

April 11, 2014

**VIA EMAIL**

Hon. Kathleen H. Burgess  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223

Re: Case \_\_\_\_\_ - Complaint of 341-363 West 50<sup>th</sup> Street Development Company, L.P. Against Consolidated Edison Company of New York, Inc. for Negligence Resulting in Property Damage

Dear Secretary Burgess:

Pursuant to Rules 12.1 and 13.15 of the New York State Public Service Commission's Rules of Procedure, 16 NYCRR §§ 12.1 and 13.15, attached please find the Complaint of 341-363 West 50<sup>th</sup> Street Development Company, L.P. Against Consolidated Edison Company of New York, Inc. for Negligence Resulting in Property Damage.

Please contact me with any questions.

Very truly yours,

COUCH WHITE, LLP

*Adam T. Conway*

Adam T. Conway

ATC/glm

cc: Marc Richter, Esq. (via e-mail; w/attachment)

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**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Complaint of 341-363 West 50<sup>th</sup> Street Redevelopment  
Company, L.P. Against Consolidated Edison Company  
of New York, Inc. For Negligence Resulting in  
Property Damage**

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Case \_\_\_\_\_

**COMPLAINT OF 341-363 WEST 50<sup>TH</sup> STREET REDEVELOPMENT COMPANY., L.P.  
AGAINST CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.  
FOR NEGLIGENCE RESULTING IN PROPERTY DAMAGE**

**Dated: April 11, 2014**

**COUCH WHITE, LLP  
540 BROADWAY  
P.O. BOX 22222  
ALBANY, NEW YORK 12201-2222  
518-426-4600**

## PRELIMINARY STATEMENT

Pursuant to Rules 12.1 and 13.15 of the New York State Public Service Commission's ("Commission") Rules of Procedure, 16 NYCRR §§ 12.1 and 13.15, 341-363 West 50<sup>th</sup> Street Redevelopment Company, L.P., also known as "Polyclinic," hereby files this Complaint requesting the Commission hold that:

- 1) Consolidated Edison Company of New York Inc. ("Con Edison") must immediately repair a Con Edison-owned vault that is leaking water into property owned by Polyclinic;
- 2) Con Edison's failure to properly operate and maintain its leaking vault constitutes negligence under General Rule 21.4 of Con Edison's Schedule for Electric Service ("Electric Tariff"); and
- 2) Con Edison is responsible for bearing the cost of materials and installation to fix the property damage its negligence caused.

## STATEMENT OF FACTS

Polyclinic is the owner of a United States Department of Housing and Urban Development subsidized multiple dwelling apartment building, located at 345 West 50th Street, New York, New York 10019 (the "Property"). The Property is home to many low income tenants. The sidewalk in front of the Property contains a vault owned by Con Edison ("Vault"). The Vault, which extends into the Property's sub-basement ("Sub-basement"), is an independent concrete compartment housing Con Edison equipment. The Vault abuts the Sub-basement on three sides.

In November 2008, Grenadier Realty, Inc. ("GRC"), the Property manager, conducted an inspection of the Property and noticed water entering the Sub-basement through a leak in the Vault. GRC immediately sent a letter, included as **Exhibit A**, notifying Con Edison of

the problem and requesting Con Edison fix the leak. On February 2, 2009, Con Edison responded by letter requesting an estimate of the damage, but made no mention of fixing the leak. A copy of the letter is attached hereto as **Exhibit B**. Dissatisfied with Con Edison's response, Starrett Corporation, acting on behalf of its affiliate Polyclinic, submitted a formal complaint by letter dated February 5, 2009, attached hereto as **Exhibit C**, to the Commission and Con Edison's general counsel seeking an immediate resolution. Subsequently, in a letter dated February 9, 2009, included as part of **Exhibit C**, the Commission escalated Polyclinic's concerns to senior staff at Con Edison directing them to remedy the situation as soon as possible.

Over the next several years, Polyclinic and GRC attempted to work with Con Edison to resolve the water infiltration issue. Early in the fall of 2011, Con Edison visited the Property to pump out the Vault and supposedly fix the leak. Unfortunately, in February 2013, GRC discovered that the Vault was still leaking water into the Sub-basement. In response to GRC's latest complaint on the issue, Con Edison conducted a field test on February 15, 2013. That field test resulted in an email, attached hereto as **Exhibit D**, wherein a Con Edison representative acknowledges that the Vault was indeed leaking into the Sub-basement.

Notwithstanding its previous determination that the Vault was leaking, on April 1, 2013, Con Edison informed GRC through an email, attached hereto as **Exhibit E**, that a dye test was necessary to determine if water was leaking from the Vault into the Sub-basement. According to Con Edison, the dye test could not be completed until sometime in May, 2013, and any work to correct the Vault would take until the end of 2013 to complete given other priorities. Consequently, GRC notified Con Edison that its proposed repair timeframe was unacceptable and that the leak required immediate repair, at which point Con Edison promised to expedite the

process. In September 2013, however, Con Edison advised GRC that the Vault leak would be put on hold until sometime in 2014 due to an “internal...job crunch.”

The leak, first identified in 2008, still has not been fixed. In the meantime, the leak has caused substantial damage to the walls and ceiling in the immediate area surrounding the leak. As a result, renovation of the Sub-basement is necessary to maintain the structural integrity of the Property for the safety of its tenants.

In 2014, Polyclinic retained Stone Engineering P.C. to conduct an assessment of the Sub-basement damage. Stone Engineering issued a report dated March 13, 2014 (“Report”) detailing the deteriorated condition of the Sub-basement and identifying Con Edison’s failure to properly maintain the Vault as the cause of the damage. The substantial nature of the damage requires complete replacement of the Sub-basement ceiling, which is expected to cost \$456,000 to repair. The Report contains a series of pictures highlighting the location of the Vault relative to the Premises and the damage to the Sub-basement caused by water infiltration from the Vault. A copy of the Report is attached hereto as **Exhibit F**.

This Complaint is necessitated by Con Edison’s abject failure to properly repair and maintain the Vault, a part of its electric system. In fact, other than pumping water out of the Vault in 2011, Con Edison has undertaken no action to correct the problem. Polyclinic and GRC have attempted numerous times over the course of six years to reach a resolution of this issue with Con Edison. However, those efforts have ultimately been unsuccessful and Polyclinic is therefore asking the Commission to order that Con Edison has a responsibility under its Electric Tariff to immediately correct the condition of the Vault and pay for the damage to the Sub-basement caused by the leak.

## ARGUMENT

### **CON EDISON MUST FIX ITS LEAKING VAULT AND PAY FOR THE DAMAGE CAUSED BY ITS NEGLIGENCE**

As set forth below, Con Edison is liable to Polyclinic for the negligent maintenance of its Vault, which has resulted in considerable damage to the Sub-basement.

#### **1. Con Edison Owes a Duty to Polyclinic Under its Electric Tariff to Operate and Maintain its Equipment and Structures on the Property Free From Defect**

Duty is defined as an obligation to conform to a particular standard of conduct towards another, to which the law will give recognition and effect.<sup>1</sup> Such a duty automatically arises where two parties enter into a contractual relationship.<sup>2</sup> Notably, the Commission and New York courts have held that tariffs amount to a binding contract between the utility and its customers.<sup>3</sup> According to General Rule 21.4 of the Electric Tariff, Con Edison is liable for “injuries or damages resulting from [Con Edison’s] negligence in the supply or use of electricity or from the presence or operation of the Company’s structures, equipment, wires, pipes, appliances or devices on [a] customer’s premises.”<sup>4</sup> The Electric Tariff therefore imposes a duty on Con

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<sup>1</sup> Carillo v. Kreckel, 43 A.D.2d 499, 501 (App. Div. 4th Dep’t 1974).

<sup>2</sup> International Fidelity Ins. Co. v. Gaco Western, Inc., 229 A.D.2d 471, 474 (App. Div. 2d Dep’t 1996).

<sup>3</sup> See Case 91-E-1011, *Appeal by both Consolidated Edison Company of New York, Inc. and Gannett Transit of the Informal Decision Rendered Partially in Favor of Gannett Transit*, Commission Determination (July 26, 1994) at 28; Case 26358, *Complaints of Westledge Nursing Home, New Rochelle Nursing Home, Morris Park Nursing Home and Bethel Nursing Home against Consolidated Edison Company of New York, Inc.*, Commission Determination (September 2, 1988); see also Krasner v. New York State Elec. & Gas Corp., 90 A.D.2d 921, 921-22 (App. Div. 3d Dep’t 1982).

<sup>4</sup> Electric Tariff General Rule 21.4.

Edison to ensure that the presence of Con Edison's Vault (which is a Con Edison structure that abuts the Property) does not cause damage to Polyclinic's Property.

**2. Con Edison Breached its Duty to GRC by Neglecting to Properly Maintain the Vault and Correct the Leak Within a Reasonable Amount of Time**

A company is liable for negligence if it fails to act with appropriate care given the circumstances.<sup>5</sup> To recover for negligence a person must demonstrate that (1) the company owed the person a cognizable duty of care; (2) the company breached or failed to exercise that duty; and (3) the person suffered injuries as a proximate result of that failure.<sup>6</sup> Con Edison had a duty to Polyclinic to ensure that the leaking Vault did not cause damage to the Sub-basement. Con Edison has breached and continues to breach that duty by failing to fix the leak.

Con Edison has known since 2008 that the Vault is leaking. In fact, as shown in an email attached as **Exhibit D**, Con Edison previously has conceded that water is leaking into the Sub-basement through the Vault wall. Yet, Con Edison has taken no steps to correct the problem. For example, despite the Commission's involvement in 2009, Con Edison made virtually no effort to fix the water leak between 2009 and 2013.<sup>7</sup>

As shown by photographs 11 through 13 of the Report, a steel grate serves as part of the Vault ceiling. Water can easily penetrate through the gaps in the grate and collect on the

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<sup>5</sup> Palsgraf v. Long Island R. Co., 248 N.Y. 339, 341 (1928).

<sup>6</sup> Solomon v. City of New York, 66 N.Y.2d 1026, 1027 (1985). Under New York law, the statute of limitations for a negligence claim is three years. However, as noted herein tariffs represent a contract between the utility and its customers, for which there is a six year statute of limitations. Because the water infiltration was first reported to Con Edison in November, 2008, this complaint is timely.

<sup>7</sup> At some point in 2011, Con Edison pumped water out of the vault, but that action provided only temporary relief and did nothing to address the underlying cause of the leak.

Vault floor. Given the extent of damage to the Sub-basement, it is apparent that water has frequently accumulated on the Vault floor between 2008, when the leak was first reported to Con Edison, and now. The Report concludes that the damage to the Sub-basement is “directly related to Con Edison’s inadequate maintenance of the Vault over a long period of time.”<sup>8</sup>

Further, Con Edison has displayed no sense of urgency to resolve the issue within a reasonable amount of time. Even though Con Edison conducted a field test on February 15, 2013, and determined that the Vault was indeed leaking into the Sub-basement, it later claimed that a dye test must be completed to determine if there is a leak. It has been more than a year since the Field Test, however, and Con Edison has not even scheduled the dye test. Instead, the Vault continues to leak and the Property damage continues to occur.

Under New York law, negligent conduct is a “proximate cause of harm to another if such conduct is a substantial factor in bringing about the harm.”<sup>9</sup> Con Edison’s continued and sustained failure to take even preliminary steps to remedy an issue it has known about for six years is negligent behavior for which Con Edison is liable under General Rule 21.4 of its Electric Tariff. Based on Con Edison’s failure to act since 2008, Polyclinic is forced to seek Commission involvement at this time.

**3. Con Edison’s Failure to Stop Water from Infiltrating Through the Vault Caused Substantial Damage to the Sub-basement**

According to the Electric Tariff, Con Edison is liable for damages resulting from its negligence in the supply of electricity or from the presence of its structures on a customer’s property. Clearly, the damages to the Sub-basement are directly related to Con Edison’s

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<sup>8</sup> Report at 1.

<sup>9</sup> Hoggard v. Otis Elevator Co., 52 Misc. 2d 704, 707 (Sup. Ct. New York Cnty. 1966).



negligence, and a Con Edison representative admitted as much in an email dated February 18, 2013. As detailed in the Report, the persistent leak caused “ponding of water on the Vault floor and in the immediate surrounding areas creating a severe water/moisture/humidity issue.”<sup>10</sup> Over time, that environment eroded the structural integrity of the walls surrounding the Vault, resulting in cracked concrete, corroded structural steel members, and damaged reinforced concrete footings in the Sub-basement. Based on these observations, the Report concludes that damage to the Sub-basement is the direct result of Con Edison’s failure to properly maintain the Vault, which caused continuous water and moisture infiltration and led to consistently high levels of humidity in the room where the Vault is located. Indeed, other than the part exposed to the Vault leak, no other portion of the Sub-basement requires repair, which further demonstrates that the Vault leak is the cause of the damage.

As a result of the Vault leak, portions of the Sub-basement are beyond repair and must be replaced. The Report concludes that the anticipated cost for replacing the cellar slab is \$456,000. And, while Polyclinic is anxious to repair the cellar slab as soon as possible, the Report clearly states that repairing the Sub-basement before the underlying Vault leak is eliminated would be a “wasted effort” that will only result in continued water damage. Nevertheless, the deterioration of the Sub-basement is now a life-threatening safety issue, and Polyclinic must take immediate action to repair the damage caused by Con Edison. Simultaneously, Con Edison must take immediate action to remediate the water infiltration.

Because the damage to the Sub-basement was caused by Con Edison’s negligence, the Commission should direct Con Edison to pay the entire cost of replacing this cellar slab. Furthermore, because the negligent condition has yet to be repaired by Con Edison, water

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<sup>10</sup> Report at 1.

infiltration is continuing and may cause additional damage by the time Con Edison ultimately repairs the faulty condition. Accordingly, the Commission should order Con Edison to repair the Vault immediately. In the alternative, Polyclinic reserves its right to supplement this Complaint with a request for additional damages if necessary.

**CONCLUSION**

For all of the foregoing reasons, Polyclinic respectfully requests the Commission to issue a ruling requiring Con Edison to: (1) immediately repair the Vault to stop water leaking into the Sub-basement; and (2) pay to Polyclinic the full cost of repairing damage to the Sub-basement caused by Con Edison's negligent maintenance of the Vault, currently estimated at \$456,000.

Dated: April 11, 2014  
Albany, New York

Respectfully submitted,



Robert M. Loughney, Esq.  
Adam T. Conway, Esq.  
Michelle K. Piasecki, Esq.  
COUCH WHITE, LLP  
*Counsel for Polyclinic*  
540 Broadway  
P.O. Box 22222  
Albany, New York 12201-2222  
(518) 426-4600

## **EXHIBIT A**



\*Grenadier Realty Corp.  
Purchasing Department  
155 Elmira Loop  
Brooklyn, New York 11239  
718-240-4664  
Fax 718-642-7511

November 3, 2008

Con Edison  
4 Irving Place  
Room M020  
New York, NY 10003

Attention: Mr. Robert Kusher, Damages

Re: Ticket # ME 08019845  
Ref: Polyclinic (341-363 W. 50 St. Redev Co LP)  
345 W. 50<sup>th</sup> Street  
New York, NY

Dear Mr. Kusher,

Please be advised that we are the managing agents for the owner of the above property. A sidewalk vault owned by Con Ed located at the above referenced address has not been properly maintained. As a result significant water has accumulated and entered the building as well as causing extensive damage to the sidewalk and structural steel supporting the sidewalk. This condition needs to be corrected immediately so we can proceed with the required repairs and seek compensation for such repairs from Con Edison. Estimates of the repair can not be furnished until the condition is rectified, as the condition is a continuing condition.

Kindly advise the undersigned when the required repairs have been completed. Hopefully immediately, before someone is hurt. For now this claim is for property damage only, but if condition continues the public will be at risk of injury.

Very truly yours,

GRENADIER REALTY CORP.  
As Agents for  
341-363 W. 50th St. Redev Co. LP

Patrick J. LoRusso  
Vice President  
Director of Purchasing and  
Technical Services

Cc: N. Weinthal  
S. Salup  
R. Vardy

## **EXHIBIT B**

02/05/2009 09:16

FEB-02-2009 18:46

1 212 614 1453  
CO ED MANHATTAN ELECT OPS

NO. 604 D02

1 212 614 1453 P.01/01



Consolidated Edison Company  
of New York, Inc.  
4 Irving Place  
New York NY 10003  
www.conEd.com

Feb 2, 2009

Polyclinic (341-383 w. 50 St. Redev Co LP)  
345 W. 50 St.  
New York, NY

Re: Claim # C-4A0017-09

Dear Mr. Patrick LoRusso

A review of our file indicates that our telephone conversation (1/23/09) with Cheryll requesting the cost of repairs you are seeking for alleged water damage has not been received. Until we receive this information, we will be unable to sufficiently examine and decide your claim. If we do not hear from you in the next few weeks, our file will be closed.

If you have any questions, please call me at (212) 460-5426.  
My fax number is (212) 614-1453.

Very truly yours,

A handwritten signature in black ink that reads 'Thomas J. Thurston'.

Thomas J. Thurston  
Manhattan Claims

TOTAL P 01

## **EXHIBIT C**

**STARRETT CORPORATION**

HOUSING & REAL ESTATE DIVISION  
HERON TOWER  
7TH FLOOR  
70 EAST 88TH STREET  
NEW YORK, NY 10022  
TEL: (212) 350-9909 FAX: (212) 350-9911

February 5, 2009

**VIA OVERNIGHT MAIL**

Charles E. McTiernan, Jr.  
General Counsel  
Consolidated Edison Company of  
New York, Inc.  
4 Irving Place  
New York, NY 10003

**RE: Polyclinic 345 W. 50<sup>th</sup> Street, New York, NY  
Claim #C-4A0017-09**

Dear Mr. McTiernan:

We are writing this letter on behalf of the above development in which our subsidiary is the general partner. The development is a United States Department of Housing and Urban Development ("HUD") Section 8 subsidized multiple dwelling apartment building housing very low income tenants, regulated by both HUD and the New York City Department of Housing Preservation and Development. For your information, I am enclosing a letter sent by Thomas Thurston of Con Edison to Mr. Patrick LoRusso, of our management company Grenadier Realty Corporation in connection with payment of the above claim.

Ordinarily I would not be involved at my level, nor seek to involve you at your level, but our principal issue is to correct the condition causing the water infiltration to the premises from the ConEd vault which still continues and has not been abated. Compensation for the damage is secondary.

All ConEd has offered is to consider a bill for damages, and to provide the development with a time limit to submit bills or the file will be closed. We cannot provide a bill for the full amount of the damage because the water infiltration continues and is causing further damage. Whether or not the file is closed, is irrelevant to a claim and ConEdison's responsibility for the condition it caused.

By copy of this letter I am notifying the New York State Public Service Commission, as a formal complaint against ConEdison for not taking corrective action to remedy the water infiltration.

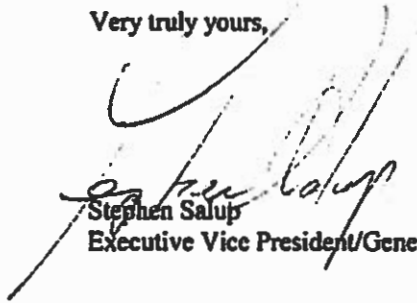
X:\LAURAUOB\FOLDERS\POLYCLINIC\#345-343 W 50TH ST\CM 09 05 09 by dww



Please have an appropriate staff member contact Patrick LoRusso at (718) 240-4664 to make arrangements to immediately correct the condition. Needless, to say whether or not your claims department closes their files, we will still bring an action against ConEd for the damages caused. We expect that as a public utility and as a responsible citizen of the City of New York, that ConEdison will correct the damage that it has caused. We trust that the ConEd legal department is more attentive than your claims department in understanding what Con Edison's obligations are.

Your intercession and assistance would be greatly appreciated.

Very truly yours,



Stephen Salup  
Executive Vice President/General Counsel

SS/lfc

Enclosure(s)

cc: Pat LoRusso  
Paul Kahn  
Thomas Thurston  
New York State Public Service Commission via overnight mail  
Chairperson  
Office of Consumer Services  
Three Empire State Plaza  
Albany, NY 12223-1350

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# STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

PUBLIC SERVICE COMMISSION

Internet Address: <http://www.dps.state.ny.us>

OFFICE LOCATIONS  
3 EMPIRE STATE PLAZA,  
ALBANY, NY 12223-1350

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ROBERT E. CURRY JR.  
JAMES L. LAROCCA  
*Commissioners*



90 CHURCH STREET  
4TH FLOOR  
NEW YORK, NY 10007-2919

295 MAIN STREET  
SUITE 1050  
BUFFALO, NY 14203-2508

PETER MCGOWAN, *General Counsel*  
JACLYN A. BRILLING, *Secretary*

February 9, 2009

Starrett Corp  
Mr. Stephen Salup  
70 East 55th Street  
New York, NY 10022

Dear Mr. Salup:

Your case number is: 904080

This letter acknowledges your recent contact with our Office of Consumer Services regarding your concern with Con Edison of New York and to advise you of the process by which this matter will be addressed.

Since Con Edison of New York did not previously resolve this matter to your satisfaction, we **have escalated your concern to senior staff at the company.** We directed them to contact you and resolve the matter you brought to our attention. By the time you receive this letter, you should have spoken with a company representative to discuss your concerns and provide you with a resolution or a date by which the company expects to resolve your concern. **We have advised the company to reach a resolution with you as soon as possible.**

If you have questions regarding the company's response to you, please contact the designated senior staff person at Con Edison of New York. If the company has not contacted you with its initial acknowledgement, does not resolve your concern within two weeks or by the date it promised a resolution, or if you are dissatisfied with the company's response, you should contact us at 1-800-342-3377 for a complete investigation of the matter. **If you report back to us that you are dissatisfied with the company's response, we will initiate an investigation and report our findings to you.**

If you have any questions regarding this process, please contact our office at 1-800-342-3377 and refer to Case Number 904080.

Sincerely,

*John Hoch*  
Office of Consumer Services

FEB 10 2009

**PLEASE NOTE: If you are not satisfied with the response you receive from Con Edison of New York, please contact us at 1-800-342-3377 for an investigation.**

## **EXHIBIT D**

**RE: POLYCLINIC, 345 West 50th St., NY, NY 10019 <External Sender>**

Barbara Tillman

**Sent:** Monday, February 18, 2013 9:48 AM

**To:** Shao, Jack [SHAOJ@coned.com]

**Cc:** John Mulholland; Paul Majewski; Patrick LoRusso; Erfe, Anthony [ERFEA@coned.com]; Richard Vardy

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Hi Jack:

Thx for keeping us posted.

Barb

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**From:** Shao, Jack [SHAOJ@coned.com]

**Sent:** Monday, February 18, 2013 8:52 AM

**To:** Barbara Tillman

**Cc:** John Mulholland; Paul Majewski; Patrick LoRusso; Erfe, Anthony; Richard Vardy

**Subject:** RE: POLYCLINIC, 345 West 50th St., NY, NY 10019 <External Sender>

Hi, Barbara:

Our area Project Manager Mr. Antony Erfe and I conducted a field visit last Friday. Mr. Richard Vardy and his Super provided the access. It was determined that there was a leak coming out from the vault area. Moving forward, we will let our vault-team further exam the leak.

I will have you updated.

Jack Shao

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**From:** Barbara Tillman [mailto:BTillman@grcrealty.com]

**Sent:** Thursday, February 14, 2013 12:26 PM

**To:** Richard Vardy

**Cc:** Shao, Jack; John Mulholland; Paul Majewski; Patrick LoRusso; Erfe, Anthony

**Subject:** FW: POLYCLINIC, 345 West 50th St., NY, NY 10019 <External Sender>

**Importance:** High

Hi Richard:

FYI – confirmation from Jack Shao – 3 p.m. tomorrow.

Per Jack's request, pls call him asap to confirm date and time.

THANK YOU JACK!

Barb

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**From:** Shao, Jack [SHAOJ@coned.com]

**Sent:** Thursday, February 14, 2013 12:06 PM

**To:** Barbara Tillman

**Cc:** Patrick LoRusso; John Mulholland; Paul Majewski; Erfe, Anthony

**Subject:** RE: POLYCLINIC, 345 West 50th St., NY, NY 10019 <External Sender>

Hi, Barbara:

As per our conversation, please inform the building manager Richie our tomorrow 3pm arrival. Our local CPM Mr. Anthony Erfe will be there as well. Please provide access to the building and have Richie call me to confirm the date/time.

Jack Shao

## **EXHIBIT E**

**RE: POLY -- CON ED VAULT LEAK <External Sender>**

Shao, Jack [SHAOJ@coned.com]

Sent: Monday, April 08, 2013 9:58 AM

To: Barbara Tillman; Erfe, Anthony [ERFEA@coned.com]

Cc: Patrick LoRusso

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Barbara: I just spoke to Erfe about this. we'll try to expedite the process in view of the situation.

Erfe: please go ahead with I&A's pump inspection prior to the dye test.

Thanks

Jack Shao

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**From:** Barbara Tillman [mailto:BTillman@grcrealty.com]  
**Sent:** Monday, April 08, 2013 9:43 AM  
**To:** Shao, Jack  
**Cc:** Patrick LoRusso  
**Subject:** FW: POLY -- CON ED VAULT LEAK <External Sender>  
**Importance:** High

HI Jack:

Please keep me posted on this -- am concerned.

thx, Barb

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**From:** Barbara Tillman  
**Sent:** Thursday, April 04, 2013 7:17 AM  
**To:** ERFEA@coned.com  
**Cc:** shaoj@coned.com; Patrick LoRusso; John Mulholland; Richard Vardy  
**Subject:** FW: POLY -- CON ED VAULT LEAK <External Sender>

Hello Anthony:

Very glad to hear from you!

Am afraid there is a looming problem: The leak from the vault is going into an area in the sub-basement that is due to be renovated -- Construction is scheduled to start June 1st.

From what I understand it is likely that the leak may damage the newly-renovated areas causing the need for potentially costly repairs.

We are concerned and are alerting you to this situation in the expectation that this additional problem-in-the-making can be avoided.

Hope to touch base with you asap.

Thank you,

Barb

212 628 8646  
917 375 7213

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**From:** Erfe, Anthony [ERFEA@coned.com]  
**Sent:** Monday, April 01, 2013 2:00 PM  
**To:** Shao, Jack; Barbara Tillman  
**Cc:** Richard Vardy; Patrick LoRusso; John Mulholland  
**Subject:** RE: POLY -- CON ED VAULT LEAK <External Sender>

Hello Barbara,

In order to confirm the vault is leaking from the structure we must perform a dye test. The vault is flooded with water and dye is added to

the vault. If the colored water seeps through in to your basement we have confirmation. However, we will be unable to administer the test until the average temperature is warm enough to not cause some kind hazardous condition outside the vault when we add water. Further, we have a number of vaults in the city that require repair also and I need to inform you that we do have a waiting list for vault repair work and that work is prioritized. We expect to perform the dye test sometime in May and then we can determine the scope of work that will be required to correct the condition. If we need to remove the transformer from service to waterproof the vault then we most likely will schedule the work to be completed after the summer period to maintain system reliability to our customers in the area. I wanted to convey that this is a long process and may take until the end of the year to complete.

If you have any questions, please do not hesitate to contact me at 347-203-9161.

Thanks,

Anthony

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**From:** Shao, Jack  
**Sent:** Wednesday, March 20, 2013 4:52 PM  
**To:** Barbara Tillman; Erfe, Anthony  
**Cc:** Richard Vardy; Patrick LoRusso; John Mulholland  
**Subject:** RE: POLY -- CON ED VAULT LEAK <External Sender>

Hi, Barbara:

We have not forgotten about 345 W50 st vault leak. Our area project manager Antony Erfe has a proven record of excellent customer service. You are at good hand.

Jack Shao

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**From:** Barbara Tillman [mailto:BTillman@grcrealty.com]  
**Sent:** Wednesday, March 20, 2013 3:11 PM  
**To:** Shao, Jack  
**Cc:** Richard Vardy; Patrick LoRusso; John Mulholland  
**Subject:** POLY -- CON ED VAULT LEAK <External Sender>  
**Importance:** High

Hi Jack:

Am afraid that the vault leak is being forgotten by Con Ed. It really must be repaired.

Please advise,  
Thank you,

Barb

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**From:** Richard Vardy  
**Sent:** Wednesday, March 20, 2013 2:21 PM  
**To:** Barbara Tillman  
**Subject:** RE: POLY -- CON ED VAULT LEAK

Barb

No one has come about the vault.

Richard

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**From:** Barbara Tillman  
**Sent:** Tuesday, March 05, 2013 1:24 PM  
**To:** Shao, Jack  
**Cc:** John Mulholland; Beverly Bailey; Patrick LoRusso  
**Subject:** RE: LANDS END II -- 265 Cherry Street, Manhattan <External Sender>

Thx Jack. Never ending problems....

So long as ur following up on the W.50th St. leak, I know it will be done. It is important, as you know!

## **Update on 345 West 50th vault leaking**

Shao, Jack [SHAOJ@coned.com]

**Sent:** Monday, September 16, 2013 8:52 AM

**To:** Barbara Tillman

**Cc:** Erfe, Anthony [ERFEA@coned.com]

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Good Morning Barbara:

It seems that our internal department faces a severe job crunch between now and the end of the year. As a result, 345 W 50<sup>th</sup> street vault's waterproofing case will have to hold off until next year. Unless you present a strong reason as to why it should be done by this year, we will follow the aforementioned scheduling.

Thank you for your patience.

Jack Shao



## **EXHIBIT F**



March 13, 2014

341-363 West 50 Street Redevelopment Co.  
c/o Grenadier Realty, Inc  
155 Elmira Loop  
Brooklyn, NY 11239

**Re: Conditions Report - 345 West 50 Street, NYC (a.k.a. Polyclinic)**

Dear Sir/Madam:

Stone Engineering, PC (SEPC) has been retained to prepare design/construction documents for partial cellar slab replacement to remediate the severely deteriorated steel framing and concrete slab. The limits of the cellar slab replacement are shown on the attached Drawing SK-01, dated February 20, 2014.

The sidewalk in front of the building contains a rectangular shaped Con Edison Vault ("Vault"). The Vault is exposed at the interior sub-cellar level of the subject building (see attached Photo Nos. 01 – 10). The self-contained steel reinforced concrete Vault is an independent chamber sealed off from the sub-cellar cellar area. The Vault is surrounded by Building Owner's premises on three sides and the fourth side extends into the street.

From the sub-cellar level SEPC noted that the Vault is in very poor condition; SEPC observed cracked concrete, corroded structural steel members, and damaged reinforced concrete footings. In addition, SEPC observed water actively leaking/percolating through the self-contained Vault and moisture leaching through the Vault walls; the water and moisture leaks/percolates directly onto structural steel members and reinforced concrete footings. SEPC also observed a significant amount of ponding water on the floor directly below the Vault and in the immediate surrounding areas creating a severe water/moisture/humidity issue.

The Building Owners cannot maintain or take precautions of the continuing condition of water seepage that has caused the extensive damage over time. It is SEPC opinion that the above described conditions are directly related to Con Edison's inadequate maintenance of Vault over a long period of time.

SEPC opened the Vault grate in front of the building and noted that the Vault was filled with a considerable amount of standing water (see Photo Nos. 11 – 13). In addition, Photo Nos. 14 - 15 shows the condition of the north side of the Con Edison Vault; cracked masonry and concrete was observed.

The building sub-cellar contains many rooms. The room where the Vault is located is the only room where the cellar slab shall be replaced to remediate the severely deteriorated steel framing and concrete slab. Attached Photo Nos. 16 – 51 shows the severely deteriorated condition of the ceiling within the building sub-cellar room.

It is SEPC's opinion that the continued water and moisture infiltration, and consistently high levels of humidity in the sub-cellar room where the Vault is located, are a direct result of Con Edison's inadequate maintenance of their Vault. It is further our opinion that the conditions described above, over an extended period of time, have directly impacted the sub-cellar ceiling, damaging it and resulting in its current severely deteriorated condition. The damaged ceiling is pervasive and cannot be repaired; replacement is required.



SEPC was informed that the Building Owners first reported the active water infiltration to Con Edison on November 3, 2008, and several times thereafter requesting remediation.

The design/construction documents prepared by SEPC for partial cellar slab replacement were forwarded to a specialty contractor who provided an estimate in the amount of \$456,000 to remediate the severely deteriorated steel framing and concrete slab. The estimated cost of repair does not account for hidden conditions uncovered during construction and/or further damage to building over time due to the consistently high levels of moisture within the room, lack of ventilation, and high temperatures.

SEPC recommends that the condition of the Vault is immediately corrected and properly maintained by Con Edison. If conditions are not corrected and the Vault is not maintained, the replacement cellar slab will ultimately be damaged by the continued water/moisture/humidity emanating from the Vault, and any maintenance or precautions taken by the Building Owners would be a wasted effort due to the persistent and continued water infiltration.

Please contact the undersigned with any questions and/or further assistance.

Respectfully,

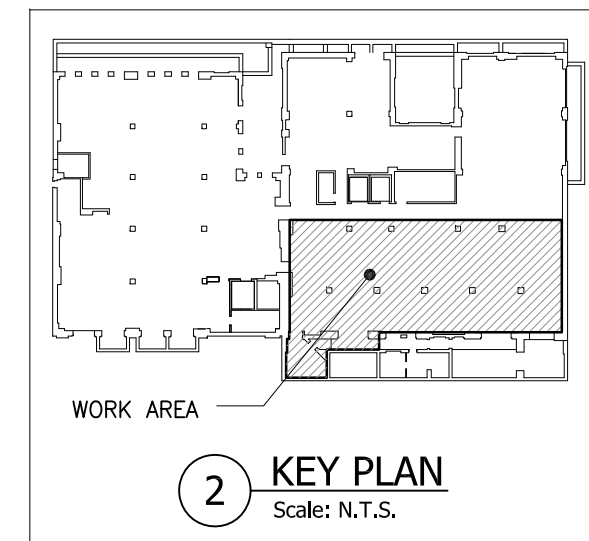


Evan Petkanas, P.E.

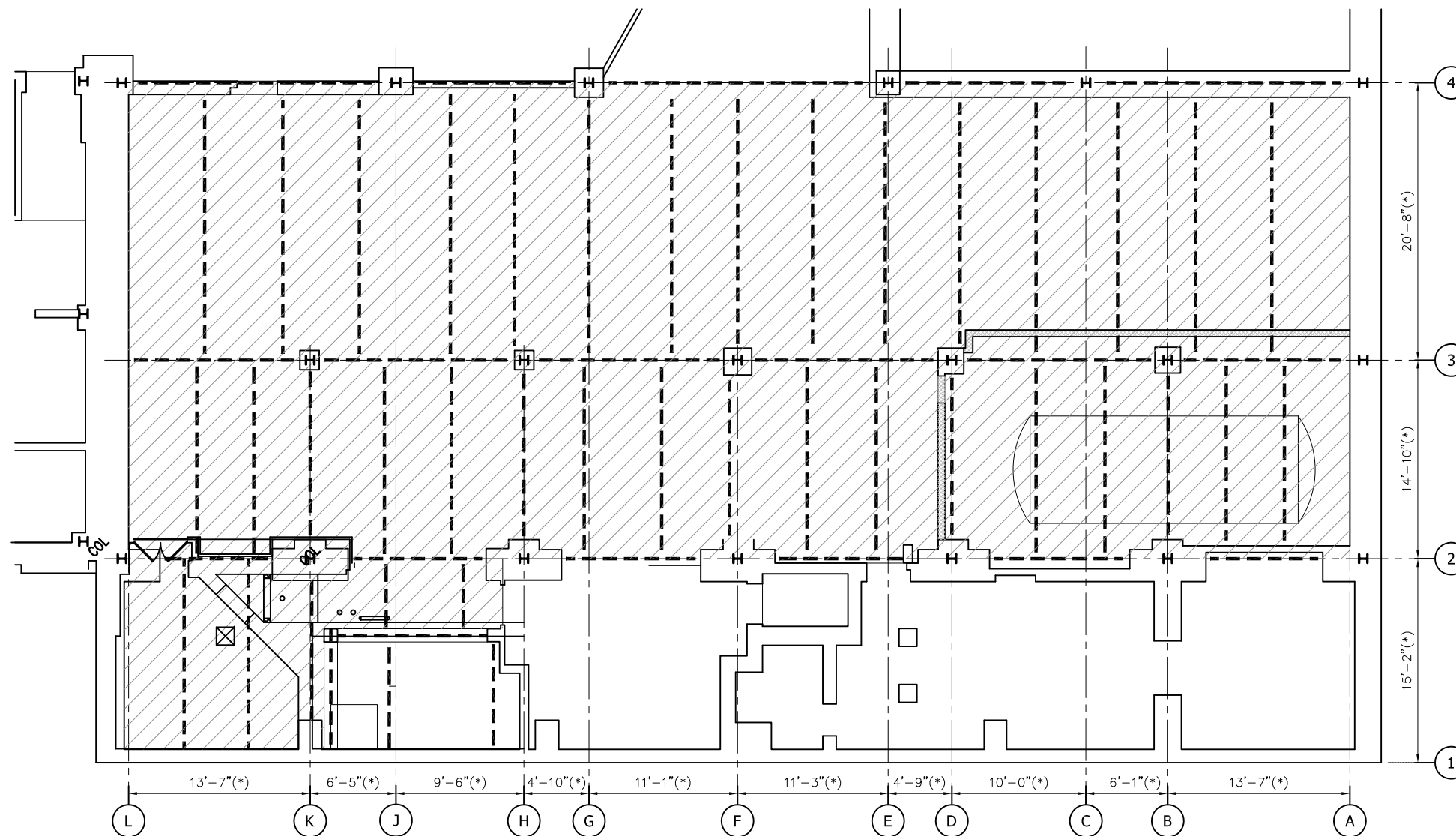
Attachments: As noted above  
cc: Patrick LoRusso, Grenadier Realty  
Paul Kahne, Grenadier Realty  
Office (File)



STONE ENGINEERING, PC  
 38 - 70 REVIEW AVENUE  
 L.I.C., NEW YORK 11101  
 TEL. 718 361-6708  
 www.stoneengineeringpc.com



NOT FOR  
 CONSTRUCTION



**1 CELLAR DEMOLITION PLAN**  
 Scale: N.T.S.

- NOTES:**
- INDICATES EXISTING STEEL BEAM.
  - (\*) INDICATES DIMENSION TO BE V.I.F..
  - ▨ INDICATES DEMOLITION AREA.
  - INDICATES DEMOLITION OF WALL BELOW SLAB.

SEAL & SIGNATURE

REVISIONS:

NO.	DATE	DESCRIPTION

ISSUES:

PROJECT NAME/ADDRESS:

**CELLAR SLAB  
 REPLACEMENT**

**345 W 50 ST  
 NY, NY 10019**

SHEET TITLE:

**CELLAR SLAB DEMOLITION  
 PLAN**

DATE: 02.20.2014

PROJECT No.: 1269

DRAWING BY: RP

CHK BY: EA

DWG NO.:

**SK-01**



Photo No. 01



Photo No. 02





Photo No. 03



Photo No. 04



Photo No. 05



Photo No. 06





Photo No. 07



Photo No. 08





Photo No. 09



Photo No. 10



Photo No. 11



Photo No. 12





Photo No. 13



Photo No. 14





Photo No. 15



Photo No. 16





Photo No. 17

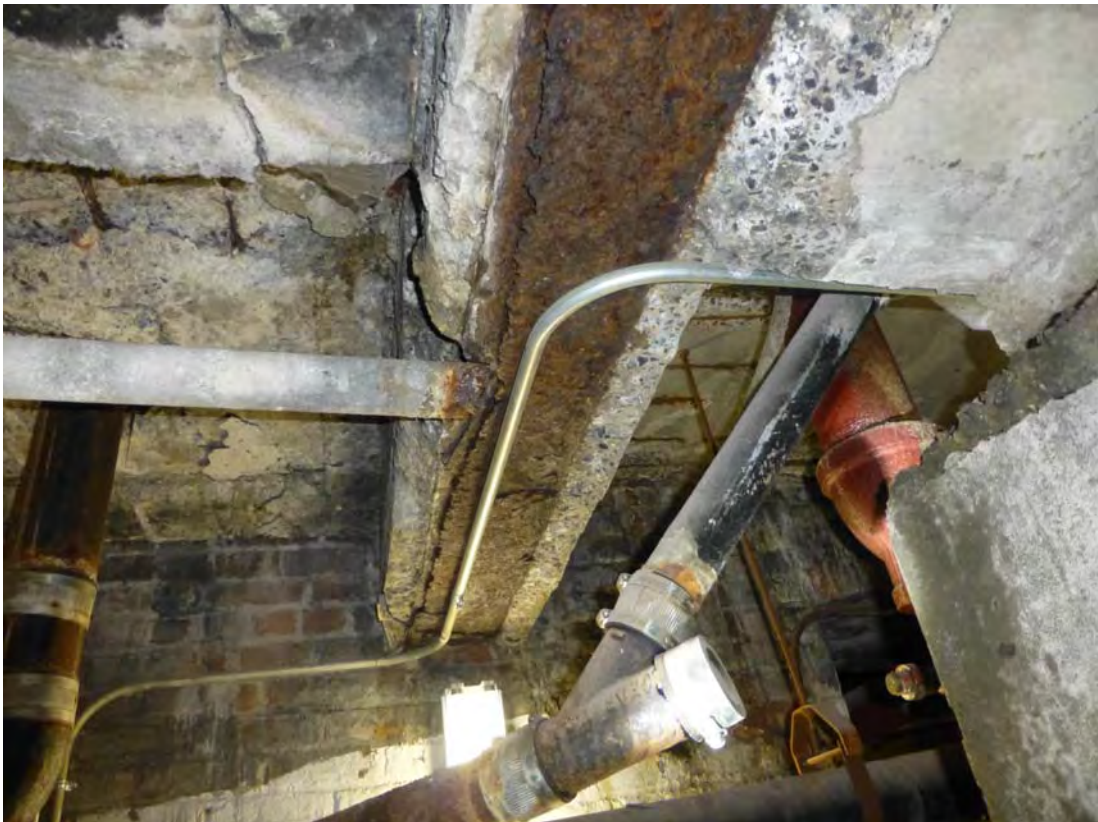


Photo No. 18





Photo No. 19



Photo No. 20





Photo No. 21



Photo No. 22





Photo No. 23



Photo No. 24





Photo No. 25



Photo No. 26





Photo No. 27



Photo No. 28





Photo No. 29



Photo No. 30





Photo No. 31



Photo No. 32





Photo No. 33



Photo No. 34





Photo No. 35



Photo No. 36





2013/12/26 15:15

Photo No. 37



2013/12/26 15:15

Photo No. 38





2013/12/26 15:15

Photo No. 39



2013/12/26 15:15

Photo No. 40





Photo No. 41



Photo No. 42





Photo No. 43



Photo No. 44





Photo No. 45



Photo No. 46





Photo No. 47



Photo No. 48





Photo No. 49



Photo No. 50



**Photo No. 51**