# Appendix A

# Hazardous Materials

## Appendix A: Hazardous Materials

The applicant is participating in the Brownfield Cleanup Program (BCP) administered by the New York State Department of Environmental Conservation (NYSDEC). The applicant was accepted into the BCP on April 19, 2005. An Interim Remedial Work Plan was approved on June 16, 2006, and a Remediation Work Plan was approved by NYSDEC on July 5, 2006. This appendix contains the following:

- July 5, 2006 letter from NYSDEC;
- Executive Summary of the Remediation Work Plan.
- Restrictive Declaration recorded November 8, 2006.

Information on the NYSDEC Brownfield Cleanup Program can be found on NYSDEC's website: http://www.dec.state.ny.us/website/der/bcp/.

# Remedial Work Plan

# West 61st Site

**NEW YORK, NEW YORK**

## Remedial Work Plan
## EXECUTIVE SUMMARY

**NYSDEC BCP Number: C231043**

**AKRF Project Number: 10321**

**Prepared for:**

Algin Management Company, LLC
64-35 Yellowstone Boulevard
Forest Hills, New York 11375

**Prepared by:**

**AKRF Engineering, P.C.**
440 Park Avenue South
New York, NY 10016
212-696-0670

**Reviewed and Approved by:**

**MARCH 2006**

# EXECUTIVE SUMMARY

The West 61st Street Site (the "Site") consists of approximately 62,500 square feet (approximately 1.44 acres) located on West 60th and 61st Streets between West End Avenue and Amsterdam Avenue in Manhattan, New York. The southwestern boundary of the Site is 100 feet east of west End Avenue and approximately 500 feet east of the Hudson River. Specifically, the Site consists of Block 1152, Lots 5, 8, 10, 11, 12, 13, 43, 52, 53, and 55. These parcels are currently occupied by vacant land, except for the northeastern corner of the Site, which is presently used as a commercial parking lot. Residential, industrial, institutional (three schools and a NYC Parks Department pool and community center), and commercial properties (an auto repair shop) are present in the surrounding neighborhood. The Site is located in an area currently going through a transformation from four and five-story residential, industrial, and commercial establishments, to schools and low-rise and high-rise residential buildings containing first-floor retail uses (stores).

The proposed development on the Site is a multi-tenant residential complex with low-rise and high-rise structures, located on the main area of the Site, between West 60th and 61st Streets. A two-level underground parking garage will be situated beneath two of the buildings. A recreation area, consisting of a tennis court and track, will be constructed on the northeastern portion of the Site, along West 60th Street. The intended use of this site is consistent with the current transition of this neighborhood and surrounding area.

A Phase I Environmental Site Assessment (ESA) was performed by AKRF on the Project Site in June 2003 to provide a preliminary Site evaluation to determine whether any existing environmental conditions or past Site uses could affect the intended Site use. The Phase I ESA Report included the findings of a Site inspection, the evaluation of available historical information, and the interpretation of relevant federal and State environmental databases. The Phase I ESA noted the presence of several above ground storage tanks and the likelihood of several below ground storage tanks. Former Site uses included a gasoline station, an automobile repair shop, an iron works, and automobile parking areas. The report also noted the presence of a commercial-industrial facility (Emsig) located east of Lot 13, which produced buttons and fabric. Records indicated that the facility generated metals and solvents in concentrations to be classified as hazardous wastes, and utilized two petroleum storage tanks during it operation from 1926 to 2003. The Phase I ESA identified several recognized environmental conditions (e.g., on-site tanks and previous uses of the Site and the off-site Emsig facility), and recommended that additional information be gathered to further assess the Site.

In October of 2004, Algin Management Company, LLC (Algin) submitted an application to the New York State Department of Environmental Conservation (NYSDEC) to participate in the Brownfield Cleanup Program as a volunteer and was approved to participate in early 2005. Under this agreement, Algin performed a NYSDEC- approved and New York State Department of Health (NYSDOH)-approved remedial site investigation in late summer and early fall of 2005, and submitted a Remedial site Investigation Report (RIR) in January 2006. An Interim Remedial Measure Work Plan was submitted to NYSDEC and NYSDOH in February 2006 to remove one or more suspected underground tanks at three locations, and to remove two distinct locations of contaminated soil containing lead and acetone. The Remediation Work Plan has been prepared to address the environmental conditions identified in the January 2006 RIR.

The remedial investigation activities that occurred at the Site included; a geophysical survey to identify underground tanks; the advancement of soil borings at 18 locations with the collection of two or more samples at each location and analysis for volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs), pesticides, polychlorinated biphenyls (PCBs), and metals; the installation of 10 groundwater monitoring wells, with the collection of samples and analysis for VOCs, SVOCs, pesticides, PCBs and metals; and the installation of soil vapor probes with the collection and analysis of soil vapor samples for VOCs. The results of the remedial investigation indicated that underground tanks are

suspected at three locations (two in Lot 43 and one in Lot 53), and possibly a fourth location in Lot 8. Elevated levels of lead were detected in the northeastern corner of Lot 43 and a slightly elevated concentration of acetone was detected at one location (MW-4) in Lot 5. Petroleum contamination was identified in the southern portion of the Site along West 60th Street. The groundwater flowing from the Site contained one volatile organic compound (benzene) and two pesticides (heptachlor epoxide and 4,4' DDD) slightly above groundwater quality standards. Several metals were identified in concentrations exceeding groundwater standards. The RIR stated that the Site does not pose a significant threat to public health or the environment and indicated that the proposed remedy (construction of the proposed project and removal of contaminated soil) would remove on-site contamination to NYSDEC/NYSDOH standards such that the future occupants would not be exposed to any contaminants remaining at the Site, and any remaining contaminants would not pose a future off-site environmental or health threat.

This Remediation Work Plan includes measures to remove sources of contamination including: underground tanks; contaminated soil directly around the tanks; petroleum-contaminated soil; historic (urban) fill; and construction and demolition debris within the proposed cellar and sub-cellar. In addition, excavation of fill material is necessary in the recreation area and the courtyard to achieve desired elevations for development. Soil beneath the limits of excavation will be tested to ensure that they meet NYSDEC-approved limits in Technical and Administrative Guidance Memorandum (TAGM) # 4046 Recommended Soil Cleanup Objectives (RSCOs) or the allowable site specific soil limits proposed in this document. Another important feature in the Remediation Work Plan is the immediate post-excavation construction of the building foundation and cellar/sub-cellar walls to prevent and/or minimize the recontamination of the remediated areas of the Site. The bottom elevation of the cellar of Building A and the sub-cellar of Buildings B and C are below the groundwater level. Immediate construction of the foundation and surrounding walls will prevent and/or minimize off-site contaminants from entering the Site and avert possible recontamination of the Site. The installation of the foundation and walls is necessary around the entire site, except the eastern section of Lot 43, which is elevated and is not subject to groundwater inflow. The groundwater is in the bedrock and will flow beneath this portion of the Site. To achieve this purpose, the proposed foundation and walls should be constructed: along West 60th Street; along the western property line of Lot 5; along the northern property line of Lot 5; along Building A facing Lot 8; along Building A facing Lots 55, 56, and 57; along Building B facing Lot 8; along Building C facing Lot 55, along the western property line of Lot 55; along West 61st Street; along Building C facing the eastern section of Lot 43 (existing parking lot); and along the eastern property line of Lot 13.

The Remediation Work Plan indicates that most of the excavated waste will be transported off-site to out-of-state facilities located in New Jersey and Pennsylvania. Only native soil to be used as backfill will be tested and approved by NYSDEC before its use. The RWP contains several appendices: a Remediation Health and Safety Plan (Appendix A), which addresses Community Air Monitoring to ensure that the surrounding community is protected from any vapors, dust or odors emitted during the excavation and loading of the on-site soil; a Quality Assurance Project Plan (Appendix C) to ensure that appropriate collection and analytical procedures are observed for any environmental or waste characterization sampling activities; a Sampling Plan (Appendix D) to ensure specific collection and analytical procedures are observed to meet the requirements of the facilities receiving the on-site soil and NYSDEC endpoint sample requirements; and a Soil Management Plan (Appendix E) to provide direction for excavation and any stockpiling of the excavated material, and truck waiting, loading and exiting procedures, including haul routes, and measures to minimize dust, odors and noise from the trucks.

**New York State Department of Environmental Conservation**
**Division of Environmental Remediation, Region 2**
47-40 21ST Street, Long Island City, NY 11101-5407
**Phone:** (718) 482-4995 • **FAX:** (718) 482-6358
**Website:** www.dec.state.ny.us

Denise M. Sheehan
Commissioner

July 05, 2006

Michelle Lapin
Senior Vice President
AKRF
440 Park Avenue South
New York, NY 10016

Re: West 61st. Street Site
Site # C 231043
Remedial Work Plan

Dear Ms. Lapin:

The New York State Department of Environmental Conservation (NYSDEC), in consultation with the New York State Department of Health, has completed its review of the document "Remedial Work Plan" dated March, 2006 and amended by a "Remedial Work Plan Addendum" letters dated June 26 and June 30, 2006. The report and associated amendments were submitted to NYSDEC under the Brownfield Cleanup Program for project number C-231043. The Remedial Work Plan was released for public comment for forty five days as required by program policy. That comment period ended on May 20, 2006.

The Remedial Work Plan as amended, (the Plan) is deemed to be appropriate and protective of public health and the environment and is hereby approved for implementation.

The approved Remedial Plan, including the Stipulation List and amendment letter must be placed by the Applicant in all publicly accessible repositories for the project within 5 business days. A certification that this document has been placed in project repositories, and that the repositories are complete with all project documents, must be submitted to the NYSDEC project manager.

The Applicant and its contractors are solely responsible for safe execution of all invasive and other work performed under the Plan. In particular, the Applicant and its contractors are responsible for the structural integrity of excavations, and protection of the structural integrity of buildings, utilities, and other structures both onsite and offsite that may be adversely affected by those excavations. The Applicant and its contractors must obtain any local, state or federal permits or approvals that may be required to perform work under the Plan. Further, the Applicant

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and its contractors are solely responsible for the identification of utilities that might be affected by work under the Plan and implementation of all required, appropriate, or necessary health and safety measures during performance of work under the approved Plan.

I understand that remedial work is starting next week. Please keep me informed of all field activities through daily reports via e-mail to spsingh@gw.dec.state.ny.us. Should you have any questions, please contact either me at 718-482-4897 or Dr. Daniel Walsh at 718-482-4599.

Sincerely,

Shaminder Chawla
Hazardous Waste Remediation

CC:

J. Gustella, NYSDOH
D. Smith, NYSDEC
D. Walsh, NYSDEC

# AFFIDAVIT OF RECORDATION

STATE OF NEW YORK )
) SS.:
COUNTY OF NEW YORK )

Liliya Suris, being duly sworn, deposes and says:

A. I am over 18 years of age, and am employed in the position of Senior Law Clerk by Kramer Levin Naftalis & Frankel

B. Attached hereto are true copies of the following executed documents, which were delivered by the undersigned on November 8, 2006 to the Office of the City Register, New York County, State of New York for recordation:

- Declaration, made by West End Enterprises, LLC and West 60th Street Associates, LLC November 3, 2006; and
- Certification pursuant to Zoning Lot Subdivision D of Section 12-10 of the Zoning Resolution of December 15, 1961 of the City of New York as amended, effective August 18, 1977, made by Commonwealth Land Title Insurance Company, dated April 22, 2006.

Liliya Suris

Sworn to before me this
8th day of November, 2006

Notary Public

LAMINA VUCETOVIC
NOTARY PUBLIC, State of New York
No. 01VU6124664
Qualified in Queens County
Commission Expires March 28, 2009

RECEIPT : M0070076500

DEPARTMENT OF FINANCE
MANHATTAN PAYMENT CENTER
66 JOHN STREET
NEW YORK
2ND FLOOR

11/8/06 12:41:19 PM CASHIER: MYC0307
1 SALE ITEM TOTAL DUE: $219.00

| ITEM DESCRIPTION | TOTAL |
|---|---|
| 9500 ACRIS Recording Fees and Taxes | $219.00 |
| Tran ID 20061106018180000001PFBD9 | |
| **ACR SUBTOTAL:** | **$219.00** |
| **SUBTOTAL:** | **$219.00** |
| **TAX:** | **$0.00** |
| **TOTAL DUE:** | **$219.00** |
| 1 PAYMENT ITEM | |
| Attorney Check 00011351 | $219.00 |
| **TOTAL DUE:** | **$219.00** |
| **AMOUNT RECEIVED:** | **$219.00** |

THANK YOU

# Restrictive Declaration

# DECLARATION

This DECLARATION made as of the 3rd day of November 2006, by West End Enterprises, LLC and West 60th Street Associates, LLC having an office located at c/o Algin Management 64-35 Yellowstone Boulevard, Forest Hills, NY 11375 (hereinafter referred to as "Declarant");

## WITNESSETH

WHEREAS, Declarant is the fee owner of certain real property located in the County of New York, City and State of New York, designated for real property tax purposes as Lot(s) 5, 8, 10, 11, 12, 13, 43, 52, 53 & 55 of Tax Block 1152 commonly known by the street address as West 60th Street and 218 - 240 West 61st Street (the "Subject Property") and is more particularly described in Exhibit A, annexed hereto and made part hereof; and

WHEREAS, Commonwealth Land Title Insurance Company has issued a Certification of Parties in Interest, annexed hereto as Exhibit B and made a part hereof, that as of the 22nd day of April, 2006, Declarant is the only Party-in-Interest (as defined in subdivision (c) of the definition of "zoning lot" set forth in Section 12-10 of the Zoning Resolution of the City of New York) in the Subject Property; and

WHEREAS, all Parties-in-Interest to the Subject Property have executed this Declaration; and

WHEREAS, the Declarant has submitted to the New York City Department of City Planning ("DCP") an application for (i) a zoning map amendment of the Subject Property from M1-6 to C6-2, (ii) a zoning text amendment to the provisions of Section 74-74 of the Zoning Resolution, (iii) a zoning special permit, pursuant to Section 74-74 of the Zoning Resolution, for a General Large Scale Development and (iv) a zoning special permit, pursuant to Section 13-562 and 74-52 of the Zoning Resolution, for a public parking garage (the "Current Project")(application no.(s) 060104ZMM, N060103ZRY, 060105ZSM and 060106ZSM) (collectively, the "Applications") pursuant to the Uniform Land Use Review Procedure (the "ULURP") as set forth in the New York City Charter, sections 197-c, 197-d, 200 and 201 and the procedures set forth in the paragraph immediately following; and

WHEREAS, an environmental assessment of the Subject Property pursuant to the State Environmental Quality Review Act (the "SEQRA") and the City Environmental Quality Review (the "CEQR") was conducted in connection with the Application (CEQR # 05DCP063Y) and, pursuant to the SEQRA and CEQR, the DCP issued a Notice of Completion of the Draft Environmental Impact Statement("DEIS") on August 4, 2006 and the Department of Environmental Protection (the "DEP") has reviewed the DEIS, including the historic land use of the Subject Property; and

WHEREAS, the results of such review as documented in DEP's December 13, 2005 letter attached hereto as Exhibit C and made a part hereof, indicate the potential presence of hazardous materials; and

WHEREAS, Declarant's application to participate as a volunteer in the New York State Brownfield Cleanup Program, Environmental Conservation Law § 27-1401 et seq., was approved by the New York State Department of Environmental Conservation ("NYSDEC") and, pursuant to a Brownfield Cleanup Agreement among Declarant and NYSDEC, Declarant has completed a NYSDEC-approved and New York State Department of Health ("NYSDOH")-approved Remedial Investigation Work Plan to determine the nature and extent of the on-site contaminants; and

WHEREAS, Declarant has submitted a Remedial Investigation Report containing the findings of the Remedial Investigation Work Plan to NYSDEC and NYSDOH and based upon the findings of such Remedial Investigation Report, Declarant prepared a NYSDEC and NYSDOH-approved Remediation Work Plan (the "Brownfield Work Plan"); and

WHEREAS, Declarant has submitted the Brownfield Work Plan to DEP for its review and approval and such review and approval are documented in DEP's October 31, 2006 letter attached hereto as Exhibit D and made a part hereof; and

WHEREAS, for the Current Project Declarant agrees to implement all hazardous material remediation required by the Brownfield Work Plan and desires to restrict the manner in which the Subject Property may be developed or redeveloped by having the implementation of the Brownfield Work Plan and the submittal of a New York State P.E. certified Remedial Closure Report for the Brownfield Work Plan to DEP for review/approval in addition to the completion of all DEP remedial requirements as outlined in Exhibit C and Exhibit D performed to the satisfaction of DEP, as evidenced by a writing as set forth herein, be a condition precedent to any change of use or soil disturbance for any such development or redevelopment; and

WHEREAS, Declarant further desires to identify the existence of any potential hazardous materials and remediate any such hazardous materials found in connection with the development or redevelopment of the Subject Property involving a change in use or soil disturbance beyond the Current Project (the "Future Project") and has agreed to submit to DEP for approval a hazardous materials sampling protocol prepared by a qualified consultant and including a health and safety plan (as approved by DEP the "Sampling Protocol") and to test and identify any potential hazardous materials pursuant to the approved Sampling Protocol and, if any such hazardous materials are found, to submit to DEP for approval a remediation plan based on such Sampling Protocol and that includes a health and safety plan (as approved by DEP the "Remediation Plan), and upon the approval of the Remediation Plan by DEP, Declarant shall provide for the remediation of such hazardous materials; and

WHEREAS, Declarant agrees to implement all hazardous material remediation required by the Brownfield Work Plan and all DEP remedial requirements as outlined in Exhibit C and Exhibit D for the Current Project and further agrees to implement the Sampling Protocol and all hazardous material remediation required by the Remediation Plan, if any, for any Future Project; and

WHEREAS, Declarant intends this Declaration to be binding upon all successors and assigns; and

WHEREAS, Declarant intends this Declaration to benefit all land owners and tenants including the City of New York ("the City") without consenting to the enforcement of this Declaration by any party or entity other than the City.

NOW, THEREFORE, Declarant does hereby declare and agree that the Subject Property shall be held, sold, transferred, and conveyed, subject to the restrictions and obligations which are for the purpose of protecting the value and desirability of the Subject Property and which shall run with the land, binding the successors and assigns of Declarant so long as they have any right, title or interest in the Subject Property or any part thereof:

1. (a) Declarant covenants and agrees not to apply for or accept a temporary or permanent Certificate of Occupancy for the Current Project until Declarant has implemented the Brownfield Work Plan to the satisfaction of DEP and DEP has issued to New York City Department of Buildings ("DOB"), as applicable, either a Notice of Satisfaction as set forth in Paragraph 2(c) or a Final Notice of Satisfaction as set forth in Paragraph 2(d).

(b) Declarant covenants and agrees, with respect to the Future Project, that no application for grading, excavation, foundation, alteration, building or other permit respecting the Subject Property which permits soil disturbance shall be submitted to or accepted from DOB by the Declarant until DEP has issued to DOB, as applicable, either a Notice of No Objection as set forth in Paragraph 2(a), a Notice to Proceed as set forth in Paragraph 2(b), a Notice of Satisfaction as set forth in Paragraph 2(c) or a Final Notice of Satisfaction as set forth in Paragraph 2(d). Declarant shall submit a copy of the Notice of No Objection, Notice to Proceed, Notice of Satisfaction or Final Notice of Satisfaction to the DOB at the time of filing of any application set forth in this Paragraph 1(b).

(c) Declarant further covenants and agrees, with respect to the Future Project, that no application for a temporary or permanent Certificate of Occupancy that reflects a change in use group respecting the Subject Property shall be submitted to or accepted from DOB by the Declarant until DEP has issued to DOB, as applicable, either a Notice of No Objection as set forth in Paragraph 2(a), a Notice of Satisfaction as set forth in Paragraph 2(c) or a Final Notice of Satisfaction as set forth in Paragraph 2(d). Declarant shall submit a copy of the Notice of No Objection, Notice of Satisfaction or Final Notice of Satisfaction to the DOB at the time of filing of any application set forth in this Paragraph 1(c).

2. (a) Notice of No Objection - DEP shall issue a Notice of No Objection after the Declarant have completed the work set forth in the DEP approved Sampling Protocol and DEP has determined in writing that the results of such sampling demonstrate that no hazardous materials remediation is required for the proposed project.

(b) Notice to Proceed - DEP shall issue a Notice to Proceed after it determines that: (i) the Remediation Plan has been approved by DEP and (ii) the permit(s) respecting the Subject Property that permit grading, excavation, foundation, alteration, building or other permit

respecting the Subject Property which permits soil disturbance or construction of the superstructure are necessary to further the implementation of the DEP approved Remediation Plan.

(c) Notice of Satisfaction - DEP shall issue a Notice of Satisfaction after the Remediation Plan or Brownfield Work Plan, as applicable, has been prepared and accepted by DEP and DEP has determined in writing that the Remediation Plan or Brownfield Work Plan has been completed to the satisfaction of DEP.

(d) Final Notice of Satisfaction - DEP shall issue a Final Notice of Satisfaction after the Remediation Plan or Brownfield Work Plan, as applicable, has been prepared and accepted by DEP and DEP has set forth in writing, that the Remediation Plan or Brownfield Work Plan has been completed to the satisfaction of DEP and all potential hazardous materials have been removed or remediated and no further hazardous remediation is required on the Subject Property as determined by DEP.

3. Declarant represents and warrants with respect to the Subject Property, that no restrictions of record, nor any present or presently existing estate or interest in the Subject Property nor any lien, encumbrance, obligation, covenant of any kind preclude, presently or potentially, the imposition of the obligations and agreements of this Declaration.

4. Declarant acknowledges that the City is an interested party to this Declaration and consents to the enforcement of this Declaration solely by the City, administratively or at law or at equity, of the obligations, restrictions and agreements pursuant to this Declaration.

5. The provisions of this Declaration shall inure to the benefit of and be binding upon the respective successors and assigns of the Declarant, and references to the Declarant shall be deemed to include such successors and assigns as well as successors to their interest in the Subject Property. References in this Declaration to agencies or instrumentalities of the City shall be deemed to include agencies or instrumentalities succeeding to the jurisdiction thereof.

6. Declarant shall be liable in the performance of any term, provision, or covenant in this Declaration, subject to the following provisions:

The City will look solely to the fee estate interest of the Declarant in the Subject Property for the collection of any money judgment recovered against Declarant, and no other property of the Declarant shall be subject to levy, execution, or other enforcement procedure for the satisfaction of the remedies of the City with respect to this Declaration. The Declarant, including its officers, managers and members, shall have no personal liability under this Declaration.

7. The obligations, restrictions and agreements herein shall be binding on the Declarant or other parties in interest only for the period during which the Declarant and any such Party-in-Interest holds an interest in the Subject Property; provided, however, that the obligations, restrictions and agreements contained in this Declaration may not be enforced against the holder of any mortgage unless and until such holder succeeds to the fee interest of the Declarant by way of foreclosure or deed in lieu of foreclosure.

8. Declarant shall indemnify the City, its respective officers, employees and agents from all claims, actions, or judgments for loss, damage or injury, including death or property damage of whatsoever kind or nature, arising from Declarant's obligations under this Declaration, including without limitation, the negligence or carelessness of the Declarant, its agents, servants or employees in undertaking such obligations; provided, however, that should such a claim be made or action brought, Declarant shall have the right to defend such claim or action with attorneys reasonably acceptable to the City and no such claim or action shall be settled without the written consent of the City.

9. If Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration, and such finding is upheld on a final appeal by a court of competent jurisdiction or by other proceeding or the time for further review of such finding or appeal has lapsed, Declarant shall indemnify and hold harmless the City from and against all reasonable legal and administrative expenses arising out of or in connection with the enforcement of Declarant's obligations under this Declaration as well as any reasonable legal and administrative expenses arising out of or in connection with the enforcement of any judgment obtained against the Declarant, including but not limited to the cost of undertaking the Remediation Plan, if any.

10. Declarant shall cause every individual or entity that between the date hereof and the date of recordation of this Declaration, becomes a Party-in-Interest (as defined in subdivision (c) of the definition of "zoning lot" set forth in Section 12-10 of the Zoning Resolution of the City of New York) to all or a portion of the Subject Property to waive its right to execute this Declaration and subordinate its interest in the Subject Property to this Declaration. Any mortgage or other lien encumbering the Subject Property in effect after the recording date of this Declaration shall be subject and subordinate hereto as provided herein. Such waivers and subordination shall be attached to this Declaration as Exhibits and recorded in the Office of the County or City Register.

11. This Declaration and the provisions hereof shall become effective as of the date of this Declaration. Within five (5) business days of the date hereof, Declarant shall submit this Declaration for recording or shall cause this Declaration to be submitted for recording in the Office of the County or City Register, where it will be indexed against the Subject Property. Declarant shall promptly deliver to the DEP and the Department of City Planning proof of recording in the form of an affidavit of recording attaching the filing receipt and a copy of the Declaration as submitted for recording. Declarant shall also provide a certified copy of this Declaration as recorded to DEP and DCP as soon as a certified copy is available.

12. This Declaration may be amended or modified by Declarant only with the approval of DEP or the agency succeeding to its jurisdiction and no other approval or consent shall be required from any other public body, private person or legal entity of any kind. A statement signed by the Assistant Commissioner of Environmental Planning and Assessment of DEP, or such person as authorized by the Assistant Commissioner, certifying approval of an amendment or modification of this Declaration shall be annexed to any instrument embodying such amendment or modification.

13. Any submittals necessary under this Declaration from Declarant to DEP shall be addressed to the Deputy Commissioner of Environmental Planning and Assessment of DEP, or such person as authorized by the Deputy Commissioner. As of the date of this Declaration DEP's address is:

New York City Department of Environmental Protection
59-17 Junction Blvd
Flushing, New York 11373

14. Declarant expressly acknowledges that this Declaration is an essential element of the SEQRA review conducted in connection with the Application and as such the filing and recordation of this Declaration may be a precondition to the determination of significance pursuant to the SEQRA Regulations, Title 6 New York Code of Rules and Regulations ("NYCRR") Part 617.7.

15. Declarant acknowledges that the satisfaction of the obligations set forth in this Declaration does not relieve Declarant of any additional requirements imposed by Federal, State or Local laws.

16. This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

17. Wherever in this Declaration, the certification, consent, approval, notice or other action of Declarant, DEP or the City is required or permitted, such certification, consent, approval, notice or other action shall not be unreasonably withheld or delayed.

18. In the event that any provision of this Declaration is deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severable and the remainder of this Declaration shall continue to be in full force and effect.

19. This Declaration and its obligations and agreements are in contemplation of Declarant receiving approvals or modified approvals of the Application. In the event that the Declarant withdraws the Application before a final determination or the Application is not approved, the obligations and agreements pursuant to this Declaration shall have no force and effect and this Declaration shall be cancelled.

20. Notice of Cancellation - Declarant may request that DEP issue a Notice of Cancellation upon the occurrence of the following steps: (i) Declarant has withdrawn the Application in writing before a final determination on the Application; (ii) the Application was not approved by the DCP and/or the City Planning Commission; or (iii) DEP has issued a Final Notice of Satisfaction indicating that all potential hazardous materials have been removed or remediated and no further hazardous remediation is required on the Subject Property. Upon such request, DEP shall issue a Notice of Cancellation after it has determined, to DEP's own satisfaction, that the above referenced steps, as applicable, have occurred. Upon receipt of a Notice of Cancellation from DEP, Declarant shall cause such Notice to be recorded in the same

manner as the Declaration herein, thus rendering this Restrictive Declaration null and void. Declarant shall promptly deliver to DEP and the DCP a certified copy of such Notice of Cancellation as recorded.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

WEST END ENTERPRISES LLC

By: _____
LAWRENCE T. GONSBERG
Title: MANAGER

WEST 60TH STREET ASSOCIATES, LLC

By: _____
LAWRENCE T. GONSBERG
Title: MANAGER

## CERTIFICATE OF ACKNOWLEDGMENT

STATE OF NEW YORK )
) .ss.:
COUNTY OF Queens )

On the 3rd day of May in the year 2006 before me, the undersigned, personally appeared Lawrence T. Gonzalo, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

BENNET L. SCHONFELD
Notary Public, State of New York
No. 02SC5048522
Qualified in Queens County
Commission Expires Aug 31, 200

EXHIBIT A

LEGAL DESCRIPTION OF SUBJECT PROPERTY
Tax Block 1152, Lots 13, 43, 52 and 53

Perimeter Description of Block 1152, Lots 13, 43, 52 and 53:

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

BEGINNING at the point on northerly side of West 60th Street, distant 300 feet easterly from the corner formed by the intersection of the northerly side of West 60th Street and the easterly side of West End Avenue;

RUNNING THENCE northerly parallel with West End Avenue and part of the way through a party wall, 100 feet 5 inches to the center line of the block

THENCE westerly along the center line of the block, 50 feet;

THENCE northerly parallel with West End Avenue, 100 feet 5 inches to the southerly side of West 61st Street;

THENCE easterly along the southerly side of West 61st Street, 300 feet;

THENCE southerly parallel with Amsterdam Avenue, 100 feet 5 inches to the center line of the block;

THENCE westerly along the center line of the block, 150 feet;

THENCE southerly parallel with Amsterdam Avenue and part of the way through a party wall, 100 feet 5 inches to the northerly side of West 60th Street;

TEHNCE westerly along the northerly side of West 60th Street, 100 feet to the point or place of BEGINNING.

Block 1152, Lot 8

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

BEGINNING at a point on northerly side of West 60th Street, distant 175 feet 1-3/8 inches easterly from the corner formed by the intersection of said northerly side of West 60th Street and the easterly side of West End Avenue;

RUNNING THENCE northerly parallel with West End Avenue, 100 feet 5 inches;

THENCE easterly parallel with West 60th Street, 49 feet 10-5/8 inches;

THENCE southerly parallel with West End Avenue, 100 feet 5 inches to said northerly side of 60th Street;

THENCE westerly along said northerly side of West 60th Street, 40 feet 10-5/8 inches to the point or place of BEGINNING.

Block 1152, Lots 10 and 11

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

BEGINNING at a point on northerly side of West 60th Street, distant 225 feet easterly from the corner formed by the intersection of the northerly side of West 60th Street with the easterly side of West End Avenue (formerly 11th Avenue);

RUNNING THENCE easterly along the northerly side of West 60th Street, 50 feet;

THENCE northerly parallel with the easterly side of West End Avenue and part of the way through a party wall, 100 feet 5 inches to the center line of the block;

THENCE westerly along said center line of the block, 50 feet;

THENCE southerly parallel with the easterly side of West End Avenue and part of the way through another party wall, 100 feet 5 inches to the northerly side of West 60th Street at the point or place of BEGINNING.

Block 1152, Lot 12

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

BEGINNING at a point on northerly side of West 60th Street, distant 275 easterly from the corner formed by the intersection of the northerly side of 60th Street with the easterly side of West End Avenue (formerly 11th Avenue);

RUNNING THENCE easterly along the northerly side of 60th Street, 25 feet;

THENCE northerly parallel with the easterly side of West End Avenue and part of the way through a party wall, 100 feet 5 inches to the center line of the block;

THENCE westerly along said center line of the block, 25 feet;

THENCE southerly parallel with the easterly side of West End Avenue and part of the way through another party wall, 100 feet 5 inches to the northerly side of 60th Street at the point or place of BEGINNING.

Block 1152, Lot 5

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

BEGINNING at a point on northerly side of West 60th Street, distant 100 feet easterly from the corner formed by the intersection of the northerly side of 60th Street with the easterly side of West End Avenue (formerly 11th Avenue);

RUNNING THENCE northerly parallel with West End Avenue (formerly 11th Avenue), 100 feet 5 inches to the center line of the block;

THENCE easterly along said center line of the block and parallel with the said northerly side of 60th Street, 75 feet;

THENCE southerly parallel with the said easterly side of West End Avenue (formerly 11th Avenue) and part of the distance through a party wall, 100 feet 5 inches to the said northerly side of 60th Street;

THENCE westerly along the said northerly side of 60th Street, 75 feet to the point or place of BEGINNING.

# EXHIBIT B

Certification of "Parties in Interest"

Title No. 040079A

# EXHIBIT "II"

## CERTIFICATION PURSUANT TO ZONING LOT SUBDIVISION D OF SECTION 12 - 10 OF THE ZONING RESOLUTION OF DECEMBER 15, 1961 OF THE CITY OF NEW YORK - AS AMENDED EFFECTIVE AUGUST 18, 1977

COMMONWEALTH LAND TITLE INSURANCE COMPANY, a Title Insurance Company licensed to do business in the State of New York and having its principal office at 655 Third Avenue, New York, New York, hereby certifies that as to the land hereafter described being a tract of land, either unsubdivided or consisting of two or more lots of record, contiguous for a minimum of ten linear feet, located within a single block, that all the parties in interest constituting a party as defined in Section 12 - 10, subdivision (d) of the Zoning Resolution of the City of New York, effective December 15, 1961, as amended, are the following:

| NAME/ADDRESS | NATURE OF INTEREST |
|---|---|
| 1. West End Enterprises, LLC<br>c/o Algin Management Co., LLC<br>64-35 Yellowstone Boulevard<br>Forest Hills, New York 11375 | Fee owner of Lots 5, 8, 10 and part of 11. |
| 2. West 60th Street Associates, LLC<br>c/o Algin Management Co., LLC<br>64-35 Yellowstone Boulevard<br>Forest Hills, New York NY 11375 | Fee owner of Lots 12, 13, 43, 52, 53, 55 and part of Lot 11. |
| 3. MCI Realty LLC<br>267 West 70th Street, Apt. 6E<br>New York, NY 10001 | Fee owner of Lots 56 and 57. |
| 4. Fannie Mae<br>3900 Wisconsin Avenue NW<br>Washington, DC | Mortgagee on mortgages recorded against Lots 56 and 57. |

**The subject tract of land with respect to which the foregoing parties are the parties in interest as aforesaid, is known as Tax Lot Numbers 5, 8, 10, 11, 12, 13, 43, 52, 53, 55, 56 and 57 in Block 1152 on the Tax Map of the City of New York, New York County and more particularly described as follows:**

SEE ATTACHED SCHEDULE "A"

# SCHEDULE A

**A: Perimeter Description of Block 1152 Lots 13, 43, 52 and 53:**

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

BEGINNING at a point on the northerly side of West 60th Street, distant 300 feet easterly from the corner formed by the intersection of the northerly side of West 60th Street and the easterly side of West End Avenue;

RUNNING THENCE northerly parallel with West End Avenue and part of the way through a party wall, 100 feet 5 inches to the center line of the block

THENCE westerly along the center line of the block, 50 feet;

THENCE northerly parallel with West End Avenue, 100 feet 5 inches to the southerly side of West 61st Street;

THENCE easterly along the southerly side of West 61st Street, 300 feet;

THENCE southerly parallel with Amsterdam Avenue, 100 feet 5 inches to the center line of the block;

THENCE westerly along the center line of the block, 150 feet;

THENCE southerly parallel with Amsterdam Avenue and part of the way through a party wall, 100 feet 5 inches to the northerly side of West 60th Street;

THENCE westerly along the northerly side of West 60th Street, 100 feet to the point or place of BEGINNING.

## SCHEDULE A - continued

**B: Perimeter Description of Block 1152 Lots 56 and 57:**

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

BEGINNING at a point on the southerly side of 61st Street, distant 175 feet from the southeast corner of 61st Street and West End Avenue;

RUNNING THENCE southerly and parallel with West End Avenue, 100 feet 5 inches to the center line of the block;

THENCE easterly and along the center line of the block, 50 feet;

THENCE northerly and parallel with West End Avenue, and part of the distance through a party wall, 100 feet 5 inches to the southerly side of 61st Street;

THENCE westerly along the southerly side of 61st Street, 50 feet to the point or place of BEGINNING.

## SCHEDULE A - continued

**C: Block 1152 Lot 8:**

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

BEGINNING at a point on the northerly side of West 60th Street, distant 175 feet 1-3/8 inches easterly from the corner formed by the intersection of said northerly side of West 60th Street and the easterly side of West End Avenue;

RUNNING THENCE northerly parallel with West End Avenue, 100 feet 5 inches;

THENCE easterly parallel with West 60th Street, 49 feet 10-5/8 inches;

THENCE southerly parallel with West End Avenue, 100 feet 5 inches to said northerly side of 60th Street;

THENCE westerly along said northerly side of West 60th Street, 49 feet 10-5/8 inches to the point or place of BEGINNING.

## SCHEDULE A - continued

**D: Block 1152 Lots 10 and 11:**

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

BEGINNING at a point on the northerly side of West 60th Street, distant 225 feet easterly from the corner formed by the intersection of the northerly side of West 60th Street with the easterly side of West End Avenue (formerly 11th Avenue);

RUNNING THENCE easterly along the northerly side of West 60th Street, 50 feet;

THENCE northerly parallel with the easterly side of West End Avenue and part of the way through a party wall, 100 feet 5 inches to the center line of the block;

THENCE westerly along said center line of the block, 50 feet;

THENCE southerly parallel with the easterly side of West End Avenue and part of the way through another party wall, 100 feet 5 inches to the northerly side of West 60th Street at the point or place of BEGINNING.

## SCHEDULE A - continued

**E: Block 1152 Lot 55:**

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

BEGINNING at a point on the southerly side of 61st Street, distant 225 feet easterly from the southeasterly corner of 11th Avenue and West 61st Street;

RUNNING THENCE southerly parallel with 11th Avenue and part of the distance through a party wall, 100 feet 5 inches to the center line of the block;

THENCE easterly along the center line of the block, 25 feet;

THENCE northerly parallel with 11th Avenue, 100 feet 5 inches to the southerly side of West 61st Street;

THENCE westerly along the said side of West 61st Street, 25 feet to the point or place of BEGINNING.

## SCHEDULE A - continued

**F: Block 1152 Lot 12:**

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

BEGINNING at a point on the northerly side of 60th Street, distant 275 feet easterly from the corner formed by the intersection of the northerly side of 60th Street with the easterly side of West End Avenue (formerly 11th Avenue);

RUNNING THENCE easterly along the northerly side of 60th Street, 25 feet;

THENCE northerly parallel with the easterly side of West End Avenue and part of the way through a party wall, 100 feet 5 inches to the center line of the block;

THENCE westerly along said center line of the block, 25 feet;

THENCE southerly parallel with the easterly side of West End Avenue and part of the way through another party wall, 100 feet 5 inches to the northerly side of 60th Street at the point or place of BEGINNING.

## SCHEDULE A - continued

**G: Block 1152 Lot 5:**

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

BEGINNING at a point on the northerly side of 60th Street, distant 100 feet easterly from the corner formed by the intersection of the northerly side of 60th Street with the easterly side of West End Avenue (formerly 11th Avenue);

RUNNING THENCE northerly parallel with West End Avenue (formerly 11th Avenue), 100 feet 5 inches to the center line of the block;

THENCE easterly along said center line of the block and parallel with the said northerly side of 60th Street, 75 feet;

THENCE southerly parallel with the said easterly side of West End Avenue (formerly 11th Avenue) and part of the distance through a party wall, 100 feet 5 inches to the said northerly side of 60th Street;

THENCE westerly along the said northerly side of 60th Street, 75 feet to the point or place of BEGINNING.

**The said premises are known as and by street address (See Below) as shown on the following DIAGRAM:**

| | | | |
|---|---|---|---|
| 1. | 218-232 West 61st Street | New York, NY | (Lot 43) |
| 2. | 236-238 West 61st Street | New York, NY | (Lot 53) |
| 3. | 234 West 61st Street | New York, NY | (Lot 52) |
| 4. | 229-235 West 60th Street | New York, NY | (Lot 13) |
| 5. | 242 West 61st Street | New York, NY | (Lot 56) |
| 6. | 244 West 61st Street | New York, NY | (Lot 57) |
| 7. | 239-245 West 60th Street | New York, NY | (Lots 8, 10 and 11) |
| 8. | 240 West 61st Street | Mew York, NY | (Lot 55) |
| 9. | 237 West 60th Street | New York, NY | (Lot 12) |
| 10. | 247-251 West 60th Street | New York, NY | (Lot 5) |

SEE ATTACHED DIAGRAM

CERTIFIED 4/22/2006 to: Jeremiah Candreva, Esq.

Jeremiah H. Candreva, Esq.
Kramer Levin Naftalis & Frankel, LLP
1177 Avenue of the Americas
New York, NY 10036

NOTE: A Zoning Lot may or may not coincide with a lot as shown on the Official Tax Map of the City of New York, or on any recorded subdivision plot or deed. A Zoning Lot may be subdivided into two or more Zoning Lots provided all the resulting Zoning Lots and all the buildings thereon shall comply with the applicable provisions of the Zoning Lot Resolution.

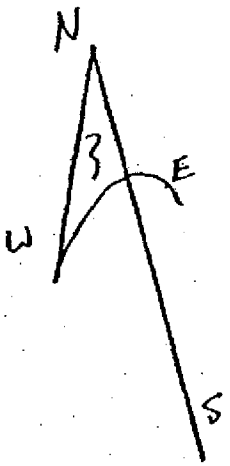
**THIS CERTIFICATE IS MADE FOR AND ACCEPTED BY THE APPLICANT UPON THE EXPRESS UNDERSTANDING THAT LIABILITY HEREUNDER IS LIMITED TO ONE THOUSAND ($1,000.00) DOLLARS.**

**COMMONWEALTH LAND TITLE INSURANCE COMPANY**

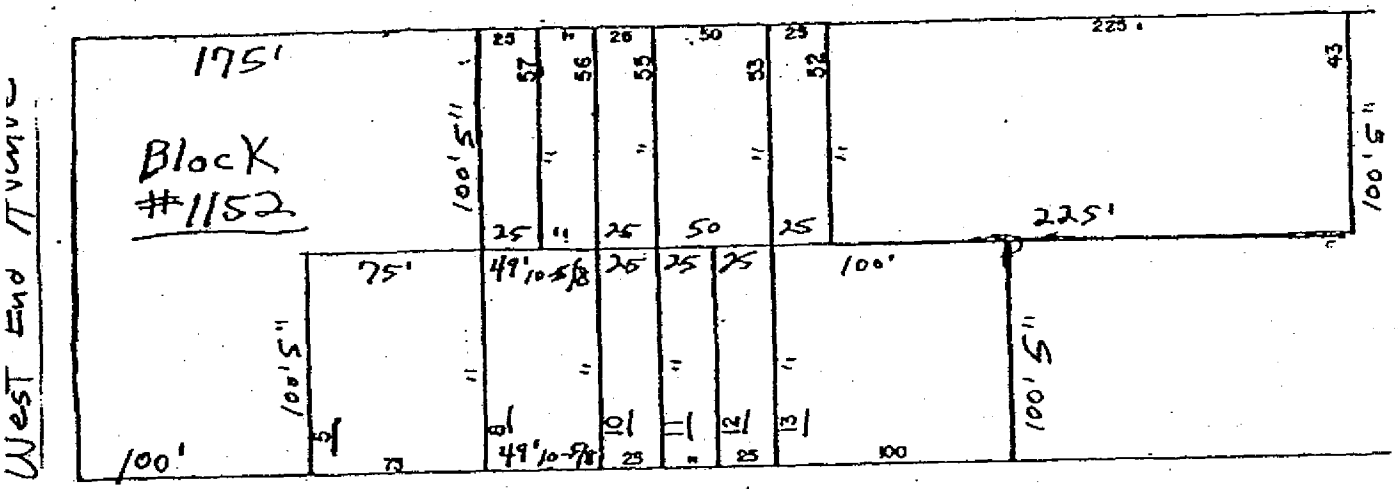
Francis M. Hoffman
Assistant Vice President
Associate Branch Counsel

Title No. 040079A

# DIAGRAM




West 61st Street



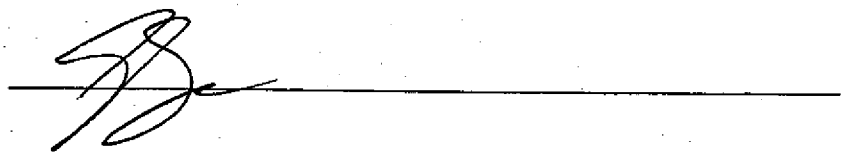

West 60th Street

Lots #5, 8, 10, 11, 12, 13, 43, 52, 53, 55, 56 and 57.

**Title No.** 040079A

STATE OF NEW YORK, COUNTY OF NEW YORK ss:

On the 21st day of May, 2006, before me, the undersigned, personally appeared Francis M. Hoffman personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



GRACE SACHI ONAGA
Notary Public, State of New York
No. 31-02ON5075493
Qualified in New York County
Commission Expires April 7, 2007

**EXHIBIT C**

DEP letter dated December 13, 2005 to follow

The City of New York
DEPARTMENT OF ENVIRONMENTAL PROTECTION
59-17 Junction Boulevard
Flushing, New York 11373
Emily Lloyd
Commissioner
Tel. (718) 595-6565
Fax: (718) 595-3525
elloyd@dep.nyc.gov
Angela Licata
Assistant Commissioner
Office of Environmental Planning & Assessment
Tel. (718) 595-4398
Fax: (718) 595-4479
alicata@dep.nyc.gov
www.nyc.gov/dep
DIAL 311 Government Information and Services for NYC

December 13, 2005

Robert Dobruskin
Director
Environmental Review
22 Reade Street
New York, New York 10007

**RE: West 61st Street Rezoning and Citywide GLSD Text Amendment 05DCP063Y/06DEPTECH117M**

Dear Mr. Dobruskin:

The New York City Department of Environmental Protection, Bureau of Environmental Planning and Assessment (DEP) has reviewed the November 2005 Environmental Site Assessment (EAS)/Draft Scope of Work (DSOW), submitted by Paul Hastings, on behalf of West End Enterprises, LLC and West 60th Street Associates, LLC, for the above-referenced project. The action involves West End Enterprises, LLC and West 60th Street Associates, LLC, proposing an amendment to the zoning map to change the zoning designation of the western half of the block bounded by West End Avenue, West 61st Street, Amsterdam Avenue, and West 60th Street (Block 1152, Lots 1, 5, 8, 10-13, p/o 43, 52, 53, 55-58, and 61) from M1-6 to C4-7 and C6-2 in the Upper West Side neighborhood of Manhattan Community Board 7. The applicant is also requesting a special permit pursuant to Zoning Resolution (ZR) Section 74-52 for a public parking garage, a special permit pursuant to ZR Section 74-74 for a general large-scale development, and a zoning text amendment to the provisions of ZR Section 74-74 to modify the open space requirements for certain large-scale developments in R8, C4, C5, and C6 zoning districts citywide.

The proposed actions would facilitate a proposal by the applicant to develop a mixed-use building on a property located at 239 West 60th Street (Block 1152, Lots 5, 8, 10-13, 43, 52, 53, and 55), which is a through-lot site with frontages on both West 60th Street and West 61st Street. The proposed building would contain a total of approximately 481,425 gross square feet (gsf) of floor area consisting of 342 residential units; 4,420 gsf of medical office space; 10,340 gsf of ground-floor retail space; and 281 parking spaces, of which 121 would be accessory parking spaces and 160 would be public parking spaces. The applicant has merged the properties located at 242 West 61st Street (Block 1152, Lot 56) and 244 West 61st Street (Block 1152, Lot 57) with the project site to create a combined zoning lot. This would allow a portion of the unused development rights from these properties, which are developed with two 5-story residential buildings, to be used in developing the proposed project. The proposed project would be comprised of a 29-story tower with a maximum height of 372 feet and three mid-rise components of 7, 9 and 14 stories. Construction of the proposed project is expected to be completed in 2008.

Although the applicant intends to construct a development with 342 dwelling units on the project's site, a development with more dwelling units could be built under the proposed zoning. The reasonable worst case development scenario (RWCDS) to be analyzed in the EIS assumes that 559 units could be constructed on the project site, which would be the maximum number of dwelling units allowed under the proposed zoning.

The RWCDS also assumes that four additional properties would be developed as a result of the proposed rezoning. The property located at 246 West 61th Street (Block 1152, Lot 58), which is not under the control of the applicant, would be developed with a 10-story residential building containing approximately 61 dwelling units. In addition, the property located at 28 West End Avenue (Block 1152, Lot 61), also not under the control of the applicant, would be developed with a 31-story building containing approximately 190 dwelling units and a 100,000 gsf middle school. The RWCDS also assumes that the two 5-story residential buildings located at 242 West 61st Street (Block 1152, Lot 56) and 244 West 61st Street (Block 1152, Lot 57), which are under the applicant's control, could each be enlarged with an additional penthouse unit.

The proposed text amendment to modify the open space provisions of ZR Section 74-74 would allow the City Planning Commission to waive the open space requirements for proposed general large-scale developments in R8, C4, C5, or C6 zoning districts provided that the applicant comply with the applicable open space requirements of the Quality Housing Program. The zoning districts within which the proposed text amendment could potentially be utilized (R8, C4, C5, and C6) are located within areas of Manhattan Community Districts 1-8, and 10-12; Queens Community Districts 1-10, and 12-14; Bronx Community Districts 1-3, 5-7, and 9-12; Staten Island Community Districts 1-3; and Brooklyn Community Districts 1-6, 8, 9, 11, 12, and 14-18. We have the following comments:

We recommend the following text changes to the Hazardous Materials section of the Draft Scope of Work. Our changes are double underlined:

**Hazardous Materials**

As stated above, independent of the proposed action, the applicant is participating in the BCP administered by NYSDEC. The applicant was accepted into the BCP on April 19, 2005. The Phase I Environmental Site Assessment (ESA) has been completed, and the applicant is currently conducting the Subsurface (Phase II) Investigation, in accordance with a NYSDEC-approved work plan and health and safety plan.

The EIS will summarize the hazardous materials assessments (including any Phase I Environmental Site Assessments and Phase II Subsurface Site Investigations, as applicable) conducted for the project site. The EIS will also describe the site remediation as undertaken under the Brownfield Cleanup Program. A complete set of Phase I and Phase II assessments/investigations will be submitted to New York City Department of Environmental Protection (NYCDEP) for thier files. Any remediation plans, soil management plans, and/or construction health and safety plans would be forwarded to NYCDEP for review and approval.

In the event that the applicant decides to "opt out" of the BCP, the hazardous materials approval process would be redirected to the NYCDEP. This includes the review and approval of all workplans and reports. All aboveground and/or underground storage tanks would continue to be administered by NYSDEC (the Division of Environmental Remediation and/or the Bureau of Spill Prevention and Response), however, all work plans and reports would also be submitted to the NYCDEP for comments/approvals.

The applicant has agreed to record a Restrictive Declaration for the parcels under its ownership/ control to ensure remedial measures that are protective of the final approved use are implemented and future construction proceeds in a manner protective to the public health. At this time, there are no specific proposals for development of the projected development sites under the reasonable worst-case development scenario (Lots 1, 58, and 61). However, because these lots (and Lot 56 and 57) would be rezoned, a preliminary screening assessment of these five lots will be undertaken to determine whether E designations for hazardous materials are warranted for these sites.

If you have any comments or questions, please contact me at (718) 595-4451.

Sincerely,

Darryl H. Cabbagestalk
Director
Project Management - NYC Projects

Copy: Gary Heath
John Wuthenow
Brad Kieves
Greg Belcamino
Robert Kulikowski
Allison Ruddock – Akrf, Inc.
Jed Candreva- Special Counsel, Kramer Levin
Jessie Hiney – Paul Hastings

**EXHIBIT D**

DEP letter dated October 31, 2006 to follow

The City of New York

DEPARTMENT OF ENVIRONMENTAL PROTECTION
59-17 Junction Boulevard
Flushing, New York 11373

Emily Lloyd
Commissioner

Tel: (718) 595-6565
Fax: (718) 595-3525
elloyd@dep.nyc.gov

Angela Licata
Deputy Commissioner

Bureau of Environmental Planning & Assessment

Tel: (718) 595-4398
Fax: (718) 595-4479
alicata@dep.nyc.gov

**NOTICE TO PROCEED**

October 31th, 2006

Robert Dobruskin
Director, Environmental Assessment & Review Division
NYC Department of City Planning
22 Reade Street
New York, NY 10007

**Re: West 61st St Rezoning and Citywide GLSD Text Amendment**
**Block 1152 Lots 1, 5, 8, 10-13, p/o 43, 52, 53, 55-58, and 61**
**CEQR No. 06DEPTECH117M**

Dear Mr. Dobruskin:

The New York City Department of Environmental Protection, Bureau of Environmental Planning and Analysis (DEP) has reviewed the August 2006 Draft Environmental Impact Statement, the January 2006 Remedial Investigation Report (Phase II) and the March 2006 Remedial Action Plan/Addendum prepared by AKRF, Inc. for the above referenced site. The action involves West End Enterprises, LLC and West 60th Street Associates, LLC, proposing an amendment to the zoning map to change the zoning designation of the western half of the block bounded by West End Avenue, West 61st Street, Amsterdam Avenue, and West 60th Street (Block 1152, Lots 1, 5, 8, 10-13, p/o 43, 52, 53, 55-58, and 61) from M1-6 to C4-7 and C6-2 in the Upper West Side neighborhood of Manhattan Community Board 7. The applicant is also requesting a special permit pursuant to Zoning Resolution (ZR) Section 74-52 for a public parking garage, a special permit pursuant to ZR Section 74-74 for a general large-scale development, and a zoning text amendment to the provisions of ZR Section 74-74 to modify the open space requirements for certain large-scale developments in R8, C4, C5, and C6 zoning districts citywide. The proposed actions would facilitate a proposal by the applicant to develop a mixed-use building on a property located at 239 West 60th Street (Block 1152, Lots 5, 8, 10-13, 43, 52, 53, and 55), which is a through-lot site with frontages on both West 60th Street and West 61st Street. The proposed building would contain a total of approximately 481,425 gross square feet (gsf) of floor area consisting of 342 residential units; 4,420 gsf of medical office space; 10,340 gsf of ground-floor retail space; and 281 parking spaces, of which 121 would be accessory parking spaces and 160 would be public parking spaces.

The applicant has merged the properties located at 242 West 61st Street (Block 1152, Lot 56) and 244 West 61st Street (Block 1152, Lot 57) with the project site to create a combined zoning lot.

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION
DEP
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The proposed action would allow a portion of the unused development rights from these properties, which are developed with two 5-story residential buildings, to be used in developing the proposed project. The proposed project would be comprised of a 29-story tower with a maximum height of 372 feet and three mid-rise components of 7, 9 and 14 stories. Construction of the proposed project is expected to be completed in 2008. Although the applicant intends to construct a development with 342 dwelling units on the project's site, a development with more dwelling units could be built under the proposed zoning. The reasonable worst case development scenario (RWCDS) to be analyzed in the EIS assumes that 559 units could be constructed on the project site, which would be the maximum number of dwelling units allowed under the proposed zoning. The RWCDS also assumes that four additional properties would be developed as a result of the proposed rezoning. The property located at 246 West 61th Street (Block 1152, Lot 58), which is not under the control of the applicant, would be developed with a 10-story residential building containing approximately 61 dwelling units. In addition, the property located at 28 West End Avenue (Block 1152, Lot 61), also not under the control of the applicant, would be developed with a 31-story building containing approximately 190 dwelling units and a 100,000 gsf middle school. The RWCDS also assumes that the two 5-story residential buildings located at 242 West 61st Street (Block 1152, Lot 56) and 244 West 61st Street (Block 1152, Lot 57), which are under the applicant's control, could each be enlarged with an additional penthouse unit. The proposed text amendment to modify the open space provisions of ZR Section 74-74 would allow the City Planning Commission to waive the open space requirements for proposed general large-scale developments in R8, C4, C5, or C6 zoning districts provided that the applicant comply with the applicable open space requirements of the Quality Housing Program. The zoning districts within which the proposed text amendment could potentially be utilized (R8, C4, C5, and C6) are located within areas of Manhattan Community Districts 1-8, and 10-12; Queens Community Districts 1-10, and 12-14; Bronx Community Districts 1-3, 5-7, and 9-12; Staten Island Community Districts 1-3; and Brooklyn Community Districts 1-6, 8, 9, 11, 12, and 14-18.

Historical onsite uses predominantly consisted of a former gas station, former auto repair shops, chemical storage, iron works and manufacturing facilities. Accordingly, the applicant entered a Brownfield Cleanup Program (BCP) with the New York State Department of Environmental Conservation (NYSDEC). In order to develop an appropriate remediation plan for the site, the applicant hired AKRF to conduct a Phase II subsurface investigation across the site to determine the nature and extent of contamination at the site. The Phase II results identified volatile organic contaminants (VOCs), semi-VOCs (SVOCs) and metals in soil and groundwater that were above the regulatory guidelines. In addition, soil gas results detected elevated levels of VOCs in several soil gas probes.

The Remedial Action Plan (RAP) and RAP addendum entail excavation of 5,600 cubic yards of petroleum contaminated soil, 40 cubic yards of lead impacted soil to be disposed as hazardous waste and removal of fill material onsite to bedrock in some places. A 20 mil vapor barrier/water proofing material will be installed beneath the building foundation to prevent migration of vapors from the residual soil and impacted

groundwater into the building. A quarterly groundwater monitoring program monitored by the NYSDEC will be implemented onsite. In addition, the RAP/addendum proposes to employ odor control methods during site remediation. The consultant is reminded that for all unpaved and/or landscaped areas, a demarcation barrier must be placed between the imported clean fill and existing fill material onsite.

Due to the residual contamination (elevated levels of SVOCs and heavy metals) which exists at the site, a Restrictive Declaration that would be binding on the property's assessors and assigns is necessary for this site to prevent future exposure to either construction workers or future occupants. The Restrictive Declaration must be designed to restrict the manner in which the property may be developed or redeveloped, by requiring that additional testing or remediation measures, if required, serve as a condition precedent to any change of use or sub-surface excavation conducted as part of any future development or redevelopment of the property. The Restrictive Declaration should be drafted and submitted to the DEP's Legal Affairs office for review/approval. Once approved, the Restrictive Declaration should be fully executed prior to a final Department of City Planning determination to ensure remediation measures outlined in the RAP/addendum above are implemented and future redevelopment proceeds in a manner protective to the public health.

Please include the DEP reference number 06DEPTECH117M in all future correspondence and submittals related to this project. If you have any questions please contact Julie Stein at (718) 595-4397.

Sincerely,

Gary C. Heath
Deputy Director
Bureau of Environmental Planning and Analysis

cc. J. Wuthenow
J. Stein
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