

STATE OF NEW YORK, and BASIL
SEGGOS, as ACTING COMMISSIONER OF
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,

NEXT MILLENNIUM REALTY, LLC,
et al.,

SUPPLEMENTAL CONSENT DECREE

- Defendants Next Millennium Realty, LLC, 101 Frost Street Associates, L.P., 101 Frost Street Corporation, Emily Spiegel, individually and as trustee under an agreement of trust for the benefit of Pamela Spiegel and Lisa Spiegel, and Jerry Spiegel (the latter two defendants, Emily and Jerry Spiegel are deceased and have been succeeded by Alan Eidler, Pamela Spiegel Sanders and Lise Spiegel Wilks, as executors of the Last Wills and Testaments of the Estates of Emily Spiegel and Jerry Spiegel, and the duly authorized administrators of the Estates of Emily Spiegel and Jerry Spiegel). In addition to these named parties, a number of other related parties have owned, managed, or otherwise had an interest in the Frost Street Sites (“FSP Predecessors In Interest”).

These parties are fully enumerated in the Frost Street Parties' Response to State of New York's First Set of Interrogatories, Response to Interrogatory 1 (pp. 5-11), dated October 31, 2009 (collectively, all of these parties and related parties together with their respective officers, directors, shareholders, members, trustees, executors and partners are herein referred to as the "Frost Street Defendants");

WHEREAS, on March 13, 2006, the State commenced this action (the "State Action") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), and New York's common law of public nuisance, restitution, and indemnification seeking to recover response costs that have been and will be incurred by the State in responding to the alleged release or threatened release of hazardous substances from the New Cassel Industrial Area ("NCIA"), and for injury to natural resources resulting from those releases;

WHEREAS, on May 20, 2008, the State alleged in its Second Amended Complaint (the "Complaint") that the Frost Street Defendants are acting and have acted as "operators," within the meaning of CERCLA § 101(20)(A)(ii), 42 U.S.C. § 9601(20)(A)(ii), and/or are "owners," within the meaning of CERCLA § 101(20)(A)(ii), 42 U.S.C. § 9601(20)(A)(ii), and are jointly and severally liable pursuant to CERCLA §§ 107(a)(2) and 113(g)(2), 42 U.S.C. §§ 9607(a)(2), 9613(g)(2), for all response costs incurred, and to be incurred, by the State in responding to releases of hazardous substances in and migrating from the NCIA, including Operable Unit 3 ("OU-3"), comprised of contaminated groundwater downgradient from the NCIA;

WHEREAS, the State alleged that the Frost Street Defendants have liability as owners and/or operators under CERCLA and released hazardous substances at the properties located at 89 Frost Street, North Hempstead, New York (Registry Site No. 1-30-43L) (the “89 Frost Street Site”), 101 Frost Street, North Hempstead, New York (Registry Site No. 1-30-043I), and 770 Main Street, North Hempstead, New York (Registry Site No. 1-30-043M) (collectively, the “Frost Street Sites”);

WHEREAS, the State alleged in the Complaint that it has incurred response costs with regard to the NCIA not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan (40 C.F.R. Part 300) (the “NCP”), and alleged that it will continue to incur costs in connection with its response actions at the NCIA;

WHEREAS, in July and August 2014, the State entered into a proposed Consent Decree (the “Decree”) with a group of defendants and third-party defendants in this action;

WHEREAS, on July 27, 2015, the Court issued an Opinion and Order, Dkt. No. 441 (“July 2015 Order”) approving the Consent Decree, Dkt No. 445 (the “Decree”), the Supplemental Consent Decree, Dkt No. 444, and the Second Supplemental Consent Decree, Dkt No. 443;

WHEREAS, the Court’s July 2015 Order also provided that the State’s claim for future response costs was severed and administratively closed with leave to reopen on ten (10) days notice within sixty (60) days of the State incurring any future response costs, Dkt. No. 441 at 22;

WHEREAS, on February 10, 2016, the Court approved the Third Supplemental Consent Decree, Dkt No. 469;

WHEREAS, on February 9, 2016, the Court issued an Opinion and Order, Dkt No. 467, awarding the State a judgment declaring that (a) the State's past response action costs with respect to the NCIA are not inconsistent with the National Contingency Plan under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); and (b) that defendants Next Millennium Realty, LLC, 101 Frost Street Associates, L.P. and the Estate of Jerry Spiegel are liable (i) under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for response costs incurred by the State in responding to contamination at and emanating from the NCIA, and specifically into OU-3; and (ii) for natural resource damages sought as compensation for the injury to the groundwater at the NCIA and OU-3, including the reasonable costs of assessing such injury, pursuant to Sections 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(g)(2);

WHEREAS, during the pendency of this case, the State and the Frost Street Defendants engaged in settlement discussions regarding reimbursement of the State for its response costs with respect to OU-3 of the NCIA and the State's claim for injury to natural resources;

WHEREAS, the State and the Frost Street Defendants (collectively, the "Parties") desire to enter into this Fourth Supplemental Decree in order to fully and finally resolve all claims that have been, and could now or hereafter be asserted by the Parties with respect to the Matters Addressed as defined below without the necessity or further expense of prolonged and complex litigation, and without admission of liability, adjudication or determination of any issue of fact or law, and the State has determined that settlement of its claims against the Frost Street Defendants in accordance with the terms set forth below is practicable and in the best interest of the public;

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN THE UNDERSIGNED AS FOLLOWS:

1. Paragraphs 1, 3-8, 22-23, 25, and 27-31 of the Decree are incorporated by reference. All references to the Settling Defendants in those paragraphs shall include the Frost Street Defendants, and all references to the Decree in those paragraphs shall include this Fourth Supplemental Decree.

2. "Matters Addressed," as that term is used in this Supplemental Decree, is defined to include claims that were, or could now or hereafter be, asserted by the State against the Frost Street Defendants arising out of or in connection with the disposal, release, and/or threat of release of hazardous substances at or from the NCIA and/or at or from the sites alleged to have been owned or operated by the Frost Street Defendants, including but not limited to any and all injuries to natural resources. "Matters Addressed" does not include (1) the State's claims for costs (except against the Estate of Emily Spiegel¹) that may be incurred by the State in the future to the extent that the United States seeks costs from the State for, or the State incurs costs for maintenance of, response actions undertaken by the United States arising out of or in connection with the disposal, release, and/or threat of release of hazardous substances at or from the NCIA and/or at or from the Frost Street Sites under CERCLA § 104(c)(3), 42 U.S.C. § 9604(c)(3) and applicable federal regulations and guidance documents (hereinafter, "EPA Section 104 Costs"); and (2) the State's claims for response costs (except against the Estate of Emily Spiegel) incurred or to be incurred that arise out of or in connection with

¹ Specifically, recovery for the State's claims for costs that may be incurred in the future to the extent the United States seeks costs from the State or the State incurs future costs as detailed in this paragraph 2, shall not be sought or collected from the Estate of Emily Spiegel.

the disposal, release, and/or threat of release of hazardous substances at or from the Frost Street Sites with respect to Operable Units 1 and/or 2 ("OU-1" and "OU-2") of the Frost Street Sites (as defined in the March 2000 Records of Decision for OU- 1 and OU-2 ("OU-1 and OU-2 RODs")) of the Frost Street Sites, Site Numbers 1-30-043 I, L, and M) and future modifications of the OU-1 and OU-2 RODs approved by the Department, if any (hereinafter, "DEC OU-1/OU-2 Costs").

3. In the event that the State brings claims against the Frost Street Defendants for claims not included in the Matters Addressed, any such claim must be brought: (a) with regard to the State's claim for EPA Section 104 Costs, on ten (10) days notice within sixty (60) days of the State incurring any EPA Section 104 Costs, as set forth in the July 2015 Order; and (b) with regard to DEC OU-1/OU-2 Costs, no later three (3) years after the date of completion of the response action, as set forth in Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2).

4. The Frost Street Defendants shall pay the total amount of \$700,000 to the State as follows: (1) an initial payment of \$250,000 within thirty (30) days of the Effective Date of this Supplemental Decree as defined below; (2) a payment of \$225,000 on the one-year anniversary of the Effective Date; and (3) a final payment of \$225,000 on the two-year anniversary of the Effective Date. Payment in full of \$700,000 will constitute full satisfaction of the Frost Street Defendants' obligations pursuant to this Supplemental Decree.

5. The payments to the State by the Frost Street Defendants shall be allotted as follows: \$455,000 in OU-3 past costs; and \$245,000 in natural resource damages.

6. Each payment shall be remitted by delivering to the Attorney General, Attention: Assistant Attorney General Daniel F. Mulvihill, 120 Broadway, 26th Floor, New York, New York 10271, a certified or bank check in that amount payable to the State of New York and containing a notation of DEC's site Nos. 1-30-043I, 1-30-43L and 1-30-043M.

7. Each of the Frost Street Defendants releases and covenants not to sue, execute judgment, or take any civil, judicial or administrative action under any federal, state, local or common law against the State, or its employees or departments, or to seek against the State any costs, damages, contribution or attorneys' fees arising out of any of the Matters Addressed in this Supplemental Decree, including discovery proceedings in connection with the Matters Addressed; provided, however, that if the State, pursuant to the Reopener set forth in Paragraph 8 hereto, asserts a claim or commences or continues a cause of action against any of the Frost Street Defendants with respect to the Frost Street Sites and/or NCIA, other than to enforce the obligations contained in this Fourth Supplemental Decree, this Paragraph 7 shall not preclude the assertion by such Frost Street Defendant of any claims, counterclaims, defenses, or other causes of action against the State. Notwithstanding the foregoing, any of the Frost Street Defendants may assert any claims or causes of action against any person other than the State, to the extent permitted by law, for any costs, damages, contribution or attorney's fees arising out of any of the Matters Addressed in this Fourth Supplemental Decree.

8. **Reopener.** Notwithstanding any other provision of this Fourth Supplement Consent Decree, the Consent Decree and any release, discharge or covenant not to sue that the Frost Street Defendants may receive from the State, the State reserves,

and this Fourth Supplement Consent Decree is without prejudice to, the right of the State to assert claims (1) against the Frost Street Defendants (except against the Estate of Emily Spiegel) or costs that may be incurred by the State in the future to the extent that the United States seeks costs from the State arising out of or in connection with the disposal, release, and/or threat of release of hazardous substances at or from the NCIA and/or at or from the sites alleged to have been owned or operated by the Frost Street Defendants under CERCLA § 104(c)(3), 42 U.S.C. § 9604(c)(3) and applicable federal regulations and guidance documents or (2) against the Frost Street Defendants (except for the Estate of Emily Spiegel) for any costs incurred or to be incurred by the State (but not claims for natural resource damages) in connection with the disposal, release, and/or threat of release of hazardous substances at or from the Frost Street Sites with respect to OU-1 and/or OU-2 of the Frost Street Sites.

9. Any notification to the State and the Frost Street Defendants shall be in writing or by electronic mail and shall be deemed properly given if sent to the following:

As to Frost Street Defendants
Kevin Maldonado, Esq.
5 Hickory Hill Road
Windham, New York 12496
Kevinmaldonado64@yahoo.com

Harry L. Szenicer
Spiegel Associates
375 North Broadway
Jericho, New York 11753

and

Arthur Sanders
Sanders Equity
41 West Putnam Avenue

Greenwich CT 06830

Notification solely of the payments made pursuant to Paragraphs 3 above also shall be sent via electronic mail by the Frost Street Defendants to:

Dorcey Bennett
New York State Office of the Attorney General
Budget and Fiscal Management Bureau
Revenues & Restitutions Unit
State Capitol, Albany, New York 12224
Dorcey.Bennett@ag.ny.gov

and

Laura Zeppetelli
Director
Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, 12th Floor
Albany, New York 12233-7012
laura.zeppetelli@dec.ny.gov

13. This Fourth Supplemental Decree constitutes the complete agreement of the Parties. This Fourth Supplemental Decree may not be amended, modified, supplemented, or otherwise changed without the written consent of both the State and the Frost Street Defendants, and approval of the District Court. This Fourth Supplemental Decree may be signed in counterparts.

14. This Fourth Supplemental Decree shall be effective upon the date that it is entered by the Court. All times for performance of activities under this Fourth Supplemental Decree shall be calculated from that date.

**STATE OF NEW YORK and BASIL
SEGGOS, ACTING COMMISSIONER OF
THE NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION**

Dated: 4/27/2016

By:

A handwritten signature in black ink, appearing to read 'Thomas Bereman', with a long horizontal flourish extending to the right.

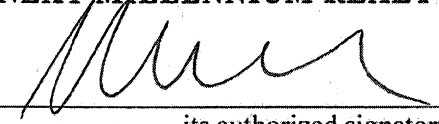
Name: Thomas BEREMAN

Title: Deputy Commissioner &

General Counsel

NEXT MILLENNIUM REALTY, LLC

Dated: April 25, 2016
New York, New York
Greenwich, Connecticut


_____, its authorized signatory

Dated: April 25, 2016
~~NASSAU County~~ New York, ~~New York~~

101 FROST STREET ASSOCIATES, L.P.
By: 101 Frost Street Corp.
By: [Signature], President
President, its authorized signatory

101 FROST STREET CORP.

Dated: April 25, 2016
NASSAU County / New York, New York

B. J. M. C. PRESIDENT
PRESIDENT ~~its authorized signatory~~

ESTATE OF JERRY SPIEGEL

Dated: _____, 2016
New York, New York

ALAN EIDLER, AS CO-EXECUTOR

Dated: April 28, 2016
New York, New York

Lise Spiegel Wilks
LISE SPIEGEL WILKS, AS CO-EXECUTOR

Dated: _____, 2016
New York, New York

PAMELA SPIEGEL SANDERS, AS CO-EXECUTOR

ESTATE OF JERRY SPIEGEL

NASSAU
County,

Dated: April 25, 2016
New York, ~~New York~~

By: AL E. Co-Executor
ALAN EIDLER, AS CO-EXECUTOR

Dated: _____, 2016
New York, New York

LISA SPIEGEL WILKS, AS CO-EXECUTOR

Dated: _____, 2016
New York, New York

PAMELA SPIEGEL SANDERS, AS CO-EXECUTOR

ESTATE OF EMILY SPIEGEL

NASSAU
COUNTY, Dated: April 25,, 2016
New York, ~~New York~~

Alan Eidler, Co-Executor
ALAN EIDLER, AS CO-EXECUTOR

Dated: _____, 2016
New York, New York

LISA SPIEGEL WILKS, AS CO-EXECUTOR

Dated: _____, 2016
New York, New York

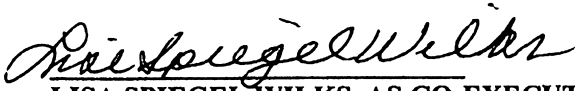
PAMELA SPIEGEL SANDERS, AS CO-EXECUTOR

ESTATE OF EMILY SPIEGEL

Dated: _____, 2016
New York, New York

ALAN EIDLER, AS CO-EXECUTOR

Dated: April 25, 2016
New York, New York



LISA SPIEGEL WILKS, AS CO-EXECUTOR

Dated: _____, 2016
New York, New York

PAMELA SPIEGEL SANDERS, AS CO-EXECUTOR

ESTATE OF EMILY SPIEGEL

NASSAU
County, Dated: April 25, 2016
New York, ~~New York~~

Alan Eidler, Co-Executor
ALAN EIDLER, AS CO-EXECUTOR

Dated: _____, 2016
New York, New York

LISA SPIEGEL WILKS, AS CO-EXECUTOR

Dated: April 25, 2016
~~New York, New York~~
Greenwich, Connecticut

Pamela Spiegel Sanders
PAMELA SPIEGEL SANDERS, AS CO-EXECUTOR

ESTATE OF JERRY SPIEGEL

NASSAU
County,

Dated: April 25, 2016
New York, ~~New York~~

By: Alan E. Eidler, Co-Executor
ALAN EIDLER, AS CO-EXECUTOR

Dated: April 25, 2016
New York, New York

LISA SPIEGEL WILKS, AS CO-EXECUTOR

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Pamela Spiegel Sanders
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