

AMENDMENT OF RIVERWALK EASEMENT AND PROJECT AGREEMENT

This Amendment of Riverwalk Easement and Project Agreement (this “Amendment”) is made and effective as of the _____ day of September, 2021, by and among the BOARD OF BUSINESS IMPROVEMENT DISTRICT NO. 2 (the “BID”), DEHL PROPERTIES, LLC, a Minnesota limited liability company (“Dehl”), HINES ACQUISITIONS LLC, a Delaware limited liability company (“Hines”), and the CITY OF MILWAUKEE, a Wisconsin municipal corporation (“City”).

RECITALS

A. The BID and Patsy and Paul, Inc. (“P&P”) entered into that certain Riverwalk Easement and Project Agreement, dated July 1, 2000, and recorded in the office of the Register of Deeds of Milwaukee County, Wisconsin, on October 1, 2001, as Document No. 8142778, (the “Original Agreement”; capitalized term used in this Amendment and not defined herein having the definitions ascribed thereto in the Original Agreement), a copy of which is attached hereto as EXHIBIT A. The Original Agreement encumbers the Property known as 333 North Water Street in the City of Milwaukee, Wisconsin, and more particularly described on EXHIBIT B hereto (the “Property”). The drawings, plans, and specifications described on EXHIBIT B of the Original Agreement cannot be found; a legible copy of EXHIBIT C of the Original Agreement cannot be found; a legal description of the Riverwalk Easement Areas described in EXHIBIT C of the Original Agreement cannot be found; and a legal description of the Planting Easement Areas described in EXHIBIT F of the Original Agreement cannot be found.

B. Pursuant to the Original Agreement, the BID caused certain repairs and improvements to be made on the Property, and to reflect the obligations of P&P to pay the costs thereof, P&P and the BID entered into (1) an Agreement Regarding Repayment of Riverwalk Improvements Costs dated July 1, 2000 and a related unrecorded Real Estate Mortgage for \$74,390.00 attached as Schedule D thereto (collectively, the “Riverwalk Cost Agreements”), and (2) an Agreement Regarding Repayment of Dockwall Repair Costs dated July 1, 2000 and a related unrecorded Real Estate Mortgage for \$225,400.00 attached as Schedule D thereto (collectively, the “Dockwall Cost Agreements”). The sums due under the Riverwalk Cost Agreements and the Dockwall Cost Agreements have since been paid in full.

C. All of the improvements that will be constructed by the BID on the Property have been completed and consist of landscaping and light poles along the Western edge of the Property as shown on the copy of a recent aerial photo attached as EXHIBIT C hereto and on the copy of the survey (dated July 22, 2021, by Donald C. Chaput of Chaput Land Surveys as Drawing No. 20210714 ALT3847-far) attached as EXHIBIT D hereto (a copy of which is on file in the BID office).

D. On or about February 9, 2017, Dehl purchased the Property from P&P, and on or about May 20, 2021, Dehl and Hines entered into a Purchase Agreement that provides for

Hines to purchase the Property from Dehl, conditioned upon, among other things, Hines obtaining the necessary approvals of its plans for a residential and mixed use development on the Property.

E. The parties hereto now desire to reflect the activities that the BID has undertaken on the Property since 2000, terminate the Riverwalk Cost Agreements and the Dockwall Cost Agreements, and, subject to Hines (or an affiliate of Hines) acquiring title to the Property, to replace the improvements and easements provided in the Original Agreement with the improvements and easements contemplated in the Hines plans as approved by the Architectural Review Board of the BID and by the City Plan Commission of the City of Milwaukee.

AGREEMENTS

In consideration of the promises, the mutual undertakings set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The above recitals are true and correct and hereby incorporated herein.
2. The Riverwalk Cost Agreements (including, without limitation, the unrecorded Real Estate Mortgage attached thereto as Schedule D) and the Dockwall Cost Agreements (including, without limitation, the unrecorded Real Estate Mortgage attached thereto as Schedule D) are hereby fully, unconditionally, and irrevocably terminated, released, and discharged of record, and are of no further force and effect.
3. If (and only if) Hines or an affiliate of Hines (in either case, the “Hines Owner”) acquires title to the Property, then the following terms and conditions set forth in this Section 3 shall apply. If Hines Owner does not acquire title to the Property, then this Section 3 shall not apply and shall be of no force and effect:

a. The Hines Owner shall replace the landscaping along the Milwaukee River as depicted and described in EXHIBIT E hereto. Thereafter, the Hines Owner shall maintain that landscaping, and the Planting Easement and the Planting Easement Areas shall be revised to coincide with that new landscaping. The Hines Owner shall own the landscaping, but it shall be subject to the Planting Easement and the rights of the BID to maintain the same if the Hines Owner fails to do so.

b. The Hines Owner shall construct the walkway and foot bridge to the over-the-water Riverwalk, rebuild the retaining wall [if commercially reasonable; still being investigated], and replace the landscaping between the retaining wall and the sidewalk, as depicted and described in EXHIBIT F hereto. Thereafter, the Hines Owner shall convey the foot bridge to the BID; the Hines Owner shall own and maintain the walkway, the new retaining wall, and the new landscaping between the retaining wall and the sidewalk; the BID shall own and maintain the foot bridge; the Riverwalk Improvements and the Riverwalk Easement Areas shall be revised to coincide with the walkway and the new retaining wall; the walkway and the new retaining wall shall be subject to the Riverwalk Easement (with any Decorations subject to the reasonable approval of the Hines Owner), including the Riverwalk Maintenance and Operation Criteria set forth in EXHIBIT G to the Original Agreement and the rights of the BID to maintain the walkway and the new retaining wall if the Hines Owner fails to do so; and the landscaping between the

retaining wall and the sidewalk shall be part of the Planting Easement Areas and subject to the Planting Easement and the right of the BID to maintain the same if the Hines Owner fails to do so.

c. The City, as the owner of the property (the “City Property”) that abuts and lies to the North of the Property, hereby grants a permanent easement to the Hines Owner over that portion of the City Property lying between the Property and the St. Paul Avenue sidewalk for the Hines Owner to construct and maintain the walkway, the retaining wall, and the landscaping depicted on EXHIBIT F hereto.

4. All notices to be given by one party to another under this Amendment shall be in writing and given by personal delivery or by certified mail, postage prepaid, or by FedEx or equivalent delivery service to the addresses set forth in this paragraph. A notice shall be deemed delivered either upon actual receipt or upon refusal by a party to accept delivery. Any party may change its address for purposes of receiving notice by delivery of written notice in accordance with the requirements of this paragraph.

BUSINESS IMPROVEMENT DISTRICT NO. 2
525 E. Chicago St.
Milwaukee, WI 53202
Attn: Ron San Felippo

DEHL PROPERTIES, LLC
c/o Interstate Development Partners
710 N. Plankinton Ave., Suite 702
Milwaukee, WI 53202
Attn: Tony Janowicz

HINES ACQUISITIONS LLC
c/o Hines Interests Limited Partnership
444 W. Lake St., Suite 2400
Chicago, IL 60606
Attn: David Bach and Tom D’Arcy

CITY
City Engineer
Infrastructure Services Division
841 North Broadway, Room 701
Milwaukee, WI 53202

and

DCD Commissioner
809 N. Broadway, 2nd Floor
Milwaukee, WI 53202

5. This Amendment shall be recorded in the office of the Register of Deeds of Milwaukee County, Wisconsin.

6. This Amendment shall be interpreted and construed in accordance with the laws of the State of Wisconsin.

7. This Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

8. This Amendment and all rights and obligations of the parties hereto shall be covenants running with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

9. The Original Agreement is hereby amended by this Amendment, and in the event of any conflict between the terms of this Amendment and the Original Agreement, the terms of this Amendment shall control.

[SIGNATURE, AUTHENTICATION, AND NOTARIZATION PAGES FOLLOW]

IN WITNESS WHEREOF, the BID, Dehl, and Hines have executed and delivered this Amendment as of the date above first written.

BOARD OF BUSINESS IMPROVEMENT
DISTRICT NO. 2

By: _____
Name: Ron San Felippo
Title: Chair

DEHL PROPERTIES, LLC

By: _____
Name: _____
Title: _____

HINES ACQUISITIONS LLC

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the City of Milwaukee has caused these presents to be signed by Tom Barrett, Mayor, and James R. Owcarski, City Clerk, and countersigned by Aycha Sawa, City Comptroller, at Milwaukee, Wisconsin, and its corporate seal to be hereunto affixed this ____ day of _____, 2021.

CITY OF MILWAUKEE

COUNTERSIGNED:

TOM BARRETT, Mayor

AYCHA SAWA, Comptroller

JAMES R. OWCZARSKI, City Clerk

AUTHENTICATION

Signatures of Tom Barrett, James R. Owcarski, and Aycha Sawa authenticated on this _____ day of _____, 2021.

Jeremy Mckenzie
Member State Bar of Wisconsin

This document was drafted by and after recording should be returned to:
Michael W. Hatch
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202

MORTGAGEE’S CONSENT AND SUBORDINATION

The undersigned, Bridgewater Bank, a Minnesota banking corporation, holder of: (i) that certain Combination Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated June 28, 2018 and recorded July 16, 2018 as Document No. 10794311, as modified by Modification of Combination Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated December 28, 2020 and recorded January 20, 2021 as Document No. 11069059; and (ii) that certain Second Combination Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated June 28, 2018 and recorded July 16, 2018 as Document No. 10794312, as modified by Modification of Second Combination Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated June 28, 2019 and recorded November 4, 2019 as Document No. 10923230, and further modified by Modification of Second Combination Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated December 28, 2020 and recorded January 19, 2021 as Document No. 11068798 (collectively, and as amended, the “Mortgages”), which Mortgages encumber the Property, hereby consents to the foregoing Amendment and acknowledges that the Mortgages shall be subordinate thereto.

BRIDGEWATER BANK, a Minnesota
banking corporation

By: _____
Name: _____
Its: _____

State of _____)
) SS
_____ County)

 This instrument was acknowledged before me on _____, 2021,
by _____ of Bridgewater Bank.

[Seal]

Notary Public, State of Wisconsin
My commission: _____

EXHIBIT A

Original Agreement

(Copy attached)

EXHIBIT B

Legal Description of the Property

Parcel A:

That part of Lots 1, 2, and 3 in Block 31, in Plat of the Town of Milwaukee on the East Side of the River, a recorded Subdivision in the Southeast 1/4 of Section 29, in Township 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, and State of Wisconsin, described as follows: Commencing at the Southeast corner of Lot 3, in Block 31 in said subdivision, said point being in the present Westerly line of North Water Street; running thence North 1° 17' 43" East, 80.25 feet to a point in the South line of Lot 1, in Block 31, in said Subdivision, said point being 4.00 feet West of the Southeast corner of said Lot 1; thence North 37° 34' 19" West, 20.94 feet to a point; thence North 85° 53' 15" West 82.95 feet to a point; thence South 86° 47' 40" West 26.68 feet to a point; thence South 1° 47' 31" East 13.02 feet to a point; thence South 88° 30' 17" West, 48.62 feet to a point in the East bank of the Milwaukee River; thence South along said East bank of the Milwaukee River, 74.86 feet to the Southwest corner of Lot 3, in said Block 31; thence South 85° 52' 42" East along the South line of said Lot 3, 168.96 feet to the point of commencement.

Parcel B:

Lots 4, 5, and 6, in Block 31, in the Plat of the Town of Milwaukee on the East Side of the River, a recorded Subdivision in the Southeast 1/4 of Section 29, in Township 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin.

For informational purposes only:

Property Address: 333 North Water Street, Milwaukee, WI 53202

Tax Key Number: 3920944212

EXHIBIT C

Aerial Photo of the Property

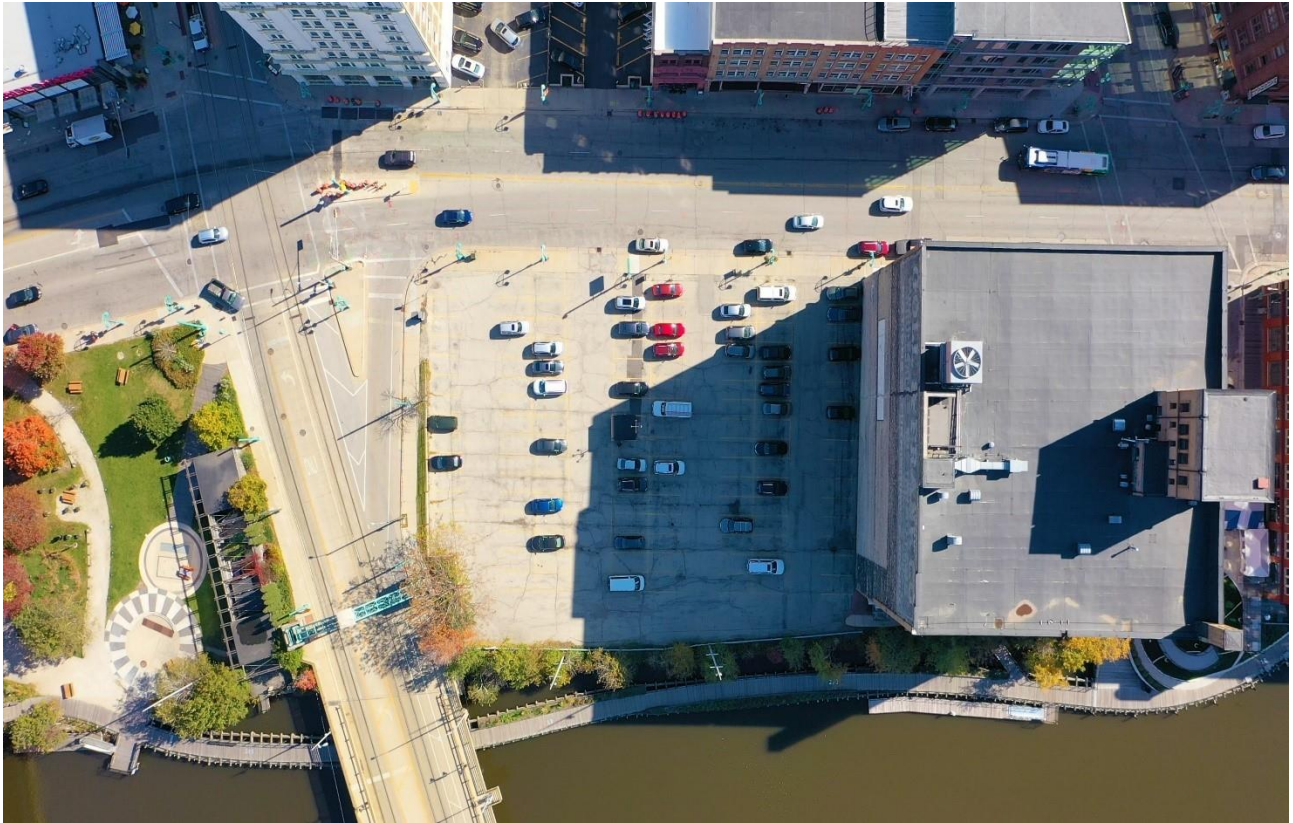


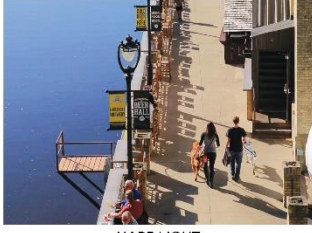
EXHIBIT E HINES LANDSCAPING PLAN (DOCKWALL)



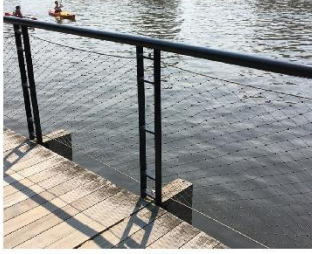
AUTUMN MAGIC BLACK CHOKEBERRY



RIVER EDGE GRASSES & PERENNIALS



HARP LIGHT

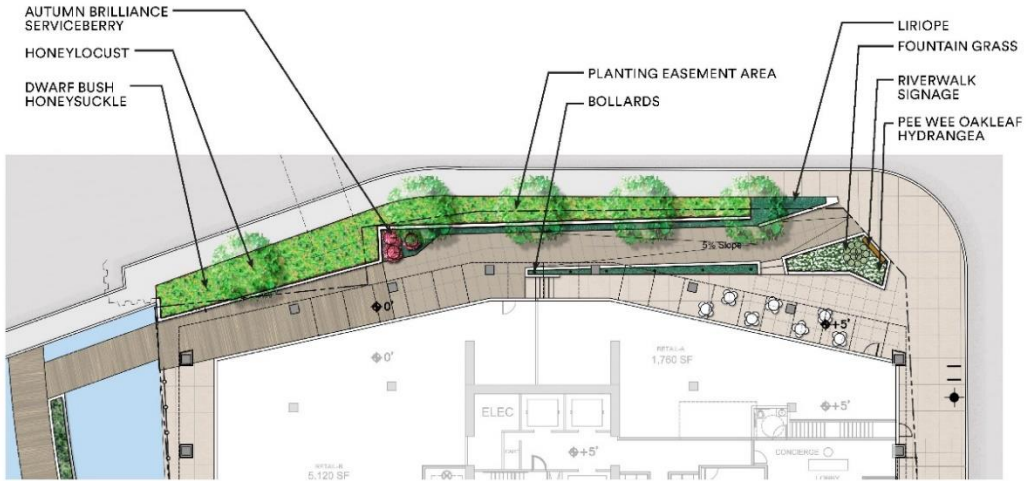


HANDRAIL

*Streetscape design is subject to revisions required by DPW

EXHIBIT E

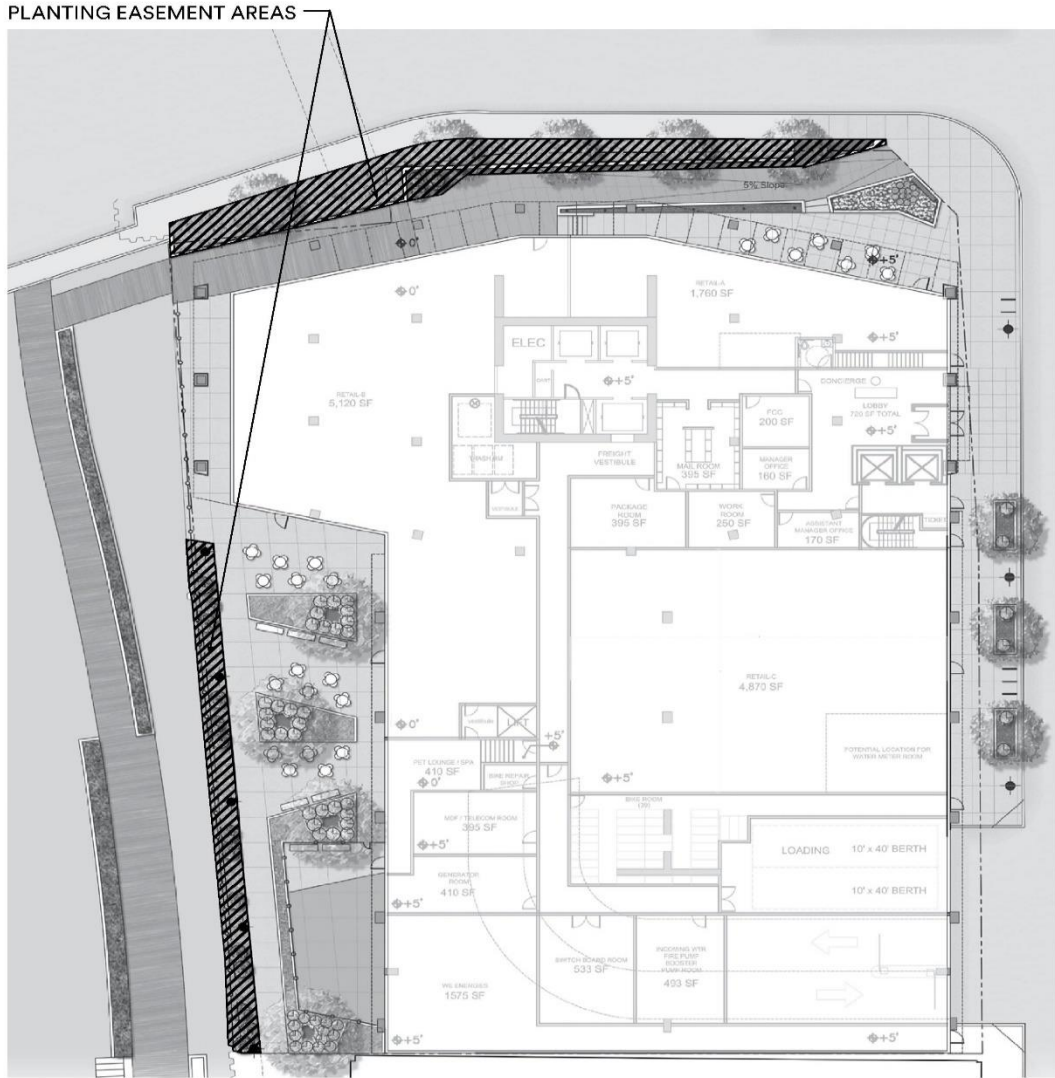
HINES LANDSCAPING PLAN (RETAINING WALL)



*Streetscape design is subject to revisions required by DPW

E - 2

EXHIBIT E PLANTING EASEMENT AREAS



*Streetscape design is subject to revisions required by DPW

E - 3

SCB © 2021 SOLOMON CORDWELL BUENZ **Hines**

333 N. WATER STREET | MILWAUKEE, WI | 08-12-2021

EXHIBIT E

PLANTING EASEMENT AREA AT DOCKWALL

The Planting Easement Area at the dockwall is described as follows:

[Insert Legal Description]

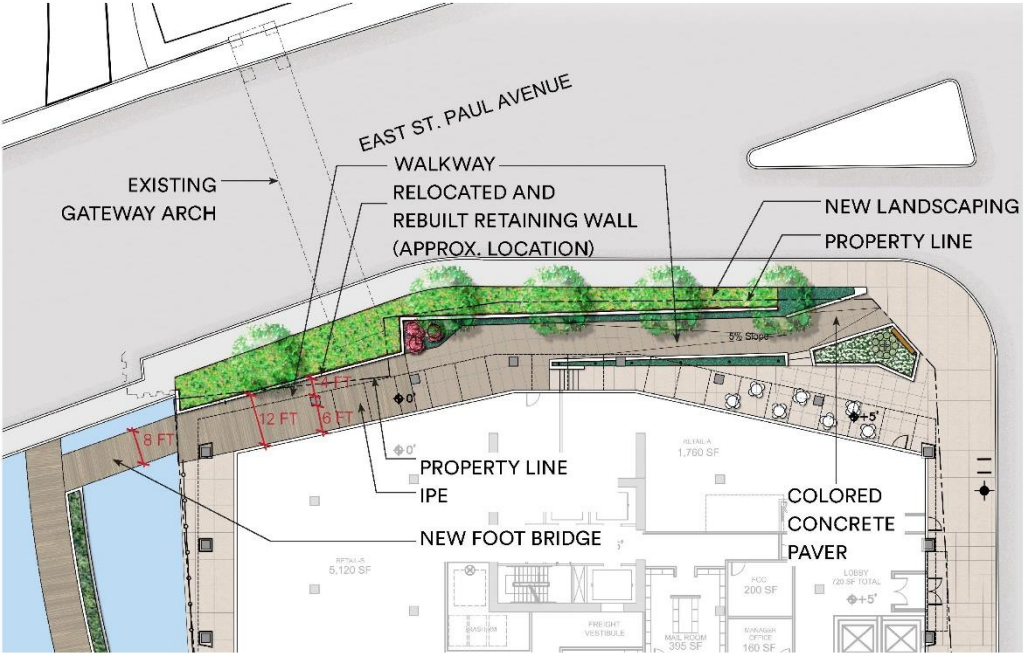
EXHIBIT E

PLANTING EASEMENT AREA AT RETAINING WALL

The Planting Easement Area at the retaining wall is described as follows:

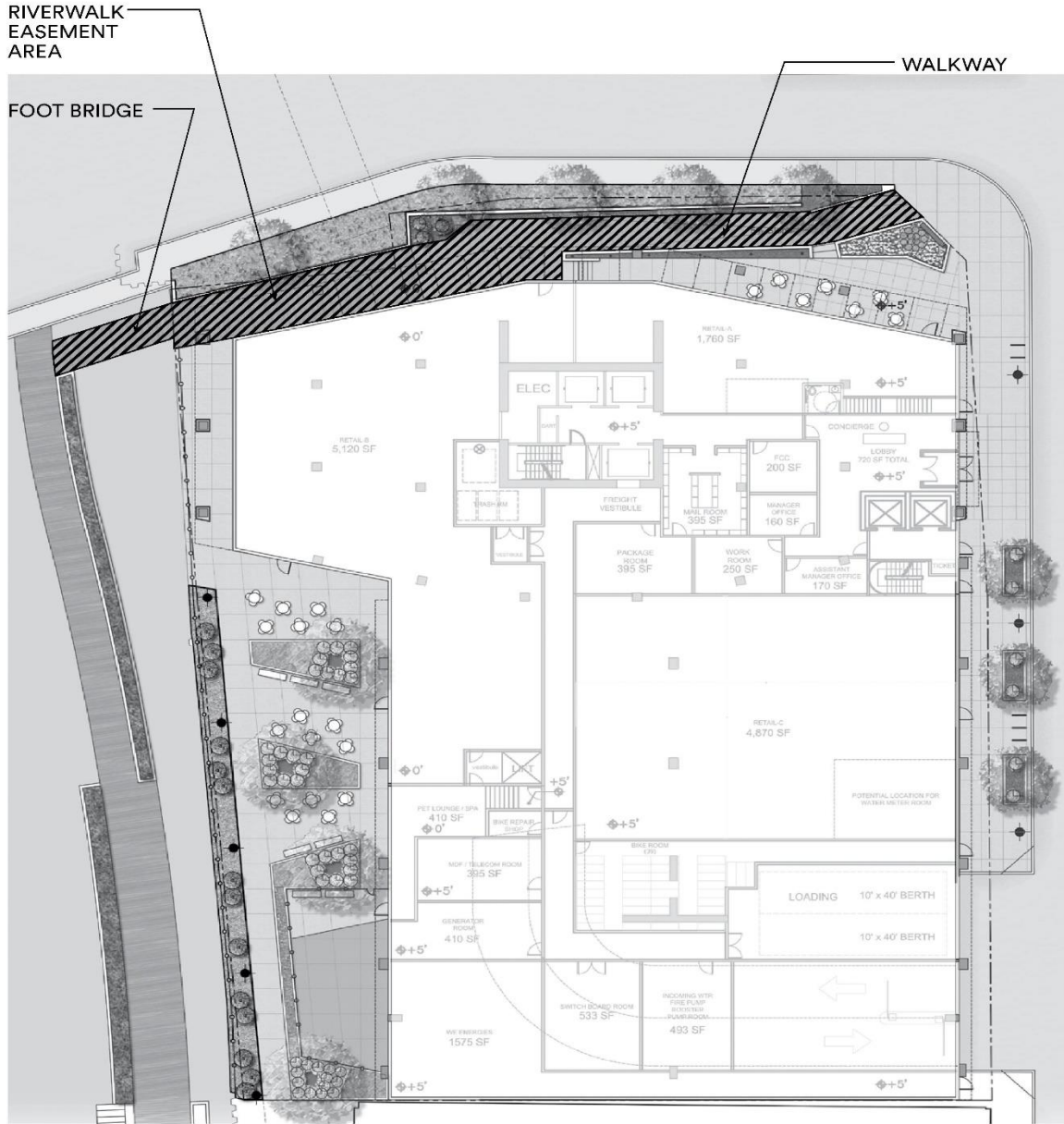
[Insert Legal Description]

EXHIBIT F HINES RIVERWALK IMPROVEMENTS PLAN



*Streetscape design is subject to revisions required by DPW

EXHIBIT F RIVERWALK EASEMENT AREA



*Streetscape design is subject to revisions required by DPW

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EXHIBIT F

RIVERWALK EASEMENT AREA

The Riverwalk Easement Area is described as follows:

[Insert Legal Description]