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Rosenberg Feldman Smith, LLP

Rita A. Sklar
95 Madison Avenue
858/58

Fax

To:	Rita Sklar	From:	Richard B. Feldman
Fax:	(212) 779-7317	Pages:	24, including cover
Re:	Vitra, Inc. v. Ninety Five Madison Co.	Date:	6/19/2018

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212-532-8834

FOR THE RECORD

JAMS ARBITRATION

VITRA, INC.,

Claimant,

-and-

JAMS No. 1425024190

NINETY-FIVE MADISON COMPANY, L.P.,

Respondent.

INTERIM AWARD

The undersigned Arbitrator, having been designated pursuant to a stipulation of settlement in open court on December 7, 2017, in *Vitra, Inc. v Ninety-Five Madison Company, L.P.* ("the Action") then pending in Supreme Court of the State of New York, County of New York under Index No. 652342/2017, (hereinafter "Settlement Agreement") and pursuant to a stipulation after mediation waiving any conflicts from the circumstance that the undersigned acted as mediator before the action was settled, and having read the written statements and affidavits with exhibits submitted by the parties, and having conducted oral argument on May 14, 2018, does hereby find, conclude and AWARD as follows:

The Claimant, referred to in the papers as Plaintiff, as it once was, seeks, under the Settlement Agreement and its arbitration provisions, a declaration that the lease dated June 16, 2016 ("the Lease") is terminated by rescission or because of constructive

eviction, or, alternatively, to have the Arbitrator appoint a receiver to exercise all of Landlord's authority with respect to the premises being leased by the Claimant. In addition, the Claimant seeks certain forms of damages.

The Respondent opposes the claims insisting that it never agreed in the Settlement Agreement to submit to arbitration the issue of terminating the Lease or appointing a receiver. In effect, it argues that the claims are not arbitrable. Moreover, the Lease itself limits the Claimant's remedies as tenant to specific performance or an injunction.

Before considering the additional forms of relief for damages or seeking remedies for the landlord's alleged obstruction, the Arbitrator will deal with the issue of arbitrability.

ARBITRABILITY

Paragraph Twenty-eight of the Settlement Agreement reads as follows:

> Any and all disputes arising out of or relating to the interpretation and enforcement of this stipulation and tenant's alterations prior to the opening - prior to tenant's substantially opening for business -- ….
>
> And all disputes arising out of or relating to the interpretation and enforcement of this stipulation and Tenant's alterations through the time tenant substantially opens for business shall be referred to the Honorable Steven [sic] Crane, as arbiter, for binding determination as provided in accordance with the rules of JAMS, and except as provided [sic]. If Justice Crane is not available or unwilling to act, Justice

> Scarpulla shall resolve any such disputes. Justice Crane, Justice Scarpulla and/or any other arbiter mutually agreed to by the parties and the court shall award attorneys' fees and the costs of the dispute proceeding, including JAMS's cost [sic] and fees, to the prevailing party.
>
> Notwithstanding, the JAMS rules or the Civil Practice Law and Rules, the parties' dispute shall be determined as follows: (A), each party shall be entitled to submit a written statement together with any affidavits and/or exhibits as they deem appropriate; (B), the parties waive any other right to present evidence at such proceeding and waive the right to conduct any discovery; (C), the parties and their representatives shall have the right to appear for purposes of presenting their arguments in support of their respective positions; (D), the determination of Justice Crane, Justice Scarpulla or any other arbiter shall be final and binding upon the parties. The parties hereby waive any right to appeal any such determination; (E), judgment on any such determination may be entered in the Supreme Court of the State of New York, County of New York.

The Claimant argues that the Lease limitations to specific performance and injunction were waived when the landlord agreed to the Settlement Agreement, *inter alia*, in its reference to the JAMS Rules. The Claimant contends that the parties are referring to the JAMS Comprehensive Rules effective July 1, 2014. Rule 11 authorizes the Arbitrator to resolve arbitrability disputes. Rule 24(c) authorizes the Arbitrator to "grant any remedy or relief that is just and equitable and within the scope of the Parties' agreement, including, but not limited to, specific performance of a contract or any other equitable or legal remedy."

While the Arbitrator agrees with the Claimant that his powers in rendering an Award are broad, and not limited to the remedies specified in the Lease, they must be "within the scope of the Parties' agreement." The Settlement Agreement limits the disputes the Arbitrator may determine to "the interpretation and enforcement of this agreement…." So, let us look more closely at the Settlement Agreement.

First of all, the Settlement Agreement settled all claims and counterclaims in the Action. It then addressed the Lease between the parties and various areas of friction that led to the Action. The Settlement Agreement embodied Respondent-Landlord's approval of Claimant-Tenant's plans dated May 12, 2017; Respondent's undertaking to sign documentation required by the Department of Buildings ("DOB") to issue a permit under these plans; Claimant's promise to pay all items of rent and additional rent starting January 1, 2018; a provision for arbitrating real estate escalation; Respondent's approval of installation of sub-meters to be programmed by a designated entity with a procedure for averaging the first two months of actual billing to determine monthly electric charges retroactive to June 1, 2016, followed by a true-up; a provision for expenditure of Tenant's Work in the amount of $1,912,500 unless Landlord's Work is not completed by December 31,

2017,[1] in which case the Claimant would have nine months from actual completion of Landlord's Work to expend and pay the $1,912,500; a rent credit of $506,250; a lease extension; the Respondent's acknowledgment that the dumbwaiter is part of the Claimant's premises; Claimant's undertaking to provide the Respondent with required language for the scope of work for each ACP-5 required for Tenant's Work; notification provisions when certain steps have been accomplished; and an undertaking that the Respondent would install its future lobby air conditioning unit and ductwork in the existing interconnecting stairway. There were other details of similar tenor covered by the remainder of the Settlement Agreement.

It is clear that the Settlement Agreement settled the nine causes of action alleged by the Claimant and the two Counterclaims of the Respondent. Notable is the ninth cause of action in which the Claimant sought a declaration that the Lease was terminated and demanded a return of all monies it had expended including its security deposit.

The Arbitrator concludes that his authority under paragraph twenty-eight of the Settlement Agreement allows him (1) to interpret and enforce the Settlement Agreement and determine

[1] There was a further provision in paragraph twenty-three relating to the completion of Landlord's Work. If the dunnage to the courtyard roof and Landlord's Work were not completed by April 15 or 16, 2018, then the Claimant's rent would be abated daily.

disputes relating thereto, and (2) to entertain disputes relating to Tenant's alterations until the Claimant substantially opens for business. The claim for termination of the Lease for the Respondent's frustration of its purpose or for any other reason such as constructive eviction was settled in the Settlement Agreement. Rather, in interpreting the Settlement Agreement, the Arbitrator holds that he is limited to the items, generally construction-oriented, that it sets forth. These items exclude, by way of settlement, the right to dispute the continued viability of the Lease for the Respondent's continuing, frustrating behavior.

On the other hand, the Respondent's objection to Claimant's alternative request for the appointment of a limited receiver is without foundation. The Settlement Agreement specifies that if there is a conflict between the Lease and the Settlement Agreement, the latter shall control. (Paragraph Twenty-seven). The provision of Article 60 of the Lease, limiting the Tenant's remedies to injunction or specific performance, conflicts with ¶28 of the Settlement Agreement incorporating JAMS Rules. JAMS Comprehensive Rule 24(c) allows the Arbitrator to grant "any remedy or relief that is just and equitable…within the scope of the parties' agreement, including, but not limited to, specific performance…or any other equitable or legal remedy." A temporary receivership under Article 64 of the CPLR is a provisional remedy along with

attachment, injunction, and notice of pendency (CPLR 6001). It is a remedy within the sweep of Rule 24(c) and, if appropriate, the Respondent subjected itself to such a remedy when agreeing to arbitration in the Settlement Agreement—as long as the dispute itself arises out of or relates to the interpretation and enforcement of the Settlement Agreement or Tenant's alterations prior to opening.

Accordingly, the Claimant's claims for termination of the Lease and a declaration of constructive eviction resulting in the same termination are denied as not arbitrable.

TEMPORARY RECEIVERSHIP

This equitable remedy is, as discussed above, available to redress the grievances the Claimant presents about the Respondent's unresponsiveness and obstructionism. In exercising his discretion, the Arbitrator will hold in abeyance the Claimant's application for the appointment of a Temporary Receiver to take on the Landlord's obligations, responsibilities and prerogatives in the oversight and approval of Tenant's alterations until it opens for business, pending the faithful and timely observation by the Respondent of its exercise of these obligations, responsibilities and prerogatives. Provision will be made for the renewal on short notice of Claimant's application for such a Receiver in the event of any further violation of the Respondent's obligations,

prerogatives and responsibilities relating to Tenant's alterations.

TREBLE DAMAGES

Claimant is seeking $31,735.89 in damages pursuant to RPAPL §853 representing compensation tripled for the nine days during which it was evicted in March, 2018, at the rate of $1,175.40 per day. The Respondent repeats the excuse it used to justify the original lock-out in March which the Arbitrator then rejected in directing that the Claimant be restored to possession. This excuse was that the Respondent and its contractor were concerned for the safety of others who might be in the premises during construction of a brick wall. The Respondent contends that no damages for the lockout period should be awarded because it was protecting the Claimant and its representatives from injury.

Having rejected the Respondent's excuse previously, along with its observation that the contractor, whose insurance would not cover the tenant's injuries, the Arbitrator is constrained to award the Claimant its actual damages of $10,578.63[2] trebled, due to the Respondent's flagrantly unlawful behavior in changing the Tenant's locks, bereft of common decency or legal justification. The Claimant is, thus, awarded $31,735.89 with interest at 9% per annum from March 20, 2018, until paid.

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[2] This is derived from the monthly rent of $36,437.50 divided by 31 days to make the daily rent $1,175.40. The Respondent, on the other hand, has divided by 30 days for a larger loss figure for the nine days of $10,931.25.

RESPONDENT'S NON-COMPLIANCE WITH THE SETTLEMENT AGREEMENT

Electrical Billing

The Claimant asserts that the temporary sub-meter was installed on January 19, 2018, but the Respondent has thwarted its electrical consultant in providing Claimant the meter readings and billing. Paragraphs 6, 7 and 8 of the Settlement Agreement address the sub-metering and the procedure for averaging Claimant's electric consumption. There was to be a retroactive adjustment in the charges from June 1, 2016, on the basis of the meter readings with a requirement that the Respondent pay the Claimant's overpayments on April 1, 2018, by way of rent credits the following month. Therefore, Claimant's utility consultant took readings and made calculations for which the Claimant should have been billed for monthly electric charges of $354.89 per month or $8,517.36 for the retrospective 24 months - June 2016 through May 2018. Respondent had billed and Claimant paid $108,951.75 for this period. It claims a refund owing of $100,434.39.

The Respondent contends that a $75,000.00 tapping fee for Claimant's extra amperage must be credited against the $108,951.75 leaving a balance from which the actual amount of usage between June 18, 2016 and April 10, 2018, of $11,934.48, should be deducted. This results in a rent credit to Claimant of $22,917.27.

In reply, the Claimant points out that the Respondent's consultant's computations fail to comply with the Settlement

Agreement in that it averages consumption over sixty days instead of the average of billing for the two months after installation of the sub-meter. Further the Respondent's consultant adds a monthly meter reading charge and building taxes. The sub-meter was not read for 20 months and charges for reading or for taxes are not provided for in the Settlement Agreement. Finally, there is no provision in the Lease for a tap in fee, and Claimant never agreed to one. The Claimant is responsible only for the actual cost of installing additional risers and equipment.

The Respondent's consultant's figures are not in conformity with the Settlement Agreement. The diminution of the Respondent's grossly excessive overcharges for electricity by a tap in fee is not in conformity with Article 46(H) of the Lease. Accordingly, the Claimant is entitled to diminish its rent and additional rent payments in the sum of $100,434.39.

Landlord's Work and Landlord's Construction

The Claimant complains that the Landlord's Work was supposed to have been completed by December 31, 2017, and that it refuses to provide a schedule of completion that would permit Claimant to inspect and begin planning its own work. As of April 17, 2018, the Claimant asserts that the Landlord's Construction was not completed thereby abating rent. Here also Claimant complains that the Respondent has not provided Claimant with any plans which it needs for its air conditioning unit.

The Respondent asserts that its Landlord's Work was completed on April 24, 2018. Therefore, Claimant is entitled to a nine-day abatement in rent of $10,578.63 for Respondent's failure to complete its work on time. The Respondent attributes the Claimant's contest of the completion of Landlord's Work to the need for third party inspections, a walk through and DOB signoffs. The Respondent establishes that the inspections have been performed and a letter of completion was issued by the DOB. Nevertheless, it argues that none of these subsequent conditions is required by the Settlement Agreement or the Lease. In contrast, Article 56(A)(x) of the Lease imposes such an obligation on the Claimant, i.e., approvals by DOB and "as built" plans.

Accordingly, the Respondent has established the date of completion of Landlord's Work and Landlord's Construction and, indeed, has delivered the dunnage plans to the Claimant at the Arbitrator's request. The Claimant is accordingly entitled to $10,578.63 as an abatement of rent for the period of delay in the Respondent's completion as authorized in paragraph 23 of the Settlement Agreement.

Electrical Connections

The Settlement Agreement at paragraph 17 required the Respondent to designate on Tenant's plans the location in the basement where the Claimant was to connect its electrical service. The Claimant claims that Respondent caused it extra expense,

without showing what this consisted of, for changing the designation made on January 29, 2018, for electrical connections to a different location on February 25 requiring revision of plans.

The Respondent explains that both parties retained electrical consultants who met concerning the riser and panel plans. The first location was designated subject to verification of capacity by the Claimant's consultant. He determined that different risers had to be used, and the consultants worked together to designate the final selection. That the experts were delayed in getting the electrical connection location correct does not make the Respondent responsible.

For lack of any quantifiable damages and Claimant's failure to attribute the relocation solely to Respondent, this claim will be dismissed.

Handicapped Ramp

Paragraph 22 of the Settlement Agreement obligated the Claimant to design and construct, at Respondent's expense, a ramp that was ADA compliant. The Claimant was to provide the Respondent with a statement of expected cost. The Claimant proclaims that it satisfied these obligations on January 18, 2018. The Respondent had 30 days to select a competitive bid; otherwise, the Claimant could proceed with its vendor. The Claimant alleges that the Respondent did not respond within these 30 days, so Claimant hired its own vendor as provided in the Settlement Agreement. Claimant

advised Respondent that it had missed the date for a competitive bid. Thereafter, the Respondent refused to consent to the work because the design was oblivious to a penetration test result showing inadequate supporting stone. The Respondent never shared the report of the penetration test with Claimant.

The Respondent asserts that it accepted as its total cost obligation the Claimant's total cost for an ADA compliant ramp and related stone work. Apparently the cost was predicated on Claimant's engineer's plans from May 15, 2017,[3] but these contemplated a single door. The Respondent reports that Landmarks[4] requires two doors. In view of this requirement new plans and their review are allegedly necessary. It also claims that engineer Silman requested that a test probe be done to determine the depth of the underlying stone; Silman determined that stone needed replacing and new plans were required. Respondent avers that no new plans have yet been submitted.

In reply, the Claimant asserts that the Landmarks Commission has given preliminary approval to the Claimant's plan including

[3] Actually, Paragraph 1 of the Settlement Agreement provided that the Respondent approved the Claimant's plans with the date May 12, 2017, and paragraph 2 obligated the Respondent to sign all necessary documents required by DOB for issuance of a permit with respect to these plans within three business days.

[4] The Claimant alleges that on December 7, 2017, when the Settlement Agreement was made, Ms. Sklar of the Respondent knew of the imminent Landmarks designation and had cooperated in achieving it, all while concealing the possibility from the Claimant and the court.

for handicapped accessibility, subject only to supplying shop drawings.

Since the Respondent in Paragraph 1 of the Settlement Agreement has reviewed and approved the Claimant's May 12, 2017, plans and proclaims that it approved the ADA compliant ramp, nothing more from the Respondent is necessary. The change from one door to two doors at the behest of the Landmarks Commission not only is to be laid at the Respondent's feet, but it appears that Landmarks has approved the Tenant's ramp design in any event. No further Landlord approval is required until shop drawings are created by the subcontractor. The Respondent has not supplied to the Claimant the results of the penetration test and is hereby directed to do so.

Elevator Work

The Respondent delayed the progress of elevator work by demanding certificates of insurance that Claimant contends were not required by Article 58 of the Lease. Nonetheless, certificates satisfactory to the Respondent were supplied. Secondly, the Respondent has not responded to Claimant's list of proposed contractors nor recommended elevator contractors as paragraph 19 obligated Respondent to do by January 15, 2018. Finally, the Respondent has not supplied a proper line drawing of the new elevator control room, related walkway and adjacent elevator lobby by January 31, 2018, as required by paragraph 16 of the Settlement

Agreement. At an April 10 hearing before the Arbitrator the Respondent submitted two alternative drawings whereas Claimant needs a single definitive drawing.

The Respondent blames the Claimant for delays in the elevator work. It accuses the Claimant of delay in retaining Jenkins & Huntington, named in paragraph 19 of the Settlement Agreement, which had previously inspected the shaftway and pit and drew plans. Apparently the Claimant did not obtain a price proposal until April. The Claimant has not paid the $5,000 deposit for plans to be drawn. The Respondent also refutes the lack of authority in the Lease for demanding certificates of insurance. Articles 3 and and 56(A)(vii) are the sources for the request for certificates. Lastly, Respondent contends that Claimant was given a line drawing before December 7, 2017, the date of the Settlement Agreement. Because Claimant complained about the lack of a line drawing the Respondent provided a new one. To the extent there is a difference in the new line drawing from the earlier one, Respondent undertakes to provide a single, authoritative drawing.

Paragraph 19 crafted a default if the Respondent's representative, Wexler, did not supply names of general contractors acceptable to the Claimant. Wexler did not. The default was Archstone. Therefore, Archstone is deemed the general contractor for the elevator work contemplated in paragraph 19. Secondly, the Respondent shall provide a single, authoritative

line drawing as required by paragraph 16 of the Settlement Agreement within five (5) business days of the date of this INTERIM AWARD. Lastly, any claim the Claimant predicates on the delay from the disagreement over certificates of insurance is academic since the Claimant provided satisfactory certificates to the Respondent.

Permitting

The Settlement Agreement in paragraph 2 states "Landlord shall sign all necessary documentation required by the Department of Buildings for the issuance of a permit with respect to the May 12, 2017 plans within three business days of being provided such documentation." The Claimant learned that the building was designated a landmark on February 5. It coordinated directly with the Landmarks Commission about requirements for design of the entry way and obtained informal approval. So, the original plans were modified accordingly and on March 12 the Commission informally approved subject to receipt of the application signed by the Respondent Landlord and Claimant's submission of shop drawings when prepared. On February 22, 2018, Claimant submitted the application which Respondent first ignored and then refused to sign until five copies of drawings required by the Lease were supplied. Ms. Sklar also objected because some boxes on the application had not been checked. And, she required details that only the shop drawings could supply, drawings that could not be

created until DOB approved the plans and issued a permit. This standoff was resolved in the hearing before the undersigned on April 10, 2018. The parties agreed on the form and contents of the application to Landmarks and on the drawings that would be attached. In violation of that agreement, Ms. Sklar altered the application without the Claimant's approval and submitted it without notice to Claimant's representative who wanted to be present at the filing.

The Respondent reverts to the single door contained in the May 12, 2017, plans that were approved in the Settlement Agreement (already discussed in connection with the Handicapped Ramp). The Respondent suggests that Claimant resubmit the plans without the storefront work and later submit the storefront for Respondent's review in accordance with Exhibit K of the Lease and its procedures. It contends that even if Landmarks blessed Claimant's modified plans, this does not preempt the Respondent's right to review and approve in its discretion.

The Respondent asserts that the Arbitrator on April 13 confirmed the Respondent's right of approval despite Landmarks approval. This may or may not be accurate but need not be addressed here because the Respondent will be seeing the shop drawings and may have rights to make objections at that time.

The Respondent approved the May 12 plans and obligated itself to sign all necessary documentation required by DOB to issue a

permit with respect to them within three business days. If this conflicts with Exhibit K of the Lease, the Settlement Agreement provisions control (¶27). The Respondent has not argued that the application to the Landmarks Commission falls outside of "all necessary documentation required by the Department of Buildings for the issuance of a permit with respect to the May 12, 2017 plans." Consequently, the Arbitrator presumes that the Landmarks application and its contents are embraced by paragraph 2 of the Settlement Agreement.

Accordingly, it is declared that the Respondent has reviewed and approved of the Landmarks application and its contents and that the Respondent will have no further approval rights with respect thereto until shop drawings are created and submitted to it.

RESPONDENT'S CONTINUING BAD FAITH

The Claimant piles on to the alleged violations of the Settlement Agreement and other alleged misbehavior of the Respondent and its sole representative, Rita Sklar, suggesting they are obstructing Claimant in remodeling and opening. As an example, it refers to Ms. Sklar's absolute refusal to communicate with Claimant's representative, Nate Rubin and refusal to respond to his phone, fax and hand-delivered inquiries.

The response is that Mr. Rubin has treated the Respondent and its professionals with disdain and verbal abuse. Respondent says

it and they will continue to work with him despite large unpaid bills he and Claimant owe to the professionals who continue to move the work forward. If issues arise, they can be arbitrated.

The Arbitrator deems this portion of the Claimant's presentation to represent support for its application for a termination of the Lease, already found to be beyond the scope of the arbitration clause in the Settlement Agreement.

RESPONDENT'S REFERENCES TO THE CLAIMANT'S DEFAULT UNDER THE LEASE

To the extent the Respondent's papers are replete with references to Claimant's failure to commence Tenant's Work and to its general contractor's directive to furlough all work on May 2, 2018, the Respondent has asked for no relief. Therefore, there is no occasion at this juncture for the Arbitrator to dispose of the default issue. Whether or not there was a default, the Arbitrator issued a Yellowstone injunction on consent. The alleged default may become academic when the Claimant begins its work. Because the Settlement Agreement in paragraph 9 affords the Claimant until September 30, 2018, or nine months after the completion of Landlord's Work, to spend $1,912,500, the Claimant may not even be in default.

CONCLUSION

Any argument not addressed in this INTERIM AWARD was found to be unavailing, without merit, academic or unnecessary to reach.

The Arbitrator concludes and AWARDS as follows:

1. The Respondent's objection to the arbitrability of the Claimant's claim for termination of the Lease is sustained, and the claims for termination of the Lease and declaration of a constructive eviction resulting in termination are dismissed as beyond the scope of the arbitration agreement in the Settlement Agreement.
2. The Respondent's objection to the arbitrability of the Claimant's alternative claim for the appointment of a temporary receiver is overruled and that claim is declared to be arbitrable under the Settlement Agreement.
3. The Claimant's claim for the appointment of a limited and temporary receiver to take on the Landlord's obligations, responsibilities and prerogatives in the oversight and approval of Tenant's alterations until it opens for business, is held in abeyance pending the faithful and timely observation by the Respondent of its exercise of these obligations, prerogatives and responsibilities. In the event of the Respondent's violation of these obligations, prerogatives and responsibilities, the Claimant is hereby granted leave, on three (3) days' notice, to renew the application being held in abeyance.
4. Claimant's claim for treble damages for actual eviction is hereby granted and the Respondent is directed to pay to the

Claimant the sum of $31,735.89 with interest at 9% per annum from March 20, 2018, until paid.

5. The Claimant's claim for rent credit for overcharges for electricity is granted, and the Claimant is entitled to diminish its rent and additional rent payments in the sum of $100,434.39.

6. The Claimant's claim for an abatement of rent for the period of delay in the Respondent's completion of Landlord's Work and Landlord's Construction is granted in the amount of $10,578.63.

7. The Claimant's claim with respect to electrical connections is denied and this claim is dismissed.

8. The Claimant's claim regarding the handicapped ramp is granted and it is DECLARED that no further submission nor approval to the Respondent is required until shop drawing are created by the subcontractor; and the Respondent is hereby directed to supply to the Claimant the results of the penetration test within three (3) business days of the date of this INTERIM AWARD.

9. The Claimant' claim respecting elevator work is granted to the following extent and otherwise denied as academic, and Archstone is deemed to be the general contractor for this work; and the Respondent is hereby directed to provide the Claimant with a single, authoritative line drawing as

required by paragraph 16 of the Settlement Agreement within five (5) business days of the date of this INTERIM AWARD.

10. The Claimant's claim with respect to the Landmarks Commission application and permitting is granted and it is DECLARED that the Respondent has reviewed and approved of the Landmarks application and its contents and that the Respondent will have no further approval rights with respect thereto until shop drawings are created and submitted to it.

Stephen G. Crane, Arbitrator

State of New York)
: ss:
County of New York)

I, Stephen G. Crane, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my INTERIM AWARD.

June 17, 2018
Date

Stephen G. Crane

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Vitra, Inc. vs. Ninety Five Madison Company, L.P.
Reference No. 1425024190

I, Annie Goodwin, not a party to the within action, hereby declare that on June 19, 2018, I served the attached Interim Award on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at New York, NEW YORK, addressed as follows:

Mr. David F. Segal
Sills Cummis & Gross P.C
101 Park Avenue
28th Floor
New York, NY 10178
Phone: 212-643-7000
dsegal@sillscummis.com
Parties Represented:
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Richard Feldman Esq.
Stephen M. Rosenberg Esq.
Rosenberg Feldman Smith, LLP
551 Fifth Avenue
24th Floor
New York, NY 10176
Phone: 212- 682-3454
rfeldman@rfs-law.com
SRosenberg@rfs-law.com
Parties Represented:
Ninety Five Madison Company, L.P.

Mr. Mark Levenson
Sills Cummis & Gross P.C.
One Riverfront Plaza
Newark, NJ 07102
Phone: 973-643-7000
mlevenson@sillscummis.com
Parties Represented:
Vitra, Inc.

I declare under penalty of perjury the foregoing to be true and correct. Executed at New York, NEW YORK on June 19, 2018.

Annie Goodwin
agoodwin@jamsadr.com

The New York City Landmarks Preservation Commission

1 Centre Street, 9th Floor North New York NY 10007 (212) 669-7926 Fax (212) 669-7797

http://nyc.gov/landmarks

TO: Rita Sklar

FROM: Erica Rothman

DATE: May 15, 2018

FAX: 212-733-7029

Pages: 3

NYC
Landmarks Preservation Commission

Meenakshi Srinivasan
Chair

Sarah Carroll
Executive Director
SCarroll@lpc.nyc.gov

1 Centre Street
9th Floor North
New York, NY 10007

212 669 7902 tel
212 669 7797 fax

May 15, 2018

Ms. Rita S. Sklar
Sklar Equities
95 Madison Avenue, Room 1201
New York, NY 10016

Re: Emmet Building, 95 Madison Avenue, Manhattan [Block 858; Lot 58]

Dear Ms. Sklar:

Following up on our conversation today regarding your submitted application for a work permit LPC 19-24565, please see the enclosed materials checklist of what the Landmarks Preservation Commission requires in order for your proposed work to be approved.

As I discussed, we would be happy to arrange a meeting between you, your expeditor, and our staff in the coming weeks to review in person. Please feel free to reach out to me by phone at (212) 669-7889.

Sincerely,

Erica Rothman

Enc.

Landmarks Preservation Commission

1 Centre Street
9th Floor North
New York, NY 10007

Voice (212) 669-7700
Fax (212) 669-7960
nyc.gov/landmarks

MATERIAL CHECKLIST 95 MADISON AVENUE, MANHATTAN, BLOCK 858 LOT 58 - DOCKET# LPC-19-24565

Staff of the Commission recently received an application for proposed work at the above property. Upon review it was found that the application materials submitted are not complete. **Any item below not marked "Accepted" must be submitted to complete the application.** **MATERIALS MUST BE RECEIVED BY THE COMMISSION WITHIN NINETY (90) DAYS.**

New Storefront Infill: Opening and Surround to Remain	**Received**	**Accepted**
> LPC Permit Application Form, signed by building owner or an officer of the co-op or condo board	☑ 5/15/2018 5:12:21 PM	☑ 5/15/2018 5:12:22 PM
Notes:		
> Two (2) copies of signed and sealed Department of Buildings filing drawings (if DOB permit is required)	☐	☐
Notes:		
> Color photograph(s) of the building showing the existing condition	☐	☐
Notes:		
> Close-up color photograph(s) of the building showing the storefront and area(s) of work	☐	☐
Notes:		
> Elevation drawings of the existing and proposed storefronts and an overall building elevation	☑ 5/15/2018 5:14:52 PM	☐
Notes:		
> Large-scale section details of the head, jamb, bulkhead and sill	☑ 5/15/2018 5:14:51 PM	☐
Notes:		
> Enlarged floor plan of storefront area	☑ 5/15/2018 5:15:48 PM	☐
Notes:		
> Large-scale partial plan showing the plane of the storefront in relation to building façade	☑ 5/15/2018 5:16:01 PM	☐
Notes:		
> Color and material sample(s)	☐	☐
Notes:		

SUBMIT MATERIALS TO:

Landmarks Preservation Commission
Attention: Erica Rothman

1 Centre Street, 9th Floor North
New York, NY 10007

Include LPC staff name and docket # on the exterior of all packages. Submit two copies of any new or revised drawings. Revised drawings must include revision dates, and all drawings for subsequent submission to the Department of Buildings must be signed and sealed.

MATERIALS MUST BE RECEIVED BY THE COMMISSION WITHIN NINETY (90) DAYS

Note that additional materials may be required and additional direction provided following further review.

EXHIBIT "B" – DEMISED PREMISES

NEW DOUBLE DOOR STORE ENTRANCE AND TRANSOM ABOVE THE ENTRANCE, AND RELATED MODIFICATIONS TO THE ADJACENT TWO (2) DISPLAY WINDOWS, ALL IN THE CENTER STORE'S ENTRANCE BAY

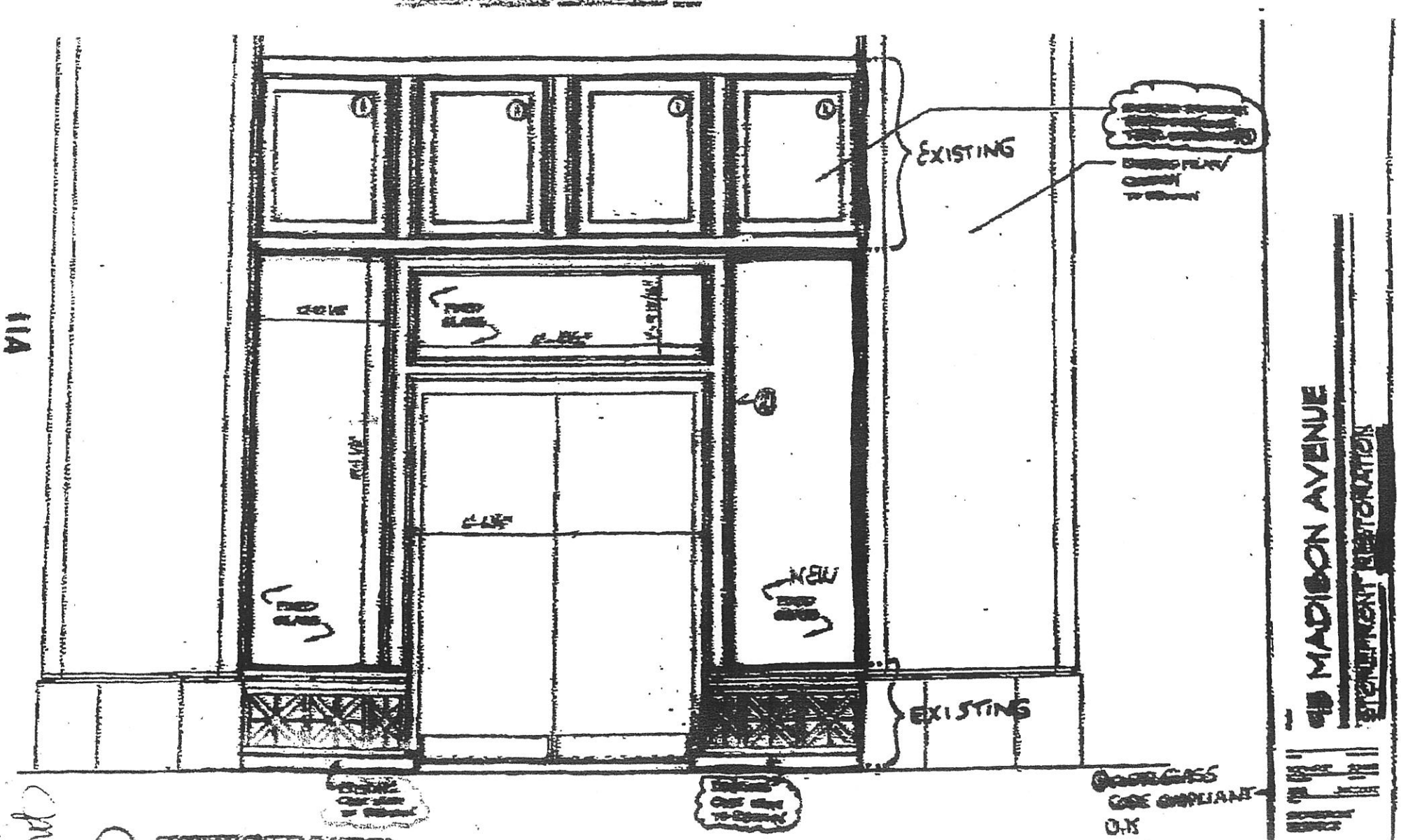
STOREFRONT ELEVATION

913 MADISON AVENUE

STOREFRONT RESTORATION

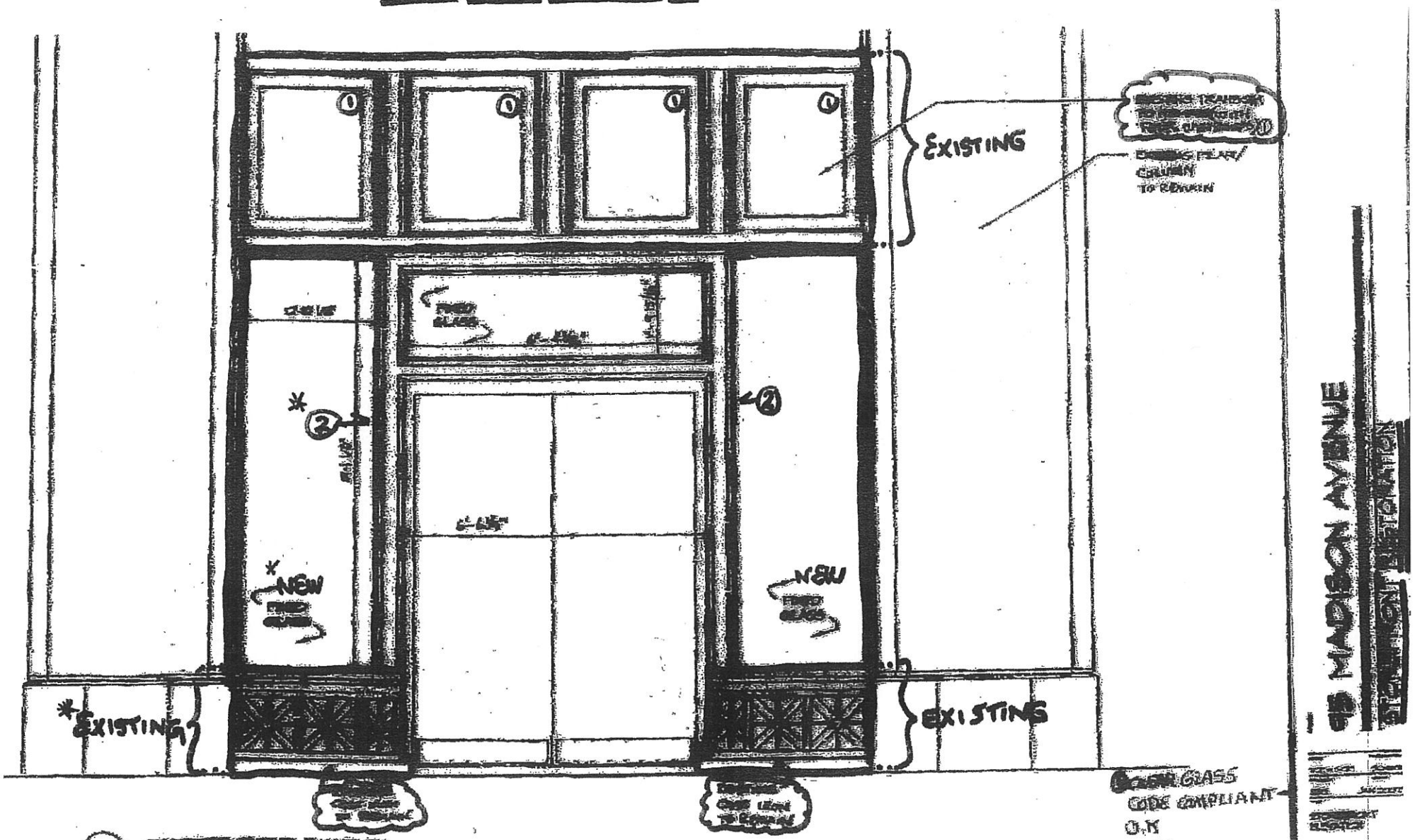
ATTACHED TO: TERM SHEET
: LEASE

EXHIBIT "F" – DESIGN PROPOSAL
NEW DOUBLE DOOR STEEL ENTRANCE
AND TRANSOM ABOVE, NEW MULLION AND
RELATED MODIFICATIONS TO THE EXISTING
TWO (2) DISPLAY WINDOWS, ALL IN THE
CENTER STORE'S ENTRANCE BAY



ATTACHED TO: TERM SHEET
: LEASE

EXHIBIT "A" - DEMISED PREMISES
NEW DOUBLE DOOR STORE ENTRANCE
AND TRANSOM ABOVE WITH NEW FRAME AND
RELATED MODIFICATIONS TO THE ADJACENT
WOOD DISPLAY WINDOWS ALL IN THE
CENTER STORE ENTRANCE BAY



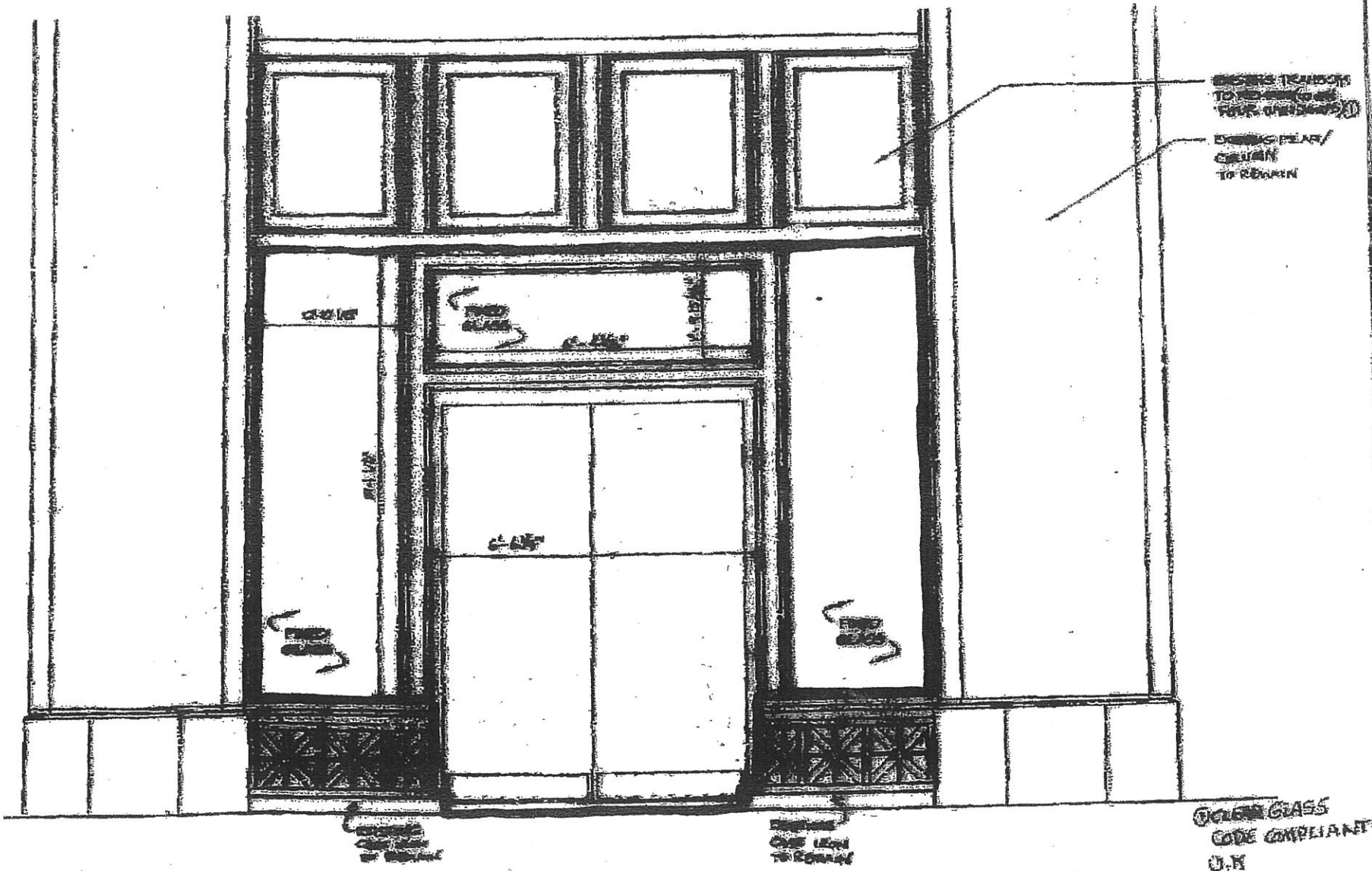
(1) STOREFRONT ELEVATION

*(2) REPLACE WINDOW MULLION WITH DUPLICATE OF ORIGINAL MULLION, IN NEW LOCATION

A2

EXHIBIT "F" – REVISED PLANS
NEW DOUBLE DOOR STORE ENTRANCE
AND TRANSOM ABOVE THE ENTRANCE, AND
RELATED MODIFICATIONS TO THE ADJACENT
TWO (2) DISPLAY WINDOWS, ALL IN THE
CENTER STORE'S ENTRANCE BAY

EXHIBIT F – DEMISED PREMISES
NEW DOUBLE DOOR STORE ENTRANCE
AND TRANSOM ABOVE THE ENTRANCE, AND
RELATED MODIFICATIONS TO THE ADJACENT
TWO (2) DISPLAY WINDOWS, ALL IN THE
CENTER STORE'S ENTRANCE BAY



1 STOREFRONT ELEVATION

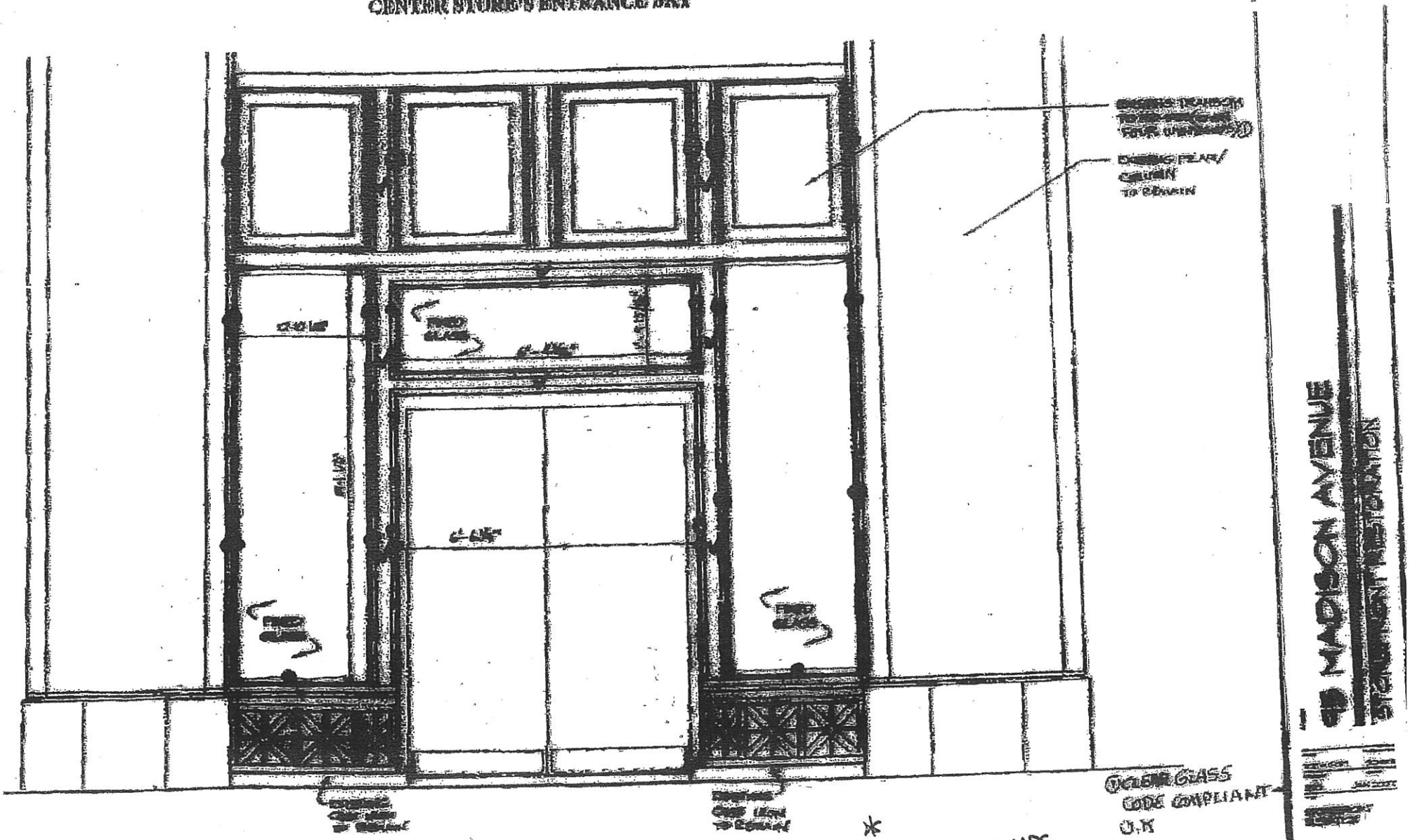
= AREA IN RED TO BE RESTORED

MADISON AVENUE

A2

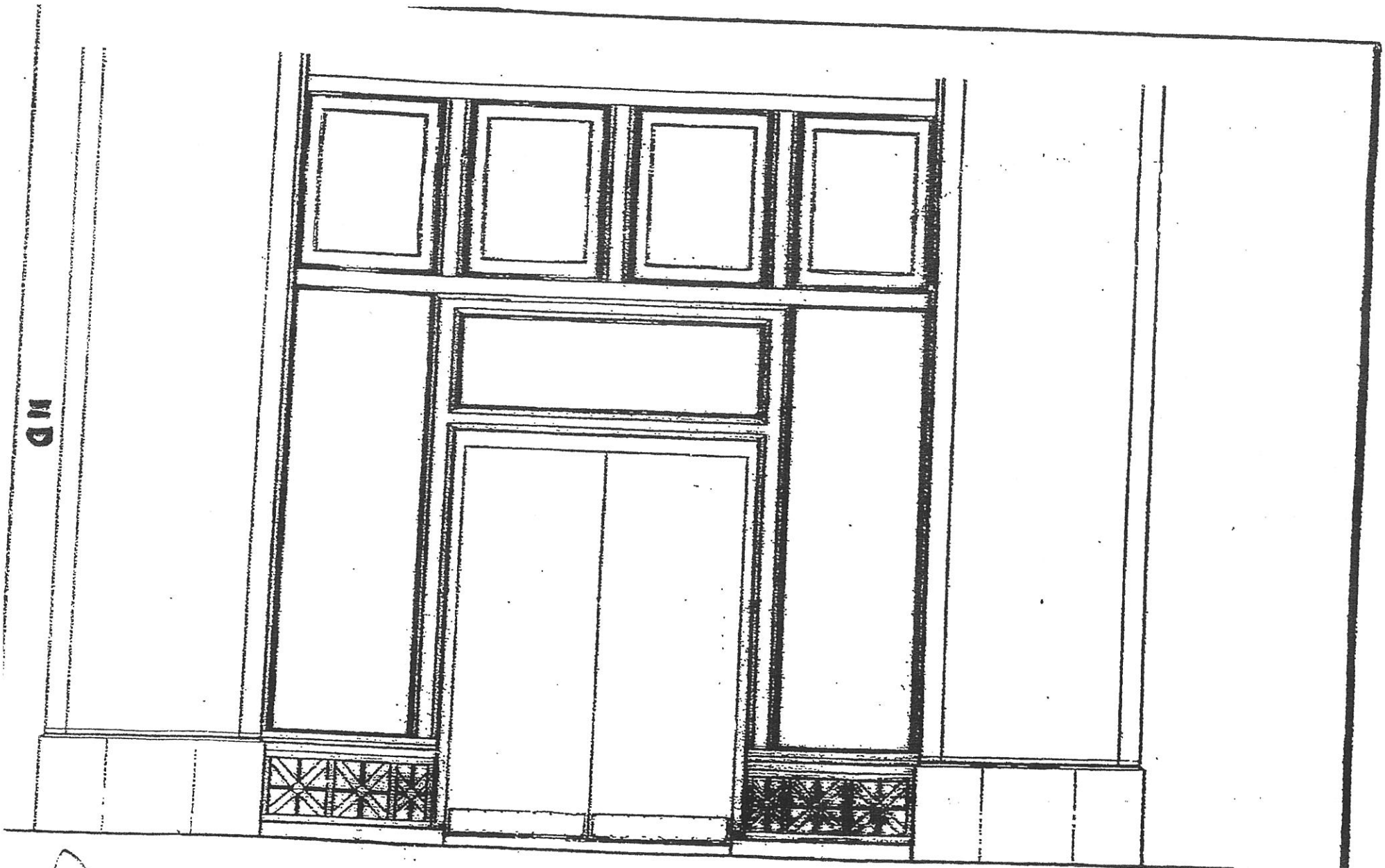
EXHIBIT F – REVISED PLANS
NEW DOUBLE DOOR STORE ENTRANCE
AND TRANSOM ABOVE THE ENTRANCE, AND
RELATED MODIFICATIONS TO THE ADJACENT
TWO (2) DISPLAY WINDOWS, ALL IN THE
CENTER STORE'S ENTRANCE BAY

EXHIBIT [illegible] – DEMISED PREMISES
NEW DOUBLE DOOR STORE ENTRANCE
AND TRANSOM ABOVE THE ENTRANCE, AND
RELATED MODIFICATIONS TO THE ADJACENT
TWO (2) DISPLAY WINDOWS, ALL IN THE
CENTER STORE'S ENTRANCE BAY



(1) STOREFRONT ELEVATION

✓ DETAILS TO MATCH
○ DETAILS TO MATCH
* NOTE: IN SHAPE
: IN MATERIAL



1 STOREFRONT ELEVATION
SCALE: 1/2" = 1'-0"