Environmental Review

ESD staff has completed an environmental review pursuant to the requirements of the State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. This review determined the proposed grant of the Easement and Restriction to be an Unlisted Action, which would not have a significant effect on the environment. In addition, the proposed development of the NYC Premises was subject to environmental review under SEQRA and the City Environmental Quality Review procedures by the New York City Office of the Deputy Mayor for Housing and Economic Development as lead agency. Neither ESD nor CCDC would undertake any construction related to the Easement or the Restriction. Grant of the proposed Easement and Restriction is consistent with CCDC's Expansion Project General Project Plan and/or its amendments that the Directors

have approved after prior environmental reviews. Therefore, it is recommended that the Directors make a Determination of No Significant Effect on the Environment.

V. Non-Discrimination and Contractor and Supplier Diversity

NYC, NYC's designated developer, and every successor in interest to the NYC Premises shall not discriminate upon the basis of race, creed, color, sex or national origin, or any other basis prohibited by applicable law, in the sale, lease or rental or in the use or occupancy of the NYC Premises or any improvements erected or to be erected thereon or any part thereof.

VI. Requested Actions

The Directors are requested to: (1) determine that there exists no reasonable alternative to the proposed granting of the Easement and Restriction that would result in the same benefits to the public or achieve the same purpose as the proposed grant; (2) authorize CCDC to enter into the Easement and Restriction; (3) make a determination of no significant effect on the environment; and (4) authorize the taking of actions related to the foregoing.

VII. Recommendation

Based on the foregoing, I recommend approval of the requested actions.

IX. Attachments

- Resolution
- Exhibit A – Map
- Exhibit B – Light and Air Easement Area
- Exhibit C – 39th Street Restriction Area

January 24, 2024

New York Convention Center Development Corporation (New York County) – Jacob K. Javits Convention Center – Renovation and Expansion Civic and Land Use Improvement Project – Grant of Certain Easement and Restriction to The City of New York – Authorization to Enter Into Easement and Restriction with The City of New York; Determination of No Significant Effect on the Environment; and Authorization to Take Related Actions

RESOLVED, that on the basis of the materials presented to the Directors at this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation (the “Materials”), the Corporation hereby determines, after giving due consideration to the Materials and the intent of The City of New York to create development, inclusive of hotel, related to the Easement and Restriction (as defined in the Materials), that there is no reasonable alternative to the proposed below-market grant of the Easement and Resolution that would result in the same benefits to the public or achieve the same purpose of the proposed grant; and be it further

RESOLVED, that based on the Materials submitted to the Directors with respect to the proposed grant of the Easement and Restriction, the Corporation hereby determines that the proposed action will not have a significant effect on the environment; and be it further

RESOLVED, that the Corporation is hereby authorized to grant to The City of New York, substantially on the terms and conditions set forth in the Materials, the Easement and Restriction described in the Materials and as shown on the maps presented to this meeting; and be it further

RESOLVED, that the Corporation hereby finds, pursuant to Section 6(1) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that the grant of the Easement and Restriction hereby approved is “in conformity with a plan or undertaking for the clearance, replanning, reconstruction or rehabilitation of substandard and insanitary areas” within The City of New York and is within ESD’s mission; and be it further

RESOLVED, that the Corporation hereby finds, pursuant to Section 1 of CCDC’s 1979 enabling legislation, that development, including development of one or more hotels, adjacent to expanded Javits is in the public interest and therefore the granting of the Easement and the Resolution is within CCDC’s mission; and be it further

RESOLVED, that the President or Chief Executive Officer or designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver all such agreements and instruments, and to take any such action as may be considered to be necessary or proper to effectuate the grants authorized by these Resolutions.

* * *

Exhibit A

Attachment A







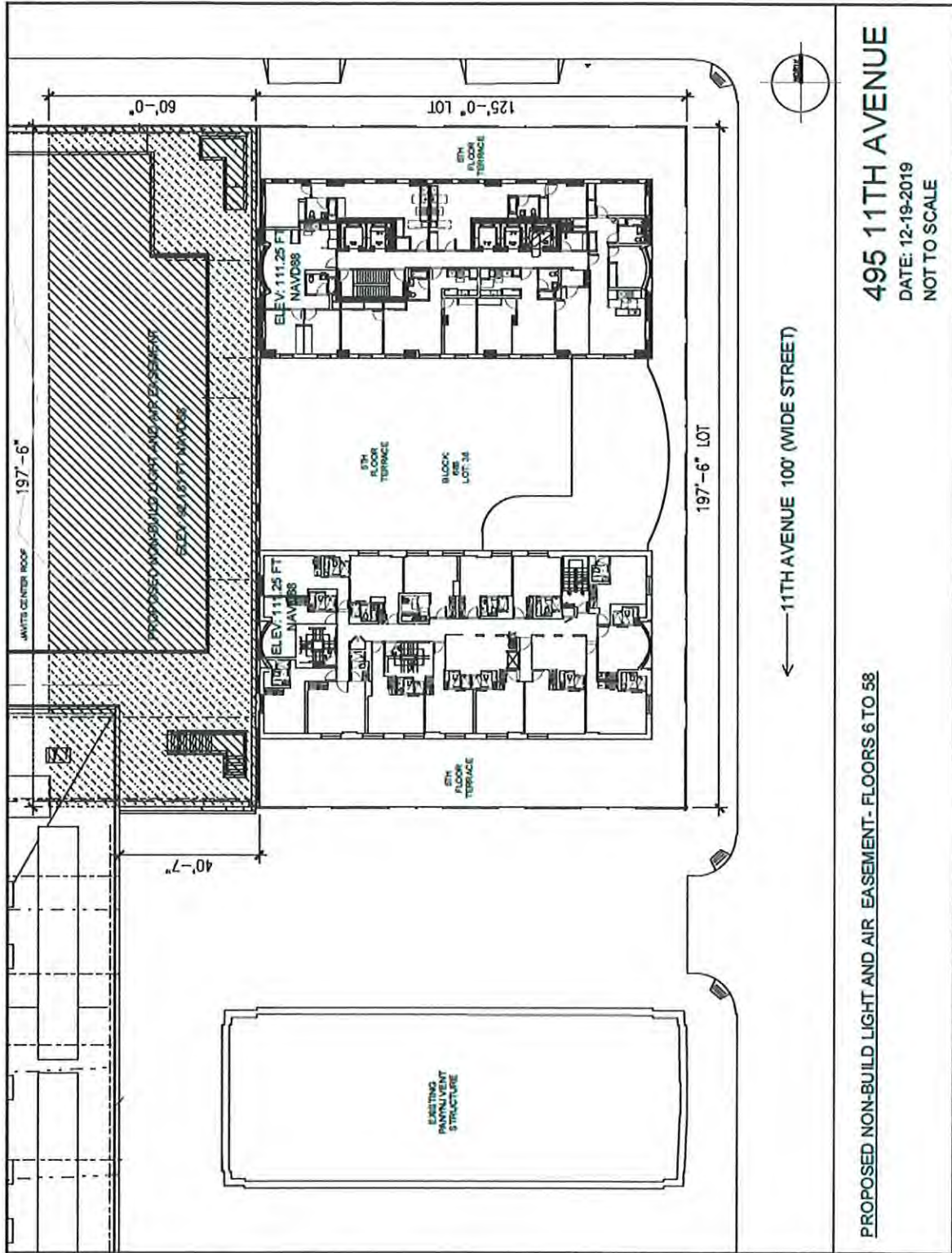
	Receiver Site – 495 11 th Avenue		Proposed Light and Easement Area
	Truck Marshalling Building – 608 West 40 th Street		Proposed Permanent Easement Area

Exhibit B

LIGHT AND AIR EASEMENT AREA

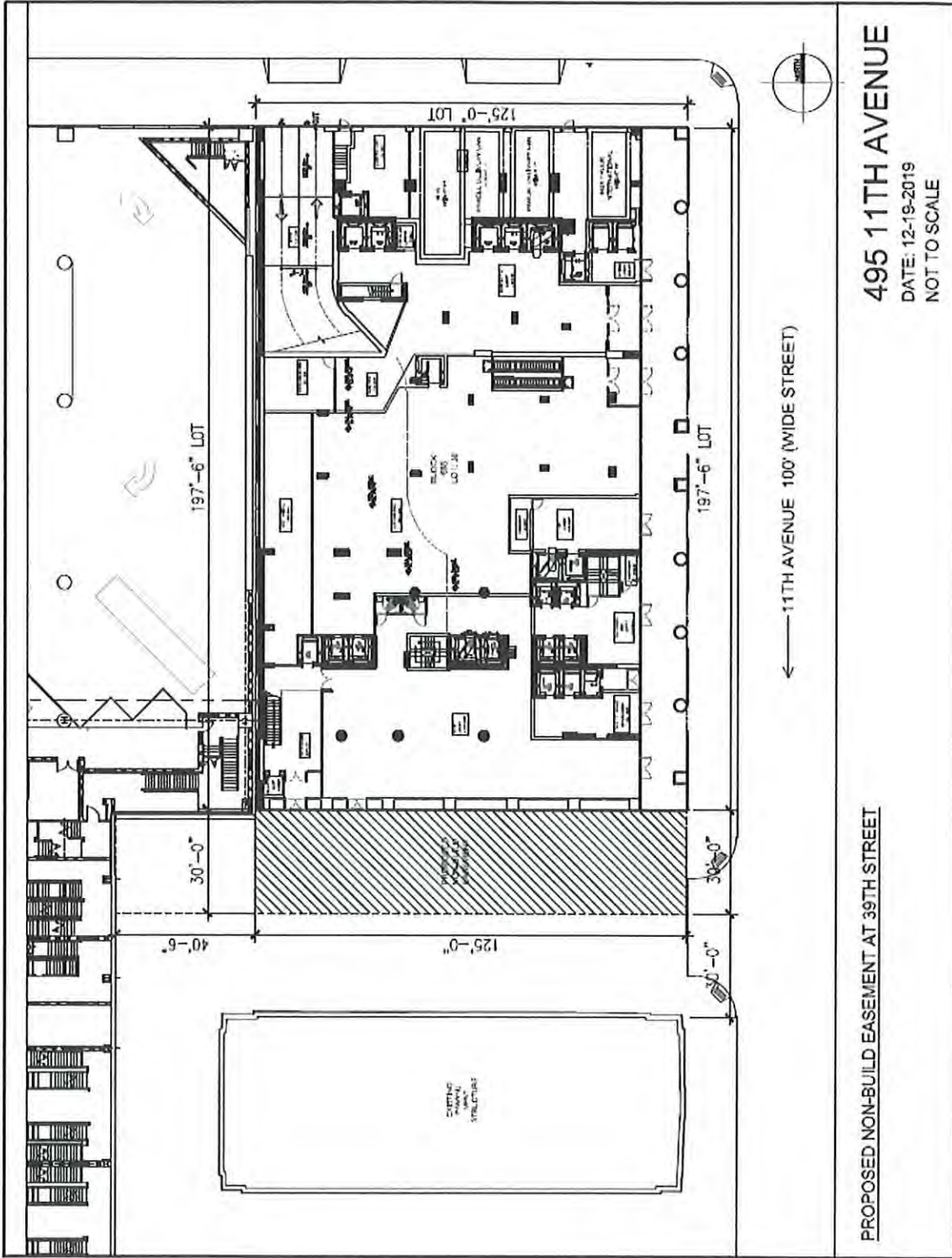


495 11TH AVENUE
DATE: 12-19-2019
NOT TO SCALE

PROPOSED NON-BUILD LIGHT AND AIR EASEMENT- FLOORS 6 TO 58

Exhibit C

39th STREET RESTRICTION AREA



495 11TH AVENUE
DATE: 12-19-2019
NOT TO SCALE

PROPOSED NON-BUILD EASEMENT AT 39TH STREET