

Matter of East 56th Del, LLC v 930 Third Ave. Corp.

2021 NY Slip Op 32265(U)

November 12, 2021

Supreme Court, New York County

Docket Number: Index No. 156819/2021

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA JAMES

PART 59

Justice

-----X

INDEX NO. 156819/2021

In the Matter of the Application of:

MOTION DATE 10/18/2021

EAST 56TH DEL, LLC

MOTION SEQ. NO. 001

Petitioner,

For an Order and Judgment pursuant to Section 881 of the
Real Property Action and Proceedings Law,

**DECISION + ORDER ON
MOTION**

- v -

930 THIRD AVENUE CORP.,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 24, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 83, 84, 85

were read on this motion to/for

RPAPL 881 LICENSE

ORDER

Upon the foregoing documents, it is hereby

ORDERED and ADJUDGED that Respondent's cross motion for summary judgment on its first counterclaim for a declaratory judgment that the New York Real Property and Proceedings Law § 881 is violative of Articles V and XIV of the United States Constitution is denied; and it is further

ORDERED, ADJUDGED and DECLARED that that the New York Real Property and Proceedings Law ("RPAPL") § 881 does not violate Articles V and XIV of the United States Constitution; and

WHEREAS, Petitioner (Licensee) and Respondent (Licensor) are parties to a special proceeding pursuant to RPAPL § 881 (Supreme Court, New York County Index No. 156819/2021);

WHEREAS, Licensee is the owner of certain land, together with all buildings and improvements thereon, designated as Block 1310, Lot 41 in the County of New York, City of New York, State of New York, which property is commonly known as 160 East 56th Street, New York, New York (the "Project Site");

WHEREAS, Licensor is the owner of certain land, together with all buildings and improvements thereon, designated as Block 1310, Lot 140 in the County of New York, City of New York, State of New York, which property is commonly known as 162-164 East 56th street, New York, New York (a/k/a 926-930 Third Avenue, New York, New York), which is adjacent to the Project Site (the "Adjacent Premises");

WHEREAS, Licensor is the owner of certain land, together with all buildings and improvements thereon, designated as Block 1310 Lot 0040 in the County of New York, City of New York, State of New York, which property is commonly known as 166 East 56th Street, New York, New York, which does not border the Project Site (the "Noncontiguous Building");

WHEREAS, Licensee is in the process of and intends to perform certain façade inspections, restoration and repair work as required by the New York City Facade Inspection Safety

Program, formerly known as Local Law 11, and other work as set forth in plans attached hereto as Exhibit A¹ on the Project Site (the "Project");

WHEREAS, Licensee has retained the services of certain engineers, architects, contractors and others to perform engineering, architectural services, and façade restoration and related work associated with the Project (such services work shall hereinafter be referred to as the "Preparatory Work");

WHEREAS, Licensee is granted, in accordance with the herein Order, from Licensor access to the Adjacent Premises, in consideration of the provision by Licensee to Licensor of certain protections from damages both to the Adjacent Premises and the land upon which it is situated and injury to persons thereon arising out of the Preparatory Work, and Licensee's work and other construction operations at the Project Site included as part of, or otherwise relating, to the Project (the "Construction"); and

WHEREAS, Licensee desires to obtain temporary access to portions of the Adjacent Premises and the Noncontiguous Building in order to facilitate the Preparatory Work and Construction and to provide protection to Licensor; and

¹Exhibits are part of NYSCEF Document Number 91.

WHEREAS, the Adjacent Premises has a lower-level courtyard roof (the "Courtyard Roof") and a roof over its fourth floor (the "Fourth Floor Roof"), together described as "Roofs"; and

WHEREAS, Licensor desires to obtain protection from damages both to the Noncontiguous Building and the land upon which it is situated; and

WHEREAS, Licensee's engineer, Joseph K. Blum Co., LLP (the "Licensee's Engineer"), has entered the Building and Building Site and performed a pre-construction condition survey (the "Pre-Con Survey") at Licensee's sole cost and expense. (A copy of the Pre-Con Survey dated June 9, 2021, is attached hereto as Exhibit B and has been approved by Licensor and Ayal Amos ["Licensor's Engineer"]);

WHEREAS, Licensee, in accordance with the herein Order, is granted from Licensor access to the Adjacent Premises, as well as access to the Courtyard Roof through the hallway of the Noncontiguous Building rather than permitting temporary access through the Adjacent Premises to the Courtyard Roof; and

WHEREAS, Licensee, subject to the herein Order, is granted from Licensor access to the Adjacent Premises, subject to the herein ordered protection from damages both to the Noncontiguous Building and the land upon which it is situated and injury to persons thereon; and

WHEREAS, Licensor desires to obtain protection from damages both to the Building and the land upon which it is situated (such land, the "Building Site"; and the Building and Building Site may be referred to collectively, as the "Property") arising out of the Preparatory Work, and Licensee's work and other construction operations at the Project Site included as part of, or otherwise relating, to the Project (the "Construction"); and

NOW, THEREFORE, it is hereby

ORDERED and ADJUDGED that Petitioner East 56th Del, LLC (Licensee), its construction manager, engineers, architects, contractors and subcontractors (collectively, Licensee) is hereby granted a license from Respondent (Licensor), of access to the Adjacent Premises and the Noncontiguous Building, in this special proceeding pursuant to RPAPL § 881, as follows:

1. Pre-Construction Survey and Noncontiguous Building Survey.

(a) Licensee is granted from Licensor a temporary, limited, non-exclusive and revocable license (in the event of a default by Licensee and a failure to cure pursuant to this License) to access the Adjacent Premises in order to perform a photographic pre-construction survey of existing conditions at the Adjacent Premises (the "Survey") and Licensee shall conduct such survey. Licensee shall provide Licensor with a copy of the pre-construction survey report (the "Survey Report") within ten (10) days of the date on which the Survey is conducted. Licensor

shall be entitled to have its engineer attend the Survey and conduct its own independent site observations. Such Pre-Construction Survey of the Premises occurred before the filing of the herein special proceeding.

(b) Licensee is granted from Licensee a temporary, limited, non-exclusive and revocable license (in the event of a default by Licensee and failure to cure pursuant to the terms of this Agreement) to access the Noncontiguous Building in order to perform a photographic pre-construction survey of existing conditions at the Noncontiguous Building (the "Noncontiguous Building Survey"), and to the extent that the Noncontiguous Survey has not already been performed, Licensee agrees that it will conduct such Non-Contiguous Building Survey. Licensee shall provide the Licensor with a copy of the pre-construction survey report (the "Noncontiguous Building Survey Report") within ten (10) days of the date on which the Survey is conducted. Licensor shall be entitled to have its engineer attend the Survey and conduct its own independent site observations.

2. Sidewalk Shed Protection.

(a) Prior to the commencement of façade restoration work on the east façade of the building on the Project Site, Licensee has and/or shall install, at its sole cost and expense, a sidewalk shed on the sidewalk in front of the Building Site

extending twenty (20) feet from the lot-line between the Building Site and the Project Site (the "Lot Line") (but in no event less than as required by New York City Building Code and all other applicable laws) as set forth more fully in drawings concerning the "Sidewalk Shed" as described in Exhibit C. The Sidewalk Shed shall not prevent ingress or egress from the Property. The Sidewalk Shed shall have a separation board on the Lot Line so as to prevent access to that portion of the Sidewalk Shed in front of the Building Site. Any awnings/canopies covered by the Sidewalk Shed shall be wrapped in plastic prior to installation of the Sidewalk Shed and shall remain wrapped in plastic until the Sidewalk Shed is completely removed.

(b) Accordingly, Licensee shall have a temporary license to enter the Property for the purpose of installing, maintaining, repairing, replacing and later removing the Sidewalk Shed (the installation, maintenance, repair, replacement and removal of the Sidewalk Shed shall be referred to as the "Sidewalk Protection Work"). Such installation, maintenance, repair, replacement and removal shall (i) be performed in accordance with the New York City Building Code and all other applicable laws; and (ii) provide for the proper drainage of water and snow/ice melt (and take into consideration the additional weight of snow and ice which may accumulate on the Sidewalk Shed). Licensee may not store or stage any materials on the Sidewalk

Shed nor have any use of the area below and above the Sidewalk Shed, other than in connection with installing, maintaining, repairing, replacing and later removing the Sidewalk Shed.

(c) Licensee, at its sole cost and expense, shall use commercially reasonable efforts in accordance with New York City Building Code and all other applicable laws to (i) prevent any unauthorized individuals from climbing on to and/or on top of the Sidewalk Shed; and (ii) prevent bills, advertisements or graffiti from being posted on the Sidewalk Shed and Building; provided, however, that Licensee shall not be required to provide security or monitoring service.

(d) Licensee, at its sole cost and expense, shall install and maintain so long as the Sidewalk Shed is in place lighting under the Sidewalk Shed in accordance with all applicable law.

(e) Licensee, at its sole cost and expense, shall install a sign on the Sidewalk Shed adequately displaying the names of each retail commercial tenant whose awnings and/or signage are hidden by the Sidewalk Shed, which signs shall be in accordance with the applicable laws.

(f) Upon the expiration or earlier cancellation or termination of this License and the licenses granted herein, the Sidewalk Shed shall be removed by Licensee at Licensee's sole cost and expense; and Licensee shall repair, at its sole cost and expense, any and all damage caused thereby to the condition

shown in the Pre-Con Survey, which obligation shall survive the expiration or earlier cancellation or termination of this License and the licenses granted herein.

(g) In the event the Licensor reasonably requires that all or a portion of the Sidewalk Shed be temporarily removed, upon reasonable request of Licensor because of a necessary emergency repair of the Building ("Licensor Work"), Licensee shall, at its sole cost and expense, within fifteen (15) calendar days of receipt of such request, and prior to the commencement of Licensor Work, remove such Sidewalk Shed (or portion thereof) from the Property, shall store such Sidewalk Shed (or portion thereof) during the course of Licensor Work, and shall reinstall such Sidewalk Shed (or portion thereof) to its original location upon the completion of Licensor Work. Licensor represents that it has no knowledge of any such Licensor Work required during the Term of this License.

3. Temporary Protections and Scaffold and Airspace Access.

Licensee is granted from Licensor a temporary, limited, restricted (pursuant to and in accordance with the terms of this Agreement), non-exclusive and revocable (in the event of a default by Licensee and failure to cure pursuant to the terms of this Agreement) license to access the Adjacent Premises during the Project to install, maintain and remove temporary protections over the Roofs (i.e. the Courtyard Roof and the Fourth Floor Roof),

skylights, bulkhead, chimneys, exhausts, stacks, wires, cables, electrical lines parapets, vents and mechanical equipment at the Adjacent Premises to the extent required by the DOB and create and maintain a controlled access zone ("CAZ") in these areas extending twenty (20) feet onto the Adjacent Premises from the property line with the Site (collectively, the "Temporary Protections"), in order for Licensee to protect the Licensor and the tenants of the Adjacent Premises during the Project in accordance with good construction practice and all applicable laws, rules, regulations, codes and directives of governmental entities having jurisdiction over the Project (collectively, the "Laws"), including, without limitation, DOB. The CAZ shall consist of a cordoned off area on the Adjacent Premises that tenants and occupants of the Adjacent Premises shall not be allowed to access. The Temporary Protections are identified in Drawing No. A-102.00 annexed hereto as Exhibit A (the "Protection Drawings"). Licensee shall have a temporary license to: (i) enter the Adjacent Premises for the purposes of installing, maintaining, repairing, replacing and later removing the Temporary Protections (including the CAZ) on the Fourth Floor Roof and transporting workers, tools, materials and equipment to the Fourth Floor Roof; and (ii) enter the Noncontiguous Building for the purpose of installing, maintaining, repairing, replacing and later removing the Temporary Protections (including the CAZ)

on the Courtyard Roof and transporting workers, tools, materials and equipment to the Courtyard Roof.

In addition, Licensee is granted from Licensee a temporary, limited, non-exclusive and revocable (in the event of a default by Licensee and failure to cure pursuant to the terms of this License) license to access the airspace above the Adjacent Premises during the Project in order to install, maintain, remove, and utilize suspended scaffolding in the airspace above the Adjacent Premises and perform three (3) suspended scaffold drops in the airspace above the Adjacent Premises in order to access the eastern elevation of the Site to perform the exterior facade repairs required by Local Law 11 and perform additional inspections of the facade at the Site (collectively, the "Scaffold and Airspace Access"), as identified in the drawings and CD-5 annexed hereto as Exhibit B (collectively, the "Scaffold and Airspace Access Drawings"). The Suspended Scaffold shall not make contact with any of the Roofs, skylights, bulkhead, chimneys, exhausts, stacks, wires, cables, electrical lines, parapets, vents and mechanical equipment at the Adjacent Premises.

Licensee may not store or stage any materials, equipment or tools on the Adjacent Premises and/or on the Noncontiguous Building, other than in connection with installing, maintaining,

repairing, replacing and later removing the Temporary Protections and Scaffold and Airspace Access.

4. Security.

Any access to the Adjacent Premises and/or the Noncontiguous Building by Licensee shall be performed in a manner so as to not create any unreasonable security threat to the Adjacent Premises and/or the Noncontiguous Building. Licensee shall use usual and customary means to endeavor to prevent unauthorized individuals from entering the Project Site and/or the Adjacent Premises and/or the Noncontiguous Building via the Project Site.

5. Roof Protection.

(a) Prior to the commencement of the facade repair Preparatory Work and Construction on the east exterior wall of the Project Site, in order to adequately protect the Adjacent Premise's Roofs, flashing, bulkheads, parapets, copings, party walls, any mechanical equipment located thereon, any vents, ducts, exhausts, stacks and chimneys which exit/expel thereon/therefrom, any skylights, wires, cables, and electrical lines, Licensee shall install at its sole cost and expense, (i) flat (2 layers of 2" Styrofoam and 2 layers of wood planking), (ii) other overhead roof protection for the Fourth Floor Roof, (iii) the Courtyard Roof identified in the documents listed in

Exhibit D (the "Roofs Protection") extending twenty (20) feet on the roofs of the Adjacent Premises from the Lot Line (the "Roof Protection"), and (iv) additional protection as described in Exhibit D.

(b) Accordingly, Licensee is granted from Licensor a temporary license to (i) enter the Adjacent Premises for the purpose of installing, maintaining, repairing, replacing and later removing the Roof Protection (the installation, maintenance, repair, replacement and removal of the Roof Protection shall be referred to as the "Roof Protection Work") for the Fourth Floor Roof, and to (ii) the Noncontiguous Building for the purpose of installing, maintaining, repairing, replacing and later removing the Roof Protection for the Courtyard Roof. Licensee may not store or stage any materials on the Roof Protection nor have any use of the area above the Roof Protection Area, other than in connection with installing, maintaining, repairing, replacing and later removing Roof Protection.

(c) Such installation, maintenance, repair, replacement and removal of the Roof Protection shall (i) be performed in accordance with the New York City Building Code and all other applicable laws; (ii) not puncture or penetrate the Adjacent Premises' Roof's surface (including, but not limited to, the Roof's protective membrane and waterproofing elements); (iii) not exceed the support

limitations of the Adjacent Premises' respective Roofs; (iv) provide for the proper drainage of water and snow/ice melt (and take into consideration the additional weight of snow and ice which may accumulate on the Roof's Protection); and (v) be adequately fastened and secured to the Adjacent Premises' Roofs so as not to blow-off. Licensor represents that it has no knowledge of existing Roof leaks or Roof damage at the Adjacent Premises.

(c) Upon the expiration or earlier cancellation or termination of this Licensee and the licenses granted herein, the Roof Protection shall be removed by Licensee at Licensee's sole cost and expense; and Licensee shall repair, at its sole cost and expense, any and all damage caused thereby to the condition shown in the Pre-Con Survey and in the additional pre-construction survey, which obligation(s) shall survive the expiration or earlier cancellation or termination of this Agreement and the licenses granted herein. Licensee shall provide Licensor with prior written notice by email at least two (2) business days in advance at Steven Bari (@stevenmbari@gmail.com) before installing the Roof Protection Work, as well as notice of completion of such work within three (3) business days thereof.

(d) In the event Licensor reasonably requires that all or a portion of the Roof's Protection be temporarily removed because of a necessary emergency repair of the Adjacent Premises ("Licensor

Work"), upon reasonable request of Licensor , Licensee shall, at its sole cost and expense, within fifteen (15) calendar days of receipt or refusal of such request, and prior to the commencement of Licensor's Work, (i) remove such Roof's Protection (or portion thereof) from the Adjacent Premises, (ii) store such Roof's Protection (or portion thereof) during the course of Licensor Work, and (iii) reinstall such Roof's Protection (or portion thereof) to its original location upon the completion of Licensor Work. Licensor represents that it has no knowledge of any such Licensor Work relating to the Roofs of the Adjacent Premises required during the Term.

6. Temporary Protections.

(a) The installation, maintenance and removal of the Temporary Protections shall: (i) be performed in accordance with the New York City Building Code and all other applicable laws; (ii) not puncture or penetrate the Adjacent Premises' Roof's surface (including, but not limited to, the Roof's protective membrane and waterproofing elements); (iii) not exceed the support limitations of the Adjacent Premises' respective Roofs; and (iv) be adequately fastened and secured to the Adjacent Premises' Roofs so as not to blow-off.

(b) Upon the expiration of this License and the licenses granted herein pursuant to and in accordance with the terms of this Agreement, the Temporary Protections shall be removed by Licensee at Licensee's sole cost and expense; and Licensee shall repair, at its sole cost and expense, any and all damage caused to the Roofs of the Adjacent Premises by the Temporary Protections to the condition shown in the Survey Report, which obligation(s) shall survive the expiration or earlier cancellation or termination of this License and the licenses granted herein. Licensee shall provide Licensor with prior written notice by email to Steven Bari (@stevenmbari@gmail.com) at least two (2) business days before installing the Temporary Protections and at least three (3) business days before removing the Temporary Protections.

(c) In the event Licensor reasonably requires that all or a portion of the Temporary Protections be temporarily removed because of a necessary emergency repair of the Adjacent Premises ("Licensor's Emergency Work"), upon reasonable request of Licensee, Licensor shall, at its sole cost and expense, within fifteen (15) calendar days of receipt of such request: (i) remove such Temporary Protections (or portion thereof) from the Adjacent Premises as necessary to allow the Licensor's Emergency Work to proceed; (ii) store such Temporary Protections (or portion thereof) during the course of Licensor's Emergency Work; and (iii) reinstall such

Temporary Protections (or portion thereof) to their original location(s) upon the completion of Licensor's Emergency Work.

(d) For purposes of clarity, and notwithstanding anything to the contrary herein: (i) Licensee shall only be required to remove any of the Temporary Protections to accommodate any Licensor's Emergency Work as set forth in items A-C immediately above if Licensee is permitted to do so by the DOB; and (ii) Licensor's Emergency Work shall be limited to work required to prevent imminent danger to the structural stability of the Adjacent Premises or as otherwise required as the result of the issuance by the DOB or any other governmental entity having jurisdiction over the Adjacent Premises of a vacate order for the Adjacent Premises. Licensor warrants and represents that it has no knowledge of any such Licensor's Emergency Work relating to the Adjacent Premises that will be required during the Term (as hereinafter defined). In the event that Licensee is required to remove all or a portion of the Temporary Protections pursuant to the terms of this paragraph, the Term (as hereinafter defined) of this License shall be suspended and tolled and will not re-start until the date that Licensee re-installs the removed Temporary Protections at the Adjacent Premises.

7. Suspended Scaffold.

Upon the expiration of this Agreement and the licenses granted herein pursuant to and in accordance with the terms of this License, the Scaffold and Airspace Access shall be removed by Licensee at Licensee's sole cost and expense; and Licensee shall repair, at its sole cost and expense, any and all damage caused to the Adjacent Premises by the Scaffold and Airspace Access to the condition shown in the Survey Report, which obligation(s) shall survive the expiration or earlier cancellation or termination of this License and the licenses granted herein. Licensee shall provide Licensor with prior written notice by email to Steven Bari (@stevenmbari@gmail.com) at least two (2) business days before installing/commencing the Scaffold and Airspace Access and at least three (3) business days before completing/removing the Scaffold and Airspace Access.

8. Protection - Generally.

(a) Licensee shall maintain the Temporary Protections and Scaffold and Airspace Access in a reasonably presentable condition and repair any damage thereto.

(b) Licensee's obligation to remove the Temporary Protections and Scaffold and Airspace Access following the expiration of

the Term (as hereinafter defined) and repair any and all damage caused to the Adjacent Premises caused by the removal of the Temporary Protections and Scaffold and Airspace Access shall survive the expiration or earlier cancellation or termination of this License and the licenses granted herein.

(c) Licensee acknowledges and understands that the Adjacent Premises and the Noncontiguous Building contain both residential and commercial spaces. Whenever Licensee is accessing the Adjacent Premises and/or the Noncontiguous Building, Licensee shall use commercially reasonable efforts to neither disturb nor interfere with the reasonable operations of the Adjacent Premises and the Noncontiguous Building or with Licensor, or its tenants, other occupants, and guests, invitees and visitors, provided, however, that Licensee and Licensor both acknowledge that the Temporary Protections and Scaffold and Airspace Access, by their nature, necessarily create some interference.

(d) Prior to accessing the Adjacent Premises and/or the Noncontiguous Building to commence the installation of the Temporary Protections and the Scaffold and Airspace Access, Licensee shall provide at least two (2) business days advance written notice by email to Steven Bari (@stevenmbari@gmail.com) as set forth herein, except in the case of an emergency, in which event, no prior notice is required (provided however, that

Licensee shall use its commercially reasonable efforts to minimize any disturbance to Licensor and the tenants and other occupants of the Adjacent Premises and/or the Noncontiguous Building and notify Licensor promptly thereafter by e-mail to Steven Bari (@stevenmbari@gmail.com)). For purposes of clarity, after providing Licensor with the notice described above prior to commencing the installation of the Temporary Protections and the Scaffold and Airspace Access, Licensee shall not be required to provide any further notice thereafter to Licensor of Licensee's continued maintenance and utilization of the Temporary Protections and the Scaffold and Airspace Access.

(e) Except as set forth above in the event of an emergency, Licensee may only access the Adjacent Premises pursuant to the terms set forth herein during normal business hours (i.e., 8:00 a.m. to 5:00 p.m.), Monday through Friday, excluding holidays (i.e., Father's Day, Labor Day, the Fourth of July, Columbus Day, Thanksgiving and Christmas.

(f) Licensee acknowledges that it is accessing the Adjacent Premises and/or the Noncontiguous Building in connection with the Project at its sole risk.

9. Other Licensee Responsibilities.

(a) All licenses provided to Licensee, set forth in this Agreement, shall be exercised: (i) in a prompt, safe, limited and efficient manner and so as not to unreasonably interfere with the use, occupancy, structural or waterproofing integrity of the Adjacent Premises; (ii) taking such reasonable precautions as may be necessary or appropriate to prevent damage to the Adjacent Premises or injury to persons or personal property, with the understanding that Licensee will be performing a construction project at the Site; (iii) so that on completion of the Adjacent Premises Access, the areas in which the Adjacent Premises Access was performed are restored to their former condition as documented in the Survey Report, unless otherwise provided herein, with all debris removed. Licensee agrees to install, maintain, utilize, operate, perform and, to the extent applicable, remove the Adjacent Premises Access in accordance with all Laws, DOB regulations, good construction practice and in a workmanlike manner.

(b) Licensee, at its sole cost and expense, shall be solely responsible for all labor and material costs, professional fees and expenses and all other costs incurred with respect to the design, construction, maintenance and, to the extent applicable, removal of the Adjacent Premises Access, and releases and holds Licensor harmless with respect to such costs.

(c) Licensee shall obtain, at their own expense, all necessary permits, approvals, or variances to perform the Adjacent Premises Access that may be required and shall pay all fees in connection therewith. Licensor shall reasonably cooperate with Licensee in connection therewith, and shall sign (or submit electronic forms) with respect to any appropriate applications or other documents that require Licensor's signature, at no cost to the Licensor, with respect to the Adjacent Premises Access. To the extent Licensee desires Licensor to sign a PW-3 form, Licensee shall provide Licensor with proof of any costs listed on such document.

(d) In all cases, Licensee shall provide two business (2) days' prior written notice of the commencement and/or installation of or the removal of any element of the Adjacent Premises Access, unless otherwise agreed to in writing between Licensee and Licensor.

(d) Licensee shall, at its sole cost and expense, promptly repair all damage or injury to the Adjacent Premises and/or the Noncontiguous Building caused by the Project (the "Remediation Work"), whether structural or non-structural, interior or exterior, and to the Licensor's and/or its tenants' or occupants' property, fixtures, glass, appurtenances, personal property, furniture and equipment contained therein (collectively, "Physical Damages"). Physical Damages shall be measured and determined by reference to the Survey Report. Remediation Work shall only be required to restore the Adjacent Premises and/or the Noncontiguous

Building to the condition as indicated in the Survey Report. All such Remediation Work shall be to the reasonable satisfaction of the Licensor.

(e) Licensee is granted from Licensor a license to access to any areas of the Adjacent Premises and/or the Noncontiguous Building necessary to properly perform the Remediation Work, which license shall be at no cost to Licensee. Provided that Licensee is granted access pursuant to the terms set forth in the preceding sentence, Licensee shall commence any required Remediation Work to remediate any Physical Damages within ten (10) days of Licensee's receipt of notice from Licensor regarding any such Physical Damages and such Remediation Work shall be completed within thirty (30) days thereafter (or otherwise as soon as is commercially practicable).

(e) Any Remediation Work must be approved by the Licensor's engineer, which approval shall not be unreasonably denied, conditioned or delayed. If: (i) Licensee fails to perform the Remediation Work, or to otherwise remediate any of the Physical Damage, within the time frame provided above (or otherwise as soon as is commercially practicable); or (ii) Licensor's engineer in its professional opinion determines that the Physical Damage will cause further damage to the Adjacent Premises and/or the Noncontiguous Building unless immediately repaired, the Licensor shall be entitled to perform the Remediation Work and invoice Licensee for its reasonable and actual costs and expenses incurred

in connection with same. This paragraph and paragraphs 8.E. and 8.F. shall survive the expiration or earlier cancellation or termination of this License. The Court retains jurisdiction with respect to the terms of this Paragraph 8.

10. Emergency Access.

In the event of an emergency relating to the health, safety or welfare of persons or the threat of damage to property, Licensee shall immediately notify Licensor by email to Steven Bari (@stevenmbari@gmail.com). If Licensee does not receive a timely response by email from Licensor, Licensee shall be permitted to access the Adjacent Premises and/or the Noncontiguous Building and address the emergency as prudently necessary, provided the Licensee uses reasonable efforts to minimize any disturbance to the occupants of the Adjacent Premises and/or the Noncontiguous Building.

11. Code Compliance.

(a) Licensee's access and use of the Adjacent Premises and/or the Noncontiguous Building pursuant to this License and its activities or the activities of Licensee shall be in full compliance with the New York City Building Code and all other applicable laws, and shall be performed in accordance with all generally accepted architectural, engineering, building and

industry standards, and in a safe, good, skillful and workmanlike manner.

(b) Licensee shall be solely responsible for and shall obtain and maintain in full force and effect at all times any and all required building permits and governmental approvals issued in connection with the Project.

12. Quality of Life.

(a) To the extent Licensee could reasonably anticipate that the Protection could negatively and materially or unreasonably impact the Property's and/or the Noncontiguous Building's tenants and other occupants, (i.e. construction activities that are excessively noisy and/or are likely to cause excessive vibrations (in excess of that permitted by law), dust, debris and odors, including without limitation, demolition work, or otherwise Licensor's reasonable use and enjoyment of the Property, Licensee (i) shall provide Licensor with adequate notice of same; and (ii) agrees to use commercially reasonable efforts to minimize any such negative impact, adverse effects and disruption associated therewith.

(b) Licensee shall immediately notify Licensor of any condition that may adversely impair the health and/or safety of any individual in, on or about the Property and/or the Noncontiguous Building.

(c) Licensee agrees to use commercially reasonable efforts to ensure that Licensee's Engineer, contractor, sub-contractors or any other individual or entity retained, engaged, hired, employed or otherwise under its control, and their employees and staff, shall not harass or loiter in, on or about the Property and/or the Noncontiguous Building, and shall not block or hinder access to the Property and/or the Noncontiguous Building.

(d) In connection with the delivery of materials, supplies, tools and equipment to the Building Site and/or the Project Site, (i) Licensee agrees that the idling of any trucks or other delivery vehicles for more than permitted by law is strictly prohibited and that Licensee shall instruct the drivers to turn off their engines as required by law and (ii) without limiting the foregoing, Licensee agrees to abide by and comply with the applicable New York City Department of Transportation regulations for idling of any trucks or other delivery vehicles.

(e) Licensee agrees to take all necessary precautions to ensure that debris from the Project Site does not fall onto the Building and/or the Noncontiguous Building and/or Building Site as a result of the Pre-Con Survey, Monitoring Work, Protection Work, Preparatory Work, Construction, the Project otherwise, and to the extent any debris does so fall, such debris shall promptly be removed by Licensee upon notice thereof.

(f) Should any unreasonable amount of dust and dirt settle on the Building and/or the Noncontiguous Building (including, but not limited to the Building's and/or the Noncontiguous Building exterior windows, terraces and balconies) and/or Building Site as a result of the Pre-Con Survey, Monitoring Work, Protection Work, Preparatory Work, Construction and/or the Project otherwise, the same shall be cleaned and sprayed-down by Licensee on a regular basis and at the completion of the Construction if necessary.

(g) Licensee agrees to take all necessary precautions to ensure that the electric, gas, water, sewer, plumbing, telephone and cable lines in, whether underground or above ground, on or about the Adjacent Premises and/or the Noncontiguous Building are not disturbed or damaged as a result of Licensee's activity in, on or about the Property, the Noncontiguous Building and/or the Project Site.

13. Insurance.

(a) For the duration of the Project and during the term of any of the licenses contemplated hereunder, Licensee shall and shall cause its contractors and subcontractors to keep in full force and effect, at a minimum, the following insurance coverage:

i. Commercial General Liability Insurance, including Contractual Liability, Products and Completed Operations Liability (including XCU coverage), Personal Injury Liability, written on an occurrence form, with combined

bodily injury and property damage limits of liability of no less than \$1,000,000 per occurrence, \$2,000,000 per location general aggregate, \$1,000,000 Personal Injury and with an aggregate limit per project;

ii. Automobile liability insurance, including owned, non-owned and hired car liability insurance for combined limits of liability of \$1,000,000 per occurrence and in the aggregate;

iii. Umbrella Liability policy in the amount of no less than \$5,000,000; and

iv. Workers' Compensation Insurance providing coverage for its employees in accordance with statutory requirements.

(b) The limits of liability can be provided in a combination of a Comprehensive General Liability policy and an Umbrella Liability policy. The policy should be written on form CG00 01 07 98 or its equivalent and shall not include any exclusions or limitations other than those incorporated in the standard form which affects the coverage afforded to Licensor hereunder or any claims that Licensor is entitled to make hereunder. Such insurance is to be primary insurance, notwithstanding any insurance maintained by the Indemnified Parties (as defined below).

(c) All insurance policies shall name as an additional insured the Licensor, as well as its managing agent, Licensor's mortgagees, on a primary non-contributory basis. All insurance policies shall

provide that the insurer will provide written notice to the additional insureds of any modifications or cancellations in accordance with the specific policy terms. Notwithstanding the foregoing, Licensee and Licensee's Professionals will provide ten (10) calendar days' prior written notice to Licensor of any cancellation of the insurance or any material modification relevant to the requirements hereunder.

(d) Prior to the earlier of either (i) the commencement of the Preparatory Work on the east façade of the Project Site; (ii) the commencement of the Construction on the east facade of the Project Site; or (iv) Licensee's entry upon the Adjacent Premises and/or the Noncontiguous Building, Licensee shall provide Licensor with a copy of the insurance policy(ies) required to be provided by this License in the amounts and coverage required herein, or at Licensee's option, certificates thereof.

(e) Licensor shall not be liable in any way whatsoever for any theft or damage to any property stored by Licensee and/or its contractors in, on or about the Adjacent Premises and/or the Noncontiguous Building, except to the extent such is caused by Licensor's gross negligence and/or willful misconduct.

(f) Licensee's failure to maintain the required insurance hereunder and/or Licensee's Professional's failure to maintain the required insurance under the License Addendum, shall

constitute a material breach of this License and shall act to immediately terminate this License and the licenses granted herein without the need to serve Licensee with a notice of default or notice to cure. However, this License and the licenses granted herein may be reinstated upon Licensee delivering to Licensor satisfactory written proof that Licensee's and Licensee's Professional's required insurance (as the case may be) has/have been reinstated. Notwithstanding the foregoing, this reinstatement shall not extend the original term of this License and the licenses granted herein.

14. Indemnification.

(a) Licensee shall, to the fullest extent permitted by law, indemnify, defend and hold harmless Licensor and its shareholders, principals, directors officers and employees (collectively, the "Indemnitees") tenants, lessees, licensees, and engineer, mortgagees, in or about the Adjacent Premises and/or the Noncontiguous Building, and their respective officers, directors, shareholders, members, managers, principals, agents, and representatives (collectively the "Indemnified Parties" or "Indemnified Party" as the case may be) from all causes of action, claims, judgments, liens, litigation, penalties, orders, violations, damages, liabilities, losses, costs, expenses and disbursements (including, without limitation, court fees, professional fees and reasonable

attorneys' fees) attributable to bodily injury, death, property damage, to the extent arising out of the installation, maintenance, operation, monitoring, inspection, reading, repairing, replacing and removal of the Protection, the Preparatory Work, the Construction and/or the Project otherwise, and the negligent actions or inactions of Licensee and/or Licensee's Engineer (including any actions or inactions prior to the Effective Date [as defined below] of this License) or any failure of Licensee to perform its obligations under this License including, without limitation, (i) a breach of this License by Licensee (ii) the Adjacent Premises Access or the access by Licensee to the Noncontiguous Building in connection with the Project (iii) any false statements or misrepresentations by Licensee contained in any document(s) Licensee request that Licensor sign (collectively, "Claims"), except to the extent caused by the negligence or willful misconduct of any of the Indemnities. Licensor shall give notice to Licensee of any Claim as soon as reasonably possible.

(b) Licensee shall, at its sole cost and expense, discharge, by bonding or otherwise, any mechanic's lien filed against the Adjacent Premises and/or the Noncontiguous Building by reason of Licensee's exercise of its rights hereunder, within thirty (30) calendar days after Licensee receives notice of the filing of such lien. If such mechanic's liens are not discharged

by bonding or otherwise within thirty (30) calendar days after Licensee receives notice of the filing of such liens, Licensor may elect to discharge such mechanic's liens at Licensee's sole cost and expense, by bonding or otherwise, and Licensee shall reimburse Licensor for such costs within fifteen (15) calendar days of receiving (or refusing) an invoice therefor.

(c) Licensee shall, at its sole cost and expense, cure and remove any violation filed against the Adjacent Premises and/or the Noncontiguous Building by reason of Licensee's exercise of its rights hereunder (including, but not limited to, paying all fines, fees, penalties and interest associated with such violation), within thirty (30) calendar days after Licensee receives notice of the filing of such violation. If such violations are not cured and removed, and if such fines, fees, penalties and interest associated with such violations are not paid, within thirty (30) calendar days after Licensor gives notice to Licensee of the filing of such violations, Licensor may elect to cure and remove such violations, and pay any and all fines, fees, penalties and interest associated with such violations, at Licensee's sole cost and expense, and Licensee shall reimburse Licensor for said costs within fifteen (15) calendar days of receiving (or refusing) an invoice therefor.

(d) If Licensee and/or any individual or entity retained, engaged, hired, employed or otherwise under its control injures

an Indemnified Party and/or damages the Adjacent Premises and/or the Noncontiguous Building or any property contained therein or thereon, Licensee shall promptly report such injury and/or damage to Licensor. In regard to such damage, Licensee shall, at its sole cost and expense, (i) repair such damage in a timely manner; and (ii) restore the damaged areas to its original condition to the condition shown in the Pre-Con Survey. The mode and scope of such repairs shall be determined approved by Licensor's Engineer, which approval shall not be unreasonably denied, conditioned or delayed, based upon the severity of the damage, and the repairs shall be made using materials and workmanship of at least equal quality to what existed prior to the damage caused thereto. If such damage is not repaired as required above, within thirty (30) calendar days or, if such repair cannot reasonably be repaired within such time, if Licensee does not commence a repair within thirty (30) days and diligently prosecute such repair to completion. Licensor may elect to repair such damage (upon first obtaining competitive bidding from three qualified contractors for any expense of \$5,000) at Licensee's sole cost and expense and Licensee shall reimburse Licensor for said repair costs within fifteen (15) calendar days of receiving (or refusing) an invoice therefor.

(e) Licensee shall, at its sole cost and expense, comply with all DOB requirements in connection with any damage to the

Adjacent Premises and/or the Noncontiguous Building (the "DOB Requirements"). To the extent the damage to the Adjacent Premises and/or the Noncontiguous Building is so severe that the tenants or other occupants of the Adjacent Premises and/or the Noncontiguous Building are required by the DOB to be evacuated from the Adjacent Premises and/or the Noncontiguous Building, Licensee shall be responsible for all reasonable costs incurred by the tenants or other occupants of the Adjacent Premises and/or the Noncontiguous Building as a result of such evacuation.

(f) The terms of this Article shall survive the expiration or earlier cancellation or termination of this License and the licenses granted herein.

15. Effectiveness and Term.

The term of the herein License shall commence within ten (10) days of service of a copy of this Order with notice of entry, and shall terminate on the later of: (i) the date on which the DOB permits the removal of the Temporary Protections, the Scaffold and Airspace Access and signs off on any and all respective permits; (ii) twelve (12) months after the date of the first installation of the Temporary Protections or the commencement of the Scaffold and Airspace Access, whichever occurs later, unless Licensor agrees in writing to extend same; or (iii)

the date on which this License may be otherwise terminated by Licensor in accordance herewith (the "Expiration Date").

In addition to the provisions otherwise stated in this License, the following shall continue and survive any expiration, or earlier cancellation or termination of this License (and/or the licenses and rights of access granted to Licensee hereunder) (i) any and all obligations of Licensee to be performed after such expiration or termination, (ii) all obligations of Licensee to indemnify, hold harmless and/or defend Licensor and/or other parties hereunder, and (iii) any and all other obligations (monetary and non-monetary) of Licensee under this License until such time as Licensee has completed all of its obligations under and pursuant to this License provided, however, the foregoing shall not limit or expand the survival of any obligations as otherwise provided herein.

16. **Changes to Drawings:** To the extent Licensee desires to revise, change or otherwise amend any drawings or plans referenced in this License relating to the Adjacent Premises Access, such revisions shall be subject to Licensor's engineer's approval, which shall not be unreasonably denied, conditioned or delayed. Licensor's engineer shall respond to any such changes within ten (10) days after transmission thereof. In the event that Licensor's engineer fails to respond to any proposed changes within the ten (10) day period set forth in the preceding sentence, such proposed changes

shall be deemed approved without further notice to Licensor. Licensor acknowledges that Licensee's drawings and plans are subject to governmental review and approval.

17. **Termination:** In the event Licensee materially breaches this License, which shall include, without limitation: (i) Licensee's failure to timely perform the Remediation Work pursuant to the terms of this License; and (ii) the lapse for any period of time of any insurance coverage required pursuant to the terms of this License, the licenses provided hereunder by Licensor may be revoked upon ten (10) days' written notice of such material breach by Licensor to Licensee, unless Licensee cures such material breach within the 10-day notice period (or, if the breach cannot reasonably be cured within such 10-day period, unless Licensee commences to cure the breach within such 10-day period and diligently prosecutes the cure to completion thereafter.

18. **Notices.**

(a) Any notices, demands, requests, or communications (collectively "Notices") required or permitted to be given pursuant to the provisions of this License shall be in writing and sent by hand or by (a) national overnight delivery service, or (b) personal delivery addressed as follows (or to such other addressee or address as may be designated by any party hereto by notice addressed to each of the other parties listed below) or with respect to notices to Licensor, by email:

To Licensee:

East 56th Del, LLC, c/o A&R Properties Group 2041 Fifth Avenue New York, New York 10035 Attention: Joshua Asherian

With a copy to:

Eric M. Bates, Esq.
401 West End Avenue
7th Floor
New York, NY 10024; and

Quinn McCabe LLP
9 East 40th Street, 14th Floor
New York, New York 10016
Attn: Christopher P. McCabe, Esq.
Attn: James P. Kelly, Esq.

To Licensor:

930 Third Avenue Corp.
c/o JPB Enterprises Inc.
49-39 Van Dam Street
Long Island City, New York 11101 Attention:
Steven M. Bari

With a copy to:

Gallet Dreyer & Berkey, LLP
845 Third Avenue
5th Floor
New York, New York 10022
Attention: Mark B. Brenner, Esq.

(b) Any notice sent by hand or by a national overnight courier shall be deemed given upon receipt or refusal. Notwithstanding the foregoing, whenever under this License a notice is (i) received or refused on a day which is not a business day, the day of receipt or refusal shall automatically be extended to the next business day; and (ii) delivered by hand

or by overnight courier (or so attempted, but refused), it shall be deemed given on the day of delivery unless delivery is made after 5:00 p.m. and/or not on a business day, in which event delivery shall be deemed given on the next occurring business day. (c) Any notice given hereunder may be given by counsel to the parties.

19. No Representation:

(a) Licensee's being granted the license herein shall not be deemed to be (i) an opinion, statement, representation, acknowledgment or agreement as to the legality adequacy, sufficiency, correctness or compliance of the Project with applicable laws and regulations, including, without limitation, the Americans with Disabilities Act (42 U.S.C.A. sec. 12101 et seq.), and Licensee shall be solely responsible therefor. Licensee shall have full responsibility for obtaining and maintaining the required governmental permits and approvals for the Adjacent Premises Access and complying with all Applicable Law; (ii) any representation as to the condition of the Adjacent Premises or its fitness for Licensee's purposes by Licensor; (iii) the creation of any estate in land in favor of either Licensee or the Licensor; (iv) a grant to either the Licensee or the Licensor of a leasehold or any other property interest in the property of the Licensee and/or the Licensor, respectively.

(b) This so-ordered License is pursuant to the laws of the State of New York, and the herein Court retains jurisdiction to decide any dispute arising out of this Order, relating to this Order, and or under this Order.

(c) This so-ordered License contains all of the terms decreed by the Court; and does not merge any prior agreements between the Licensee and the Licensor.

(d) This so-ordered License confers rights and benefits only upon the Licensee and the Licensor, but Licensee and Licensee each acknowledge and agree that the access granted and the work performed at the Adjacent Premises and the Noncontiguous Building pursuant to the licenses granted hereunder will be performed by the Licensee's Construction Team.

(d) Any failure by either the Licensee or the Licensor to insist upon the strict performance by the other of any of the provisions of this License shall not be deemed a waiver of any of the provisions hereof, and the non-waiving party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance by the other party of any and all of the provisions of this Court ordered License to be performed by the other party; and it is further

ORDERED that Licensee shall post with the Clerk of New York County an undertaking in the amount of \$ _____ to be determined by a JHO/Special Referee, to cover reasonable

attorneys and other professional, such as engineering and architectural, fees, incurred by Licensor as the result of this License and Licensee's entry upon the Adjacent Premises and/or Noncontiguous Building pursuant to the License, and after the first ninety days of the License, or thirty (30) days after the amount is determined by such JHO/Special Referee, whichever is later, such amount shall be paid by Licensee to Licensor; and it is further

ORDERED that this matter having come on before this court on November 3, 2021 on application of the Licensee for a license pursuant to Real Property and Proceedings Law § 881 at oral argument of the written submissions, and further submissions made thereafter, and the Licensee having been represented in connection therewith by James Patrick Kelly, Esq., and the Licensor having been represented in connection therewith by Eugene H. Goldberg, Esq., pursuant to CPLR 4317, and it appearing to the court that a reference to determine is proper and appropriate pursuant to CPLR 4317 (a), it is now hereby

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the following individual issue of fact, which is hereby submitted to the JHO/Special Referee for such purpose:

(1) the issue of the amount of an undertaking, to cover reasonable attorneys' fees and other professional, such as

engineering and architectural, fees incurred by Licensor as the result of Licensee's entry upon the Adjacent Premises and Noncontiguous Building pursuant to this License, to be posted by Licensee with the Clerk of New York County, and such amount to be paid by Licensee to Licensee after the first ninety days of the License, or thirty (30) days after the amount is determined by such JHO/Special Referee, whichever is later; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for Licensee shall, within fifteen (15) days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the

information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly.

DECISION

This court agrees with Petitioner that Real Property Actions and Proceedings Law ("RPAPL") § 881 has been "'upheld against every constitutional objection that could conceivably be heard'", Sunrise Jewish Center of Valley Stream, Inc. v Lipko, 61 Misc2d 673, 675 (Sup Ct Nassau County 1969), citing Chase Manhattan Bank v Broadway, Whitney Co, 57 Misc2d 1091 (Sup Ct, Queens County, 1968), affd 24 NY2d 927 (1969). Therefore, a declaratory judgment

upholding the constitutionality of RPAPL § 881 and in favor of Petitioner must be rendered.

As stated in Matter of Dorn Holdings, LLC v 152 W. 58th Owners Corp., 149 AD3d 518, 519 (1st Dept 2017):

"Supreme Court also did not abuse its discretion in granting respondents' attorneys' and engineers' fees. 'A property owner compelled to grant a license should not be put in a position of either having to incur the costs of a design professional to ensure petitioner's work will not endanger his property, or having to grant access without being able to conduct a meaningful review of petitioner's plans'".

Thus, Licensee must pay Licensor the reasonable attorneys' and other professional fees incurred by Licensor in the course of Licensee's pursuit of the herein License.

Finally, in an exercise of its discretion, this court declines to order that Petitioner pay Respondent a monthly license fee for access to the Adjacent Premises and Noncontiguous Building of Respondent, which access is necessary for Petitioner to carry out façade repairs mandated by the New York City Façade Inspection Safety Program, formerly known as Local Law 11. Respondent does not assert that Petitioner's façade inspections, restoration and repair work will entail substantial interference with the use and enjoyment of Petitioner, its tenants and other occupants of either the Adjacent Premises or the Noncontiguous Building. On that basis, the facts at bar are distinguishable from those of Matter of 400

E57 Fee Owner LLC v 405 East 56th Street, LLC, 193 AD3d 626, 627 (1st Dept 2021), wherein the roof protection petitioner therein sought to install "would completely prohibit the tenants of the terraced apartments from using any portion of their terraces."

Debra A. James

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<u>11/12/2021</u> DATE		<u>DEBRA JAMES, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE