UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF GOWANUS CANAL SUPERFUND SITE LSG 363 Bond Street LLC, Proceeding under Sections 106(a) and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622.	Index Number CERCLA-02-2014-2004

SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR
REMOVAL ACTION BY BONA FIDE PROSPECTIVE PURCHASER

I. INTRODUCTION

1. This Settlement Agreement and Order on Consent for Removal Action by Bona Fide Prospective Purchaser ("Settlement Agreement") is voluntarily entered into by and between the United States on behalf of the Environmental Protection Agency, Region II ("EPA") and LSG 363 Bond Street LLC ("Purchaser") (collectively, the "Parties") under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9601-9675. Under this Settlement Agreement, Purchaser agrees to perform a removal action and pay certain response costs in connection with the Gowanus Canal Superfund Site located in Brooklyn, Kings County, New York and property located at 388 Carroll Street and 363 Bond Street, Brooklyn, New York (collectively, the "Property").

II. JURISDICTION AND GENERAL PROVISIONS

2. This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Sections 104, 106, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606, 9607, and 9622, and delegated to the Administrator of EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, which authority has been delegated to the Regional Administrators of EPA by EPA Delegations No. 14-14-A, 14-14-C, and 14-14-D, and was further delegated in Region II to the Director of the Emergency and Remedial Response Division by Regional Order No. R-1200, dated November 23, 2004. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General to compromise and settle claims of the United States.

3. The Parties agree that the United States District Court for the Eastern District of New York will have jurisdiction pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any

enforcement action brought with respect to this Settlement Agreement.

4. EPA has notified the State of New York (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

5. Purchaser represents that it is a bona fide prospective purchaser ("BFPP") as defined by Section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that it has and will continue to comply with Sections 101(40) during its ownership of the Property, and, thus, qualifies for the protection from liability under CERCLA set forth in Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Property. In view, however, of the complex nature and significance of the Work to be performed in connection with the Site, and the risk of claims under CERCLA being asserted against Purchaser notwithstanding Section 107(r)(1) as a consequence of Purchaser's acquisition of the Property, and activities at the Property and the Site pursuant to this Settlement Agreement, one of the purposes of this Settlement Agreement is to resolve, subject to the reservations and limitations contained in Section XIX (Reservations of Rights by United States), any potential liability of Purchaser under CERCLA for the Existing Contamination as defined in Paragraph 10(g) below.

6. The resolution of Purchaser's potential CERCLA liability, in exchange for Purchaser's performance of the Work and reimbursement of certain response costs is in the public interest.

7. The Parties recognize that this Settlement Agreement has been negotiated in good faith. Purchaser agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

III. PARTIES BOUND

8. This Settlement Agreement applies to and is binding upon EPA and upon Purchaser and its successors and assigns. Any change in ownership or corporate status of Purchaser including, but not limited to, any transfer of assets or real or personal property shall not alter Purchaser's responsibilities under this Settlement Agreement.

9. Purchaser shall ensure that its contractors, subcontractors, and representatives comply with this Settlement Agreement, and, where appropriate, receive a copy of this Settlement Agreement. Purchaser shall be responsible for any noncompliance with this Settlement Agreement.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto. Whenever terms listed below are used in this Settlement Agreement or in an

attachment to this Settlement Agreement, the following definitions shall apply:

a. "BFPP" shall mean a bona fide prospective purchaser as described in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

c. "Day" or "day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or federal or state holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or state holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall mean the date specified in Section XXVII of this Settlement Agreement.

e. "EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Existing Contamination" shall mean:

i. any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the Effective Date;

ii. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and

iii. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the Effective Date.

h. "Gowanus Canal Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

i. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

j. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous

Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

k. "Oversight Costs" shall mean (a) all direct and indirect costs paid by EPA from September 1, 2013 through the Effective Date of this Settlement Agreement related to Purchaser's proposed Work and this Settlement Agreement; (b) all direct and indirect costs incurred by EPA in overseeing Purchaser's implementation of the Work (defined below) until the date of EPA's written notification pursuant to Paragraph 95 of this Settlement Agreement that the Work has been completed; and (c) all other direct and indirect costs incurred by EPA in connection with the implementation of this Settlement Agreement.

l. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

m. "Parties" shall mean EPA and Purchaser.

n. "Property" shall mean 388 Carroll Street and 363 Bond Street, Kings County, Brooklyn, NY, which are identified on the Kings County Tax Map, respectively, as Block 452, Lots 15 and 1, and are contiguous to one another. (Prior to November 2013, the street address of 388 Carroll Street was sometimes incorrectly denoted as 400 Carroll Street, the address for the Carroll Street Bridge control building).

o. "Purchaser" shall mean LSG 363 Bond Street LLC.

p. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

q. "Settlement Agreement" shall mean this Settlement Agreement and Order on Consent for Removal Action by Bona Fide Prospective Purchaser and all appendices attached hereto (listed in Section XXV). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

r. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

s. "Site" shall mean the Gowanus Canal Superfund Site, an approximately 100-foot wide, 1.8-mile-long canal located in the Borough of Brooklyn, Kings County, New York, any areas that are sources of contamination to the canal, and the Property.

t. "Supervising Contractor" shall mean the principal contractor retained by Purchaser to supervise and direct the implementation of the Work agreed to in this Settlement Agreement and to sign and approve the Final Report submitted concerning such Work.

u. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

v. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2), or (3) above.

w. "Work" shall mean all removal activities Purchaser is required to perform under this Settlement Agreement.

V. FINDINGS OF FACT

11. The Gowanus Canal is a brackish, tidal arm of the New York-New Jersey Harbor Estuary, extending for approximately 1.8 miles through Brooklyn, New York. The approximately 100-foot-wide canal runs southwest from Butler Street to Gowanus Bay and Upper New York Bay. The adjacent waterfront is primarily commercial and industrial, currently including concrete plants, warehouses, and parking lots. The canal also borders several residential neighborhoods.

12. The canal was constructed by bulkheading and dredging a tidal creek and wetland. Following its completion in the late 1860s, the canal quickly became one of the nation's busiest industrial waterways, servicing heavy industries that included manufactured gas plants ("MGPs"), coal yards, cement manufacturers, tanneries, paint and ink factories, machine shops, chemical plants and oil refineries. As a result of the poor environmental practices typical of the era, large quantities of wastes from many of these operations were discharged directly into the canal. The canal served as an open sewer when it was initially constructed. By the late 1870s, sewers entering the canal carried a combination of household waste, industrial effluent from the MGPs and other industries and storm water runoff.

13. Historic and ongoing discharges to the canal have contained hazardous substances such as polycyclic aromatic hydrocarbons ("PAHs") (a semi-volatile organic compound), polychlorinated biphenyls ("PCBs"), pesticides, metals and volatile organic compounds), causing the canal to become one of New York's most polluted waterways.

14. Much of the heavy industrial activity along the canal has ceased, although many upland areas adjacent to the canal remained zoned for industrial uses. Land uses along and near certain portions of the canal are in the process of transitioning from heavy industrial to light industrial, commercial, and residential. The canal is currently used by some for recreational purposes, such as boating, diving, and catching fish for consumption. The canal, Gowanus Bay and Upper New York Bay are subject to New York State fishing advisories.

15. At the request of the New York State Department of Environmental Conservation ("NYSDEC"), by publication in the *Federal Register* on April 8, 2009, EPA proposed the Site for inclusion on the National Priorities List ("NPL") established pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605. On March 2, 2010, EPA listed the Site on the NPL.

16. EPA conducted field work for a remedial investigation ("RI") between 2009 and 2010 and issued a draft RI report in January 2011. EPA's RI included sampling of various media, including canal sediment, surface water and groundwater and soil at properties along the canal thought to be the possible sources of ongoing contamination to the canal. The RI included human health and ecological risk assessments which found that canal sediments are affected by hazardous substances that are adsorbed to sediment particles and by the upwelling and horizontal transport of non-aqueous phase liquid, which contains PAHs. In surface sediments (0-to-6-inch depth interval), PAHs, PCBs and seven metals (barium, cadmium, copper, lead, mercury, nickel and silver) were found to be contributing to unacceptable ecological and human health risks. EPA issued a draft feasibility study ("FS") in December 2011 examining the potential methods of addressing the risk to human health and the environment.

17. Purchaser is a limited liability company incorporated in the State of New York. Purchaser acquired the Property in June and July 2013 after having initiated negotiations with EPA for this Settlement Agreement.

18. The Property includes two parcels which have previously been utilized for a variety of uses. These include use as a lumber yard, an oil terminal, a marine equipment storage yard and an automobile scrap yard (388 Carroll Street) and a cement and asphalt facility, a garage, a grocery, a warehouse and a radio parts manufacturing facility (363 Bond Street). Contamination, as detailed below, is present at the Property from such prior operations and, as described below, from apparent migration from the canal beneath the Property.

19. In 2004 and 2005, respectively, ASTM Phase I and Phase II environmental assessments were performed for the Property. In 2004, a petroleum release was reported to NYSDEC when contaminated soil was encountered during the removal of three underground storage tanks from 388 Carroll Street. A petroleum release was also reported at 363 Bond Street.

20. In 2009, the Property and an adjoining parcel, 365 Bond Street, subject to a related Settlement Agreement (CERCLA-02-2014-2008), were rezoned for residential use. Preliminary design work was performed by the anticipated purchaser of the Property. However, the sale of the three parcels was not completed by that entity.

21. Based on the former land uses at the Property, EPA's RI included the installation of groundwater monitoring wells at the Property, including monitoring wells MW36 and MW43 at 388 Carroll Street and monitoring wells MW5 and MW6 at 365 Bond Street. Soil samples collected during the installation of MW43 indicated the presence of dense non-aqueous phase liquid ("DNAPL") at approximately 30 feet below grade in an area that is below the water table and hydraulically connected to the canal. The DNAPL is believed to be coal tar which contains polycyclic aromatic hydrocarbons ("PAHs") (a semi-volatile organic compound) and other hazardous substances. As a result, the DNAPL location has the potential to be a continuing source of contamination to the canal.

22. In 2011, the then owner of 388 Carroll Street contacted EPA regarding the DNAPL. EPA requested that the owner conduct further delineation sampling of the DNAPL beyond EPA's RI sampling. EPA conducted a site visit on July 8, 2011 to observe the collection of additional soil samples at the DNAPL location in the vicinity of monitoring well MW43. After evaluating all data collected to date, EPA determined that the DNAPL location was adequately delineated. Although the presence of DNAPL was not attributed to former or current onsite operations, based on the depth of the DNAPL hotspot and its limited size, EPA has determined that installation of a barrier wall is an appropriate measure to control potential DNAPL release to the canal.

23. EPA issued the Record of Decision ("ROD") for the Site on September 27, 2013. The selected remedy includes dredging of contaminated accumulated sediments in the canal and capping of contaminated native sediments. Temporary shoring of bulkheads will be necessary at the majority of parcels along the canal to prevent bulkhead collapse during dredging and capping operations. The temporary shoring would involve driving sheet piling to depths greater than currently exist for the bulkheads along the canal.

24. In 2004, the U.S. Army Corps of Engineers ("USACE") issued a cultural resources report for the Site developed as part of its ecosystem restoration study pursuant to the Clean Water Act, which determined that the bulkheads were eligible for listing on the National Register of Historic Sites. Regarding historic preservation of the bulkheads, the ROD indicates:

> Should the bulkheads be subject to adverse effects as a result of cleanup actions, a wide range of mitigating measures could be implemented as part of the remedy. As noted above, the appropriate measures would likely include additional documentation of bulkhead characteristics and the incorporation of archaeological and architectural investigations.

25. Due to the original timber crib bulkhead construction, repair and upgrade options are limited. Typical repairs and upgrades involve installation of new sheet piling along the existing bulkhead face, resulting in incremental encroachment on the canal. NYSDEC seeks to limit and mitigate such encroachment when approving such bulkhead repairs and upgrades along the canal.

26. Purchaser has indicated to EPA its willingness to address the DNAPL hotspot and conduct additional delineation sampling to confirm that the Property is properly characterized and to conduct such other work as the Parties agree is necessary and appropriate as consideration for this Order. In connection with Purchaser's purchase of the Property, updated Phase I's for each parcel in the Property were conducted in February 2012, additional sampling work was conducted in November 2012, and further investigative steps were conducted until the purchase of the Property. Purchaser is also conducting surficial cleanup work identified under the NYSDEC Brownfields Program.

27. Purchaser submitted to EPA a bulkhead design for the Property (hereinafter, "Bulkhead Design") in November 2013 which EPA approved and which would extend the bulkhead to

EPA's estimated potential dredging depth and serve as a barrier wall to eliminate the potential for migration to the canal from DNAPL located at 388 Carroll Street. Mitigation of the encroachment from Purchaser's bulkhead work will be accomplished at the Property through creation of an intertidal zone and green infrastructure area where 2nd Street meets the canal. The Bulkhead Design is attached as Appendix A.

28. Based on the dredging depths contained in the ROD, EPA has determined that the depth specified in the Bulkhead Design would be sufficient to eliminate the need for installation and removal of temporary sheet piling at the Property, thereby reducing future remedy implementation time and costs and reducing remedial construction-related impacts to Purchaser. Because Purchaser's proposed bulkhead repair work at the Property could potentially create contaminant re-suspension in the canal, EPA will require that Purchaser provide appropriate controls, and the work will be performed under EPA oversight.

29. The Work is subject to Section 121(e)(1) CERCLA permit exemption provision, 42 U.S.C. § 9621(e)(1), and the NCP. EPA intends to coordinate with the appropriate regulatory authorities, which may include the USACE, the NYSDEC, New York City Department of Small Business Services and the New York State Historic Preservation Office ("SHPO") in order to ensure substantive compliance with the applicable regulatory requirements for such bulkhead work.

30. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

31. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

32. The Purchaser is a limited liability company which is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

VI. DETERMINATIONS

33. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the NCP. These factors include, but are not limited to, the following conditions:

    a. Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants; and

    b. the unavailability of other appropriate federal or state response mechanisms to respond to the release.

34. EPA has determined that a removal action is necessary to address the release or threat of release of hazardous substances, pollutants or contaminants at the Site.

35. The actions required by this Settlement Agreement are necessary to protect the public health or welfare or the environment, are in the public interest, and, if carried out in compliance with the terms of this Settlement Agreement, are reasonable steps which will be considered to be consistent with the NCP.

36. Based upon the Findings of Fact and Conclusions of Law set forth above, and the administrative record supporting this removal action, EPA has determined that the actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and it is hereby agreed and ordered that Purchaser shall undertake a removal action at the Site, as set forth in Section VII (Work To Be Performed), below.

VII. WORK TO BE PERFORMED

37. Purchaser shall perform, at a minimum, all actions necessary to implement the Work set forth in this Settlement Agreement. Purchaser has submitted, and EPA has approved, the following documents: 1) a Bulkhead Work Plan, including measures for controlling re-suspension during bulkhead installation; 2) a work plan regarding additional delineation sampling of the Property, pursuant to a sampling plan approved by EPA; 3) stormwater and sanitary sewer calculations and design for the Property; 4) documentation of the existing historic bulkhead pursuant to an approved cultural resources work plan. The actions to be implemented shall include, but are not limited to, the following:

    a. Completion of construction, within twelve (12) months of the Effective Date of this Settlement Agreement, of a new sealed steel sheet pile bulkhead pursuant to the EPA-approved Bulkhead Design, in substantial conformance with the Bulkhead Design attached hereto as Appendix A, to control or eliminate potential impacts to the canal and to permit dredging to remedial dredging depths, which installation shall comply with the relevant substantive permit requirements for the USACE, NYSDEC, SHPO and the New York City Department of Small Business Services;

    b. Development of a Bulkhead Maintenance Plan ("BMP") providing for the periodic inspection of the bulkhead and such maintenance and repairs as may be necessary to ensure its effective function as a barrier;;

    c. Performance of additional delineation sampling of the Property, pursuant to a sampling plan approved by EPA;

d. Excavation of contaminated surface soil hot spots at the Property, appropriate capping and backfilling of the excavation area and restoration, consistent with a work plan approved by the NYSDEC Brownfield Program;

e. Performance of such other investigations, studies, and response actions as Purchaser or EPA may propose and mutually agree to include under this Settlement Agreement.

Purchaser shall perform all actions required by this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

38. Work Plan and Implementation.

a. Within thirty (30) days after the Effective Date, Purchaser shall submit to EPA for approval a work plan ("Work Plan") for performing the Work required under this Settlement Agreement, including the removal action generally described in Paragraph 37, above. The Work Plan shall provide a schedule for the actions required by this Settlement Agreement and a Quality Assurance Project Plan ("QAPP") for sampling pursuant to Paragraph 37.d.

b. EPA may approve, disapprove, require revisions to, or modify the Work Plan in whole or in part. If EPA requires revisions, Purchaser shall submit a revised Work Plan within thirty (30) days of receipt of EPA's notification of the required revisions. Purchaser shall implement the Work Plan as approved or modified in writing by EPA in accordance with the schedule approved by EPA. Once approved, approved with modifications, or modified by EPA, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Purchaser shall not commence any Work except in conformance with the terms of this Settlement Agreement. Purchaser shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval or modification pursuant to Paragraph 38.b.

39. The Work Plan shall include a Health and Safety Plan shall ensure the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include

contingency planning. The Health and Safety Plan, as appropriate, shall address the following:

a. Delineation of the work zones;

b. Personnel monitoring requirements, paying particular attention to monitoring specific job functions in compliance with OSHA requirements;

c. Personal protective equipment requirements and upgrade thresholds based on real-time air monitoring;

d. Demonstration that all personnel, including subcontractor personnel, have current certifications as per applicable OSHA regulations; and

e. Decontamination procedures for personnel and equipment exiting any hot zone.

If the performance of any subsequent phase of the work required by this Settlement Agreement requires alteration of the Health and Safety Plan, Purchaser shall submit to EPA for review and comment proposed amendments to the Health and Safety Plan.

40. The QAPP shall contain the following:

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA policy and guidance regarding sampling, quality assurance, quality control, data validation, and chain of custody procedures. Purchaser shall incorporate these procedures in accordance with the Uniform Federal Policy for Implementing Quality Systems ("UFP-QS"), EPA-505-F-03-001, March 2005; Uniform Federal Policy for Quality Assurance Project Plans ("UFP-QAPP"), Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005 or newer; and other guidance documents referenced in the aforementioned guidance documents. Subsequent amendments to the above, upon notification by EPA to Purchaser of such amendments, shall apply only to procedures conducted after such notification.

b. If the performance of any subsequent phase of the Work required by this Settlement Agreement requires alteration of the QAPP, Purchaser shall submit to EPA for review and approval proposed amendments to the QAPP.

c. Purchaser shall conduct the appropriate level of data verification/validation and provide the specified data deliverables as provided in the EPA-approved QAPP.

d. The QAPP shall require that any laboratory utilized by Purchaser is certified for the matrix/analyses which are to be conducted for any work performed pursuant to this Order, by one of the following accreditation/ certification programs: USEPA Contract Laboratory Program ("CLP"), National Environmental Laboratory Accreditation Program ("NELAP"), American Association for Laboratory Accreditation ("A2LA"),

or a certification issued by a program conducted by a state, and acceptable to EPA, for the analytic services to be provided. The QAPP shall require the Purchaser to submit laboratory certificates from such accreditation programs that are valid at the time samples are analyzed.

e. In their contract(s) with laboratories utilized for the analyses of samples, Purchaser shall require granting access to USEPA personnel and authorized representatives of the USEPA to the laboratories for the purpose of ensuring the accuracy of laboratory results related to the Site.

g. The QAPP shall include detailed procedures, methods and sampling parameters to be implemented to sample and analyze the contaminants found in Site soils that are required for off-Site transport and disposal. The QAPP will also include detailed procedures, methods, and sampling parameters to be utilized for post-excavation sampling of soil and infiltrating groundwater in the areas of excavation to establish criteria for determining completion of the waste and contaminated soil removal. The QAPP will include maps depicting proposed sampling locations. Appropriate sampling and analysis methods (e.g., sample frequency, compositing techniques, etc.), as necessary shall be utilized for the proper disposal of contaminated soil.

h. Upon request by EPA, Purchaser shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Purchaser while performing Work under this Settlement Agreement. Purchaser shall notify EPA not less than seven (7) days in advance of any sample collection activity.

41. Reporting

a. Purchaser shall provide, via email to EPA's Project Coordinator, not less than seven (7) days advance notice of all field activities, and weekly progress reports at the conclusion of each week while Purchaser is conducting field activities. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Final Report. Within ninety (90) days after completion of all Work required by the Work Plan required by this Settlement Agreement, Purchaser shall submit for EPA review and approval in accordance with Section XXVI (Notice of Completion) a final report summarizing the actions taken to comply with this Settlement Agreement. The Final Report shall include, as applicable:

i. A synopsis of all Work performed under this Settlement Agreement;

ii. A detailed description of all EPA-approved modifications to the Work Plan

that occurred during Purchaser' performance of the Work required under this Settlement Agreement;

iii. A listing of quantities and types of materials removed from the Property or handled at the Property;

iv. A discussion of removal and disposal options considered for those materials;

v. A listing of the ultimate destination of those materials;

vi. A presentation of the analytical results of all sampling and analyses performed, including data and chain of custody records;

vii. Accompanying appendices containing all relevant documentation generated during the Work (*e.g.*, as-built drawings, manifests, bills of lading, invoices, bills, contracts, certificates of destruction and permits);

viii. An accounting of expenses incurred by Purchaser in performing the Work; and

ix. The following certification signed by the Purchaser's Supervising Contractor:

"I certify that the information contained in and accompanying this document is true, accurate, and complete."

42. Off-Site Shipments.

a. All hazardous substances and pollutants or contaminants removed from the Property pursuant to this Settlement Agreement, for off-Site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with (a) Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), (b) Section 300.440 of the NCP, (c) the Clean Air Act, 42 U.S.C. § 7401, *et seq.*, (d) RCRA, (e) the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*, and (f) all other applicable federal and state requirements.

b. If hazardous substances from the Site are to be shipped outside of New York State, Purchaser shall provide prior notification of such Waste shipments in accordance with the EPA Memorandum entitled "Notification of Out-of-State Shipments of Superfund Site Wastes" (OSWER Directive 9330.2-07, September 14, 1989). At least five (5) Working Days prior to such Waste shipments, Purchaser shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the Wastes are to be shipped; (b) the type and quantity of Waste to be shipped; (c) the expected schedule for the Waste shipments; (d) the method of transportation and name of transporter; and (e) the treatment and/or disposal method of the Waste streams.

VIII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATORS AND AUTHORITY OF THE EPA PROJECT COORDINATOR

43. Purchaser shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractors within fourteen (14) days of the Effective Date. Purchaser shall also notify EPA of the name(s) and qualifications of any other contractor or subcontractor retained to perform work at least seven (7) days prior to commencement of such Work. EPA retains the right to disapprove of any or all the contractors or subcontractors. If EPA disapproves of a selected contractor, Purchaser shall retain a different contractor and notify EPA of contractor's name and qualifications within fourteen (14) days of EPA's disapproval.

44. Within fourteen (14) days after the Effective Date, Purchaser shall designate a Project Coordinator who shall be responsible for administration of all actions by Purchaser required by this Agreement and Order and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present at the Site or readily available during the Work. EPA retains the right to disapprove of the Project Coordinator. If EPA disapproves of the Project Coordinator, Purchaser shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within seven (7) days following EPA's disapproval.

45. The Project Coordinator shall oversee Purchaser's implementation of this Settlement Agreement. The EPA Project Coordinator shall have the authority vested in an On-Scene Coordinator or Remedial Project Manager by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other response action undertaken at the Site. Absence of the EPA Project Coordinator from the Site shall not be cause for stoppage of work unless specifically directed by the EPA Project Coordinator. The current EPA Project Coordinator for the Work is:

Christos Tsiamis
Remedial Project Manager
New York Remediation Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866
(212) 637-4257
tsiamis.christos@epa.gov

EPA will notify Purchaser's Project Coordinator if EPA designates a different EPA Project Coordinator for the Work.

IX. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

46. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, telephone number (800) 424-8802, Purchaser shall immediately orally notify the Chief of the Response and Prevention Branch of the Emergency and Remedial Response Division of EPA, Region 2, at (732) 321-6656 of the incident or Site conditions. Purchaser shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this paragraph are in addition to, not in lieu of, reporting under CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

47. In the event of any action or occurrence during Purchaser's performance of the requirements of this Settlement Agreement which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Purchaser shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding paragraph. Purchaser shall take such action in accordance with applicable provisions of this Settlement Agreement including, but not limited to, the Health and Safety Plan. In the event that EPA determines that: (a) the activities performed pursuant to this Settlement Agreement; (b) significant changes in conditions at the Site; or (c) emergency circumstances occurring at the Property pose a threat to human health or the environment, EPA may direct Purchaser to stop further implementation of any actions pursuant to this Settlement Agreement or to take other and further actions reasonably necessary to abate the threat.

48. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

X. PLANS AND REPORTS REQUIRING EPA APPROVAL

49. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement, Purchaser shall have fourteen (14) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Purchaser shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Purchaser a written statement to that effect.

50. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement is disapproved by EPA, even after being resubmitted following Purchaser's receipt of EPA's comments on the initial submittal, Purchaser shall be deemed to be out of compliance with this Settlement Agreement. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Purchaser to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs of doing so from Purchaser. Purchaser shall implement any such item(s) as amended or developed by EPA.

51. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all Work performed pursuant to this Settlement Agreement.

52. All plans, reports and other submittals required to be submitted to EPA pursuant to this Settlement Agreement, upon approval by EPA, shall be deemed to be incorporated into and an enforceable part of this Settlement Agreement.

XI. PAYMENT OF OVERSIGHT COSTS

53. Purchaser hereby agrees to reimburse EPA for all Oversight Costs. EPA will periodically send billings to Purchaser for Oversight Costs. The billings will be accompanied by a printout of cost data in EPA's financial management system. Purchaser shall remit payment to EPA via electronic funds transfer ("EFT") within thirty (30) days of receipt of each such billing.

54. To effect payment via EFT, Purchaser shall instruct their bank to remit payment in the required amount via EFT using the following information, or such other updated EFT information that EPA may subsequently provide to Purchaser:

- Amount of payment
- Bank: **Federal Reserve Bank of New York**
- Account code for Federal Reserve Bank account receiving the payment: **68010727**
- Federal Reserve Bank ABA Routing Number: **021030004**
- SWIFT Address: **FRNYUS33**
  33 Liberty Street
  New York, NY 10045
- Field Tag 4200 of the Fedwire message should read:
  D 68010727 Environmental Protection Agency
- Name of remitter:
- Settlement Agreement Index number: **CERCLA-02-2014-2004**
- Site/spill identifier: **02-ZP**

At the time of payment, Purchaser shall send notice via regular mail that such payment has been made to:

U.S. Environmental Protection Agency
Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

and via email to the following:

acctsreceivable.cinwd@epa.gov

tsiamis.christos@epa.gov

carr.brian@epa.gov

Such notices shall reference the date of the EFT, the payment amount, the name of the Site, the Settlement Agreement index number, and Purchaser's name and address.

The total amount to be paid by Purchaser pursuant to this paragraph shall be deposited into the Gowanus Canal Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

55. Purchaser shall pay interest on any amounts overdue under Paragraph 53 above. Such interest shall begin to accrue on the first day that payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

XII. ACCESS/NOTICE TO SUCCESSORS/INSTITUTIONAL CONTROLS

56. EPA, NYSDEC, and their designated representatives, including, but not limited to, employees, agents, contractor(s), and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Settlement Agreement. Purchaser shall at all times permit EPA, NYSDEC, and their designated representatives full access to and freedom of movement at the Property and any other premises where Work under this Settlement Agreement is to be performed for purposes of inspecting or observing Purchaser's progress in implementing the requirements of this Settlement Agreement, verifying the information submitted to EPA by Purchaser, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be related to EPA oversight of the implementation of this Settlement Agreement.

57. In the event that action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Purchaser, Purchaser shall use their best efforts to obtain access agreements from the present owners within twenty (20) days of the Effective Date of this Settlement Agreement for purposes of implementing the requirements of this Settlement Agreement. Such agreements shall provide access not only for Purchaser, but also for EPA and its designated representatives or agents, as well as NYSDEC and its

designated representatives or agents. Such agreements shall specify that Purchaser is not EPA's representative with respect to liability associated with Site activities. If such access agreements are not obtained by Purchaser within the time period specified herein, Purchaser shall immediately notify EPA of their failure to obtain access and shall include in that notification a summary of the steps Purchaser has taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Purchaser, may perform those response actions with EPA contractors at the property in question, or may terminate the Settlement Agreement if Purchaser cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Purchaser shall perform all other activities not requiring access to that property. Purchaser shall integrate the results of any such tasks undertaken by EPA into their reports and deliverables.

58. Upon request, Purchaser shall provide EPA with access to all records and documentation related to the conditions at the Site, hazardous substances found at or released from the Site, and the actions conducted pursuant to this Settlement Agreement except for those items, if any, subject to the attorney-client or attorney work product privileges. Nothing herein shall preclude Purchaser from asserting a business confidentiality claim pursuant to 40 C.F.R. Part 2, Subpart B. All data, information, and records created, maintained, or received by Purchaser or their contractor(s) or consultant(s) in connection with implementation of the Work under this Settlement Agreement, including, but not limited to, contractual documents, invoices, receipts, work orders, and disposal records shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this paragraph. EPA shall be permitted to copy all such documents. Purchaser shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Purchaser or their contractor(s), or on Purchaser's behalf, in connection with the implementation of this Settlement Agreement.

59. Notwithstanding any other provision of this Settlement Agreement, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statutes or regulations.

60. If EPA so requests, Purchaser shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Kings County, New York, which shall provide notice to all successors-in-title that the Property is part of the Site, that EPA issued this Settlement Agreement for the performance of a removal action that Purchaser will be performing, and that EPA has released and waived its Section 107(r) lien on the Property in this Settlement Agreement in accordance with Section XXII (Release and Waiver of Lien). Purchaser shall record the notice within sixty (60) days of EPA's approval of the notices. Purchaser shall provide EPA with a certified copy of the recorded notice within thirty (30) days of recording such notices(s).

61. If EPA so requests, Purchaser shall implement and comply with any land use restrictions and institutional controls on the Property in connection with response actions at the Property.

XIII. RECORD RETENTION, DOCUMENTATION, AND AVAILABILITY OF INFORMATION

62. Purchaser shall preserve all documents and information relating to Work performed under this Settlement Agreement, or relating to Waste materials found on or released from the Property, for six (6) years after completion of the Work required by this Settlement Agreement. At the end of the six (6) year period, Purchaser shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Purchaser shall provide EPA with the originals or copies of such documents and information.

63. All documents submitted by Purchaser to EPA in the course of implementing this Settlement Agreement shall be available to the public unless identified as confidential by Purchaser pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all such documents to NYSDEC, and NYSDEC may make those documents available to the public unless Purchaser conforms with applicable New York law and regulations regarding confidentiality. Purchaser shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific, or engineering data relating to the Work performed hereunder.

XIV. FORCE MAJEURE

64. "Force majeure," for purposes of this Settlement Agreement, is defined as any event arising from causes beyond the control of Purchaser and of any entity controlling, controlled by, or under common control with Purchaser, including their contractors and subcontractors, that delays the timely performance of any obligation under this Settlement Agreement notwithstanding Purchaser's best efforts to avoid the delay. The requirement that Purchaser exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (a) as it is occurring; and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any Work to be performed under this Settlement Agreement or the financial difficulty of Purchaser to perform such Work.

65. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a force majeure event, Purchaser shall notify by telephone the EPA Project Coordinator or, in his absence, the Chief of the Central New York Remediation Section of the Emergency and Remedial Response Division of EPA Region II at 212-637-4288 within forty-eight (48) hours of when Purchaser knew or should have known that the event might cause a delay. In addition, Purchaser shall notify EPA in writing within seven (7) calendar days after the date when Purchaser first become aware or should have become aware of the circumstances that may delay or prevent performance.

Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Purchaser's rationale for interpreting such circumstances as being beyond their control (should that be Purchaser's claim); (b) the actions (including pertinent dates) that Purchaser have taken and/or plan to take to minimize any delay; and (c) the date by which or the time period within which Purchaser proposes to complete the delayed activities. Such notification shall not relieve Purchaser of any of their obligations under this Settlement Agreement. Purchaser's failure to timely and properly notify EPA as required by this paragraph shall constitute a waiver of Purchaser's right to claim an event of force majeure. The burden of proving that an event constituting a force majeure has occurred shall rest with Purchaser.

66. If EPA determines that a delay in performance of a requirement under this Settlement Agreement is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Purchaser's obligation to perform or complete other tasks required by the Settlement Agreement that are not directly affected by the force majeure. Purchaser shall use their best efforts to avoid or minimize any delay or prevention of performance of their obligations under this Settlement Agreement.

XV. STIPULATED PENALTIES

67. If Purchaser fails, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Settlement Agreement, and such failure is not excused under the terms of Paragraphs 64 through 66 above (Force Majeure), Purchaser shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below:

a. For all requirements of this Settlement Agreement, other than the timely provision of progress reports required by Paragraph 41.a., stipulated penalties shall accrue in the amount of $750 per day, per violation, for the first 7 days of noncompliance, $1,000 per day, per violation, for the 8th through 15th day of noncompliance, $1,500 per day, per violation, for the 16th through 25th day of noncompliance, and $3,000 per day, per violation, for the 26th day of noncompliance and beyond.

b. For the progress reports required by Paragraph 41.a., stipulated penalties shall accrue in the amount of $250 per day, per violation, for the first 7 days of noncompliance, $500 per day, per violation, for the 8th through 15th day of noncompliance, $1,000 per day, per violation, for the 16th through 25th day of noncompliance, and $2,000 per day, per violation, for the 26th day of noncompliance and beyond.

68. All penalties shall accrue as of the first day after the applicable deadline has passed and shall continue to accrue until the noncompliance is corrected or completion of the task(s) for which there is non-compliance. Such penalties shall be due and payable thirty (30) days following receipt of a written demand from EPA. Payment of any such penalties to EPA shall be made

via EFT in accordance with the payment procedures in Section XI above. Purchaser shall pay interest on any amounts overdue under this paragraph. Such interest shall begin to accrue on the first day that the respective payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

69. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Settlement Agreement. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Purchaser of a violation or act of noncompliance. The payment of penalties shall not alter in any way Purchaser's obligation to complete the performance of the Work required under this Settlement Agreement.

70. If Purchaser fails to comply with the terms of this Settlement Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Settlement Agreement or otherwise obtain compliance.

71. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Purchaser's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement Agreement. Notwithstanding any other provision of this Section, EPA may, in its sole discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVI. FINANCIAL ASSURANCE

72. Purchaser shall demonstrate their ability to complete the Work required by this Settlement Agreement and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within twenty (20) days of the effective date of this Settlement Agreement one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Purchaser has sufficient assets available to perform the Work. Purchaser shall demonstrate financial assurance in an amount no less than the estimated cost of the Work to be performed by Purchaser under this Settlement Agreement. If EPA determines that the financial assurances submitted by Purchaser pursuant to this paragraph are inadequate, Purchaser shall, within fifteen (15) days after receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this paragraph.

XVII. CERTIFICATION

73. By entering into this Settlement Agreement, Purchaser certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to

Purchaser and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Settlement Agreement. Purchaser also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Purchaser is not materially accurate and complete, this Settlement Agreement, within the sole discretion of EPA, shall be null and void and EPA reserves all rights it may have.

XVIII. COVENANT NOT TO SUE BY UNITED STATES

74. In consideration of the actions that will be performed and the payments that will be made by Purchaser under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the United States covenants not to sue or to take administrative action against Purchaser pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Purchaser of all obligations under this Settlement Agreement, including, but not limited to, payment of Oversight Costs pursuant to Section XI. This covenant not to sue extends only to Purchaser and does not extend to any other person.

XIX. RESERVATION OF RIGHTS BY UNITED STATES

75. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA or the United States from seeking legal or equitable relief to enforce the terms of this Settlement Agreement or from taking other legal or equitable action as it deems appropriate and necessary.

76. The covenant not to sue set forth in Section XVIII above does not pertain to any matters other than those expressly identified therein. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against Purchaser with respect to all other matters, including, but not limited to:

    a. liability for failure by Purchaser to meet a requirement of this Settlement Agreement;

    b. criminal liability;

    c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability for violations of federal, state, or local law or regulations during or after implementation of the Work other than as provided in the Work Plan, the Work, or otherwise ordered by EPA;

e. liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Property after the Effective Date, not within the definition of Existing Contamination;

f. liability resulting from exacerbation of Existing Contamination by Purchaser, its successors, assigns, lessees, or sublessees; and

g. liability arising from the disposal, release or threat of release of Waste Materials outside of the Site.

77. With respect to any claim or cause of action asserted by the United States, Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that Purchaser has complied with all of the requirements of 42 U.S.C. § 9601(40).

78. Work Takeover. In the event EPA determines that Purchaser has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Prior to taking over the Work, EPA will issue written notice to Purchaser specifying the grounds upon which such notice was issued and providing Purchaser with thirty (30) days within which to remedy the circumstances giving rise to EPA's issuance of the notice. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any Financial Responsibility mechanism provided pursuant to Section XVI (Financial Assurance) of this Settlement Agreement. Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANT NOT TO SUE BY PURCHASER

79. Purchaser covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Existing Contamination, the Work, Oversight Costs or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law.

80. Purchaser reserves, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Purchaser's plans, reports, other deliverables, or activities.

81. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXI. EFFECT OF SETTLEMENT/CONTRIBUTION

82. Nothing in this Settlement Agreement precludes the United States or Purchaser from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any person not a party to this Settlement Agreement, including any claim Purchaser may have pursuant to Section 107(a)(4)(B). Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

83. In the event of a suit or claim for contribution brought against Purchaser, notwithstanding the provisions of Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination (including any claim based on the contention that Purchaser is not a BFPP, or has lost its status as a BFPP as a result of response actions taken in compliance with this Settlement Agreement or at the direction of the EPA Project Coordinator), the Parties agree that this Settlement Agreement shall then constitute an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C.§§ 9613(f)(2) and 9622(h)(4), and that Purchaser would be entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all

response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to Existing Contamination, as defined, with respect to the Property and the Site.

84. In the event Purchaser is found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a BFPP, or to have lost its status as a BFPP as a result of response actions taken in compliance with this Settlement Agreement or at the direction of the EPA Project Coordinator, the Parties agree that this Settlement Agreement shall then constitute an administrative settlement within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Purchaser has resolved its liability for all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or by any other person with respect to the Existing Contamination, as defined, with respect to the Property and the Site.

85. Purchaser agrees that with respect to any suit or claim brought by it for matters related to this Settlement Agreement it will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

86. Purchaser also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement it will notify the United States in writing within ten (10) days of service of the complaint on it. In addition, Purchaser agrees that it will notify the United States within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

XXII. RELEASE AND WAIVER OF LIENS

87. Subject to the Reservation of Rights in Section XIX of this Settlement Agreement, upon satisfactory completion of the Work specified in Section VII (Work to be Performed) and payment of Oversight Costs due under Section XI, EPA agrees to release and waive any lien it may have on the Property now and in the future under Section 107(r) of CERCLA, 42 U.S.C.§ 9607(r), for costs incurred or to be incurred by EPA in responding to the release or threat of release of Existing Contamination.

XXIII. INDEMNIFICATION

88. Purchaser shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Purchaser, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Purchaser agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Purchaser, Purchaser's officers, directors, employees, agents, contractors, subcontractors, and any

persons acting on Purchaser's behalf or under Purchaser's control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Purchaser in carrying out activities pursuant to this Settlement Agreement. Neither Purchaser nor any such contractor shall be considered an agent of the United States.

89. The United States shall give Purchaser notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Purchaser prior to settling such claim.

90. Purchaser waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Purchaser shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Purchaser and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. MODIFICATION

91. The EPA Project Coordinator may make modifications to any plan or schedule or the Work Plan in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the EPA Project Coordinator's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

92. If Purchaser seeks permission to deviate from any approved work plan or schedule, Purchaser's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Purchaser may not proceed with the requested deviation until receiving oral or written approval from the EPA Project Coordinator.

93. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Purchaser shall relieve Purchaser of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXV. APPENDICES

94. The following appendices are attached to and incorporated into this Settlement Agreement:

"Appendix A" is the EPA approved Bulkhead Design

XXVI. NOTICE OF COMPLETION

95. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including continued compliance with CERCLA Section 101(40) with respect to the Property in accordance with Paragraph 5 of this Settlement Agreement, the BMP, post-removal site controls, record retention, and compliance with any institutional controls, EPA will provide written notice to Purchaser. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Purchaser, provide a list of the deficiencies, and require that Purchaser modify the Work Plan if appropriate in order to correct such deficiencies. Purchaser shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Purchaser to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXVII. EFFECTIVE DATE

96. The Effective Date of this Settlement Agreement shall be the date upon which EPA issues written notice to Purchaser that the public comment period pursuant to Section XXXI, below, has closed, that comments received, if any, do not require EPA to modify or withdraw its consent to this Agreement.

XXVIII. DISCLAIMER

97. This Settlement Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XXIX. NOTICES AND SUBMISSIONS

98. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one party to another under this Settlement Agreement, shall be deemed submitted either when hand-delivered or as of the date of receipt by certified mail/return receipt requested, express mail, or facsimile.

Submissions to EPA under this Settlement Agreement shall be sent to the following addressees:

3 copies: (1 bound, 1 unbound, 1 electronic)	Remedial Project Manager - Gowanus Canal Site Emergency and Remedial Response Division U.S. Environmental Protection Agency, Region 2 290 Broadway, 20th Floor

New York, New York 10007-1866

1 copy: (electronic)	Chief, New York/Caribbean Superfund Branch Office of Regional Counsel United States Environmental Protection Agency, Region 2 290 Broadway, 17th Floor New York, New York 10007-1866 Attn: Gowanus Canal Superfund Site Attorney
3 copies: (2 unbound, 1 electronic)	Director, Division of Environmental Remediation N.Y.S. Department of Environmental Conservation 625 Broadway, 12th Floor Albany, New York 12233-7011 Attn: Gowanus Canal Superfund Site
2 copies: (1 unbound, 1 electronic)	Regional Attorney, Region 2 N.Y.S. Department of Environmental Conservation Hunters Point Plaza 47-40 21st Street Long Island City, New York 11101 Attn: Gowanus Canal Superfund Site

Submissions to Purchaser shall be addressed to:

Joseph E. Teichman, Esq.
The Lightstone Group, LLC
460 Park Avenue, Suite 1300
New York, NY 10022

David S. Yudelson, Esq.
Sive, Paget & Riesel P.C.
460 Park Avenue, 10th Fl.
New York, N.Y. 10022

XXXI. PUBLIC COMMENT

99. This Settlement Agreement shall be subject to a thirty-day (30-day) public comment period, after which EPA may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BY:

Walter E. Mugdan

August 7, 2014

Walter E. Mugdan
Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region II

Date

The undersigned representative of Purchaser certifies that it is fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party it represents to this document.

IT IS SO AGREED:
LSG 363 BOND STREET LLC
BY:

Name
Mitchell Hochberg

8/5/14
Date

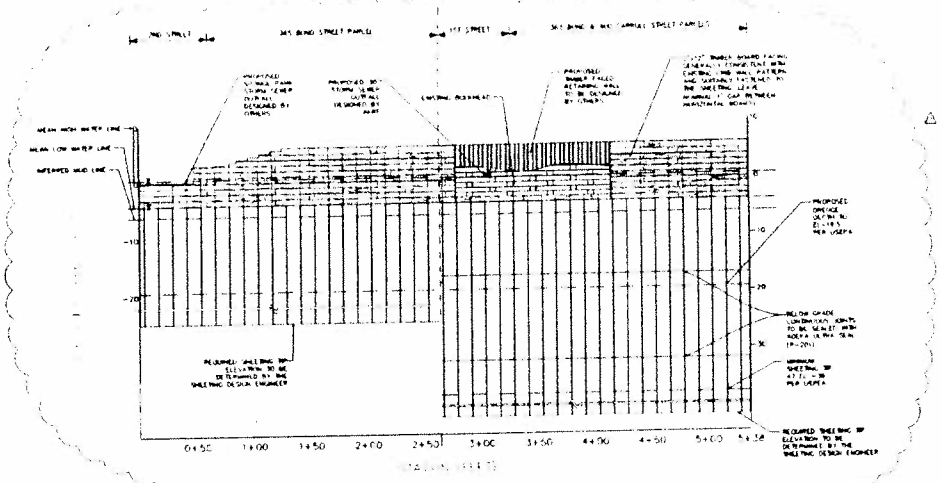
IT IS SO AGREED:
UNITED STATES DEPARTMENT OF JUSTICE
BY:

Ellen Mahan /EDJ

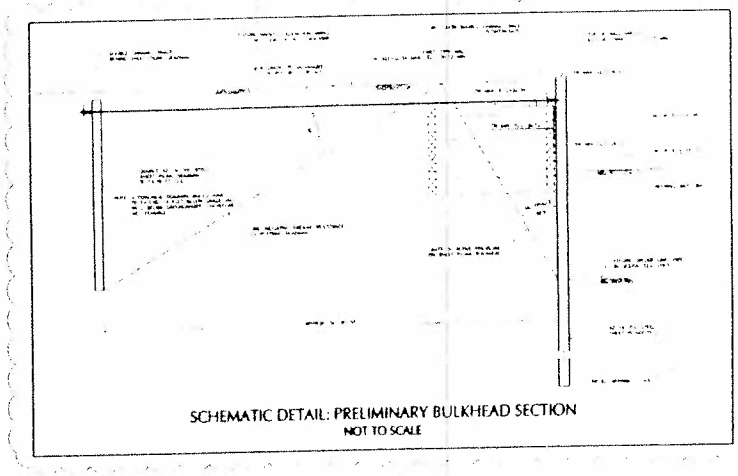
Ellen Mahan
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date 8/25/14

Appendix A – Bulkhead Design

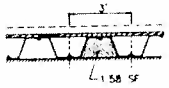


BULKHEAD ALIGNMENT PROFILE



SCHEMATIC DETAIL: PRELIMINARY BULKHEAD SECTION
NOT TO SCALE

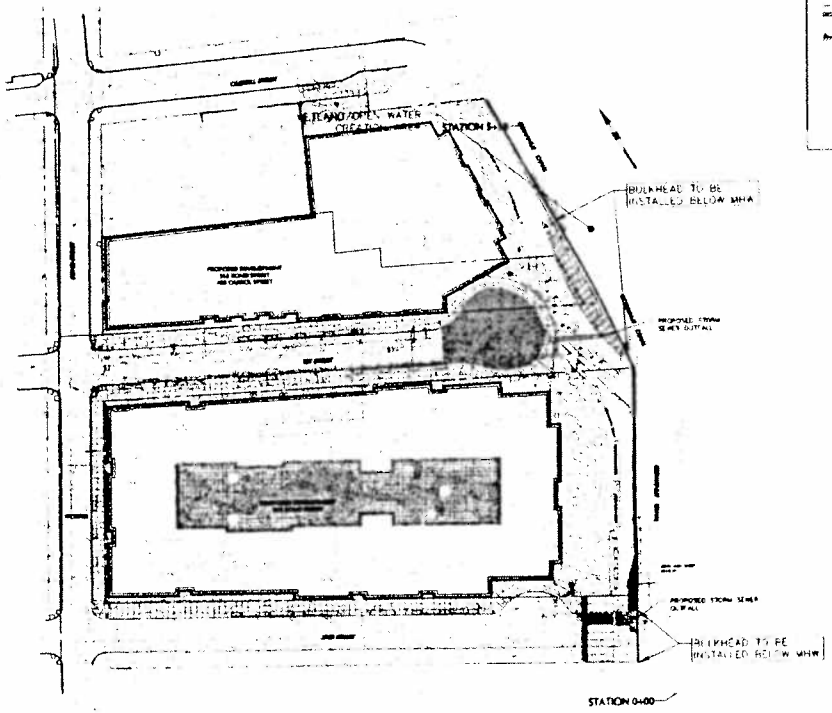
BULKHEAD SHEETING IMPACT AREA



PART PLAN
N.T.S.

- ASSUMING PZ-27 SHEET PILES,
- 1.58 SF PER 3 LINEAR FEET OF SHEETING
- USING A TOTAL LENGTH OF 352.8 FEET, NOT INCLUDING BULKHEADS TO BE INSTALLED BELOW MHW

TOTAL BULKHEAD SHEETING IMPACT



EXISTING WETLAND / OPEN WATER TO BE FILLED

- BELOW MHW = 520 SF
- BELOW SHW = 609 SF

NEW WETLAND / OPEN WATER AREA

- TOTAL AREA = 1,874 SF

REFERENCE NOTES

1. EXISTING IMPOUNDMENT BASED ON DRAFT SURVEY ENTITLED "TOPOGRAPHIC & BOUNDARY SURVEY" PREPARED BY LANGAN, DATED 1/18/11
2. PROPOSED SITE PLAN BACKGROUND BASED ON ELECTRONIC DRAWINGS BY AKRT ENGINEERING P.C. RECEIVED ON 6/13/12
3. MEAN HIGH WATER AND OPEN HIGH WATER ELEVATIONS ARE BASED ON INFORMATION OBTAINED FROM THE BROOKLYN BRIDGE, NY STATION 8575767
4. EXTENTS OF NEW WETLAND/OPEN WATER AREA BASED ON PLAN ENTITLED "EXPLANATORY MATERIALS PLAN" PREPARED BY LEE WEINTRAUB LANDSCAPE ARCHITECTURE, LLC ON 8/22/2012
5. THE PROPOSED SHEETING LAYOUT SHOWN ON THE DRAWING PRESUMES THE SHEETING CAN BE INSTALLED VERY CLOSE TO THE OUTSIDE FACE OF THE EXISTING BULKHEAD STRUCTURE. THE CONTRACTOR IS SOLELY RESPONSIBLE FOR INVESTIGATING THE CONDITIONS OF THE EXISTING VERTICAL TIMBER PILES ALONG THE BULKHEAD THE SUBSURFACE CONDITIONS WITHIN THE CANAL, THE PRESENCE OF ANY OTHER POTENTIAL OBSTRUCTIONS IN THE CANAL, AND FOR REMOVING THESE OBSTRUCTIONS AS NECESSARY SO THE SHEETING CAN BE INSTALLED AS INDICATED ON THE LAYOUT
6. SHEET PILE WALL CONCEPT FROM PLAN ENTITLED "SHEET PILE CONCEPT SCHEMATIC PART PLAN AND SECTION" PREPARED BY LANGAN, DATED 4/26/11
7. PROPOSED STORM SEWER AND OUTFALL INFORMATION FROM DRAWING ENTITLED "CONTRACT DRAWING & DRAINAGE PLAN" DATED 10/21/11 PREPARED BY AKRT ENGINEERING P.C.
8. SPONGE PARK SHOWN FOR REFERENCE ONLY. PROPOSED BY DEANDE FUNG. REFER TO OF BRIDGE PLANS DATED 10/19/2012
9. FOR WETLAND ELEVATIONS SEE DRAWING ENTITLED "DEPLANADE SECTIONS" PREPARED BY LEE WEINTRAUB LANDSCAPE ARCHITECTURE, LLC DATED 8/22/2012
10. THE BACKS ANCHORS AND/OR WALERS MAY BE REQUIRED. MAY REQUIRE MINOR MODIFICATION OF EXISTING TIMBER STRUCTURE AND PROPOSED NEW TIMBER FENDER SYSTEM
11. SCHEMATIC OF THE PREFABRICATED PROTECTIVE BULKHEAD CONTROL FOR WHICH PROVIDED FOR INFORMATION PURPOSES ONLY

10/22/13	[illegible]	
10/22/13	[illegible]	

LANGAN

CARROLL GARDENS DEVELOPMENT

BROOKLYN NEW YORK

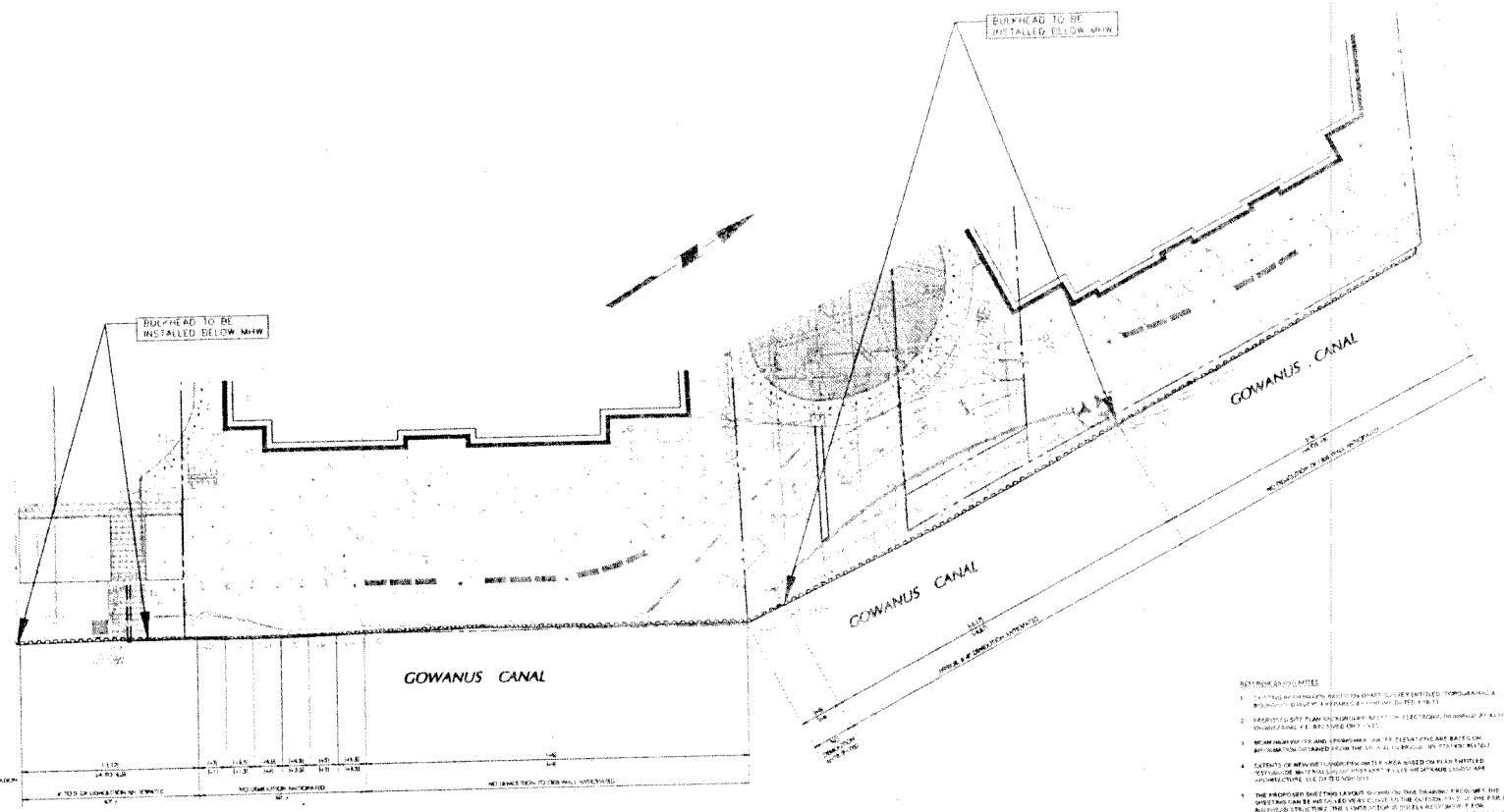
WETLAND / OPEN WATER IMPACT PLAN w/ BULKHEAD PROFILE

Project No. 100267501
Date 07/01/13
Scale 1" = 50'
Drawn By LMT

WP101

DRAFT FOR DISCUSSION

PROJECT No. 100267501



DRAFT FOR DISCUSSION

Date	Description	No
	REVISIONS	

ANGAN

CARROLL GARDENS DEVELOPMENT

SCHEMATIC NEW BULKHEAD PLAN

Project No. 100267501

Date 10/02/11

Drawing No. WP102

LANBAN

PROJECT No. 100267501