

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
STATE SUPERFUND PROGRAM  
ECL §27-1301 *et seq.*

In the Matter of a Remedial Program for

**ORDER ON CONSENT AND  
ADMINISTRATIVE SETTLEMENT Index No.  
CO 1-20211105-179**

**DEC Site Name:** 100 Commercial

DEC Site No.: 130075 and V00157

Site Address: 100 Commercial Street, Plainview, New York 11803

Hereinafter referred to as "Site"

by: OE 100 COMMERCIAL STREET LLC, a Delaware limited liability company,  
RESPONDENT

Hereinafter referred to as "Respondent"

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of the Environmental Conservation Law ("ECL") and the New York State Finance Law ("SFL"), and such laws provide the Department with authority to enter into this Order on Consent and Administrative Settlement (the "Settlement Agreement" or "Order").

2. A. The Department is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the ECL and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL 3-0301, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

3. The Site was formerly listed on the Registry of Inactive Hazardous Waste Disposal Sites in New York State (the "Registry") as Site Number 130075. The Site was also in the Voluntary Cleanup Program, Site Number V00157, when the Department and the Chapter 11 Trustee in Bankruptcy for the former owner of the Site (Comm 100 Associates) executed an agreement dated November 19, 1998 (the "Agreement") whereby the Trustee agreed to implement a remedial program at the Site. Upon completion of the remedial program, the

Department delisted the Site from the Registry, effective April 25, 2006 (as set forth by letter from the Department dated the same day). Following the Department's determination that the remedial obligations had been completed pursuant to the Agreement, the Department issued the responding parties an Assignable Release and Covenant Not to Sue by letter dated November 14, 2005 (the "2005 Release and CNS").

4. Pursuant to the legal authorities cited herein, the Department has incurred costs, and may need to incur additional costs. These expenditures are authorized by and in conformance with relevant and applicable State and federal law.

5. A. Respondent represents it is a prospective purchaser under a contract to acquire title to the Site. Respondent further represents that it is not affiliated in any way with NAKODA BHERAV & CO., LLC, a New York limited liability company, the current owner of the Site, or any previous owners or operators of the Site.

B. Respondent represents that it is a Bona Fide Prospective Purchaser ("BFPP") as that term is defined in Section 101(40) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601(40) and that it has and will continue to comply with the requirements of CERCLA §§ 101(40) and 107(r)(1) during its ownership of the Site. Therefore, Respondent qualifies for the protection from liability under CERCLA set forth in CERCLA § 107(r)(1), 42 U.S.C. § 9607(r)(1), with respect to the contamination existing at the Site on the effective date of this Order.

C. Respondent anticipates that following the date that this Order is executed by the Department, NAKODA BHERAV & CO., LLC, a New York limited liability company, will convey title of the Site to Respondent.

6. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

7. Respondent and the Department agree that the primary goals of this Order are (i) for Respondent to satisfy the terms and conditions set forth herein to obtain BFPP liability protection under CERCLA, (ii) provide the Department access to the Site in accordance with applicable law, and (iii) for the Department to release the Respondent and furnish a covenant not to sue with respect to response costs incurred by the State related to the Site upon the execution of this Order and Respondent's satisfaction of the terms and conditions set forth herein.

8. The Parties recognize that implementation of this Order will avoid prolonged and costly litigation between the Parties. The Parties also recognize that this Order is mutually acceptable, fair, reasonable and in the public interest.

9. Solely with regard to the matters set forth below, Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order and agrees not to contest the validity of this Order or its terms or the validity of data submitted to the Department by Respondent pursuant to this Order.

**NOW**, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

I. Real Property

The Site subject to this Order has been assigned number 130075 and V00157, consists of approximately 3.5 acres, and is described as follows:

Subject Property Description (A Property Description of the Site is attached as Exhibit "A")

100 Commercial Street, Plainview, New York  
Tax Map/Parcel No.: Section 13, Block 98, Lot 5

II. Site Access/Notice to Successors in Interest

A. Respondent agrees to provide to the Department, any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to the remedial program at the Site, and any agent, consultant, contractor, or other person so authorized by the Commissioner, an irrevocable right of access at all reasonable times to the Site with seventy-two (72) hour written notification and subject to authorization of tenants and to any other property Respondent controls to which access is required for the implementation of response actions at and near the Site under applicable federal and state law, including but not limited to all activities authorized under ECL §§ 27-1309(3) – (4) and ECL § 27-1313(8). The Department and others acting for or with the Department shall use reasonable efforts not to interfere with the use and enjoyment of the Site, including working reasonably with Respondent on placement of any features, including but not limited to monitoring wells. Notwithstanding any provision of this Settlement Agreement, the Department retains all of its authorities and rights, including enforcement authorities thereto, under CERCLA, Article 27, Title 13 of the ECL or pursuant to any other provision of state or federal statutory or common law.

B. Within sixty (60) days after the effective date of this Settlement Agreement, Respondent shall cause to be filed with the Nassau County Clerk a Department-approved Notice of Settlement Agreement, which Notice shall be substantially similar to the Notice of Bona Fide Prospective Purchaser Agreement attached as Exhibit B, to provide all parties who may acquire any interest in the Site with notice of this Settlement Agreement. Within thirty (30) days of such filing (or a longer period of time as may be required to obtain a certified copy provided Respondent advises the Department of the status of its efforts to obtain such certified

copy within thirty (30) days), Respondent shall provide the Department with a copy of such instrument certified by the Nassau County Clerk to be a true and faithful copy.

C. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site or becomes aware of such conveyance, Respondent shall, not fewer than forty-five (45) days before the date of conveyance or within forty-five (45) days after becoming aware of such conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Settlement Agreement. However, such obligation shall not extend to the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security order, lease or any other right accruing to a party not affiliated with Respondent to secure repayment of money or the performance of a duty or obligation.

D. Respondent shall require that assignees, successors in interest, lessees and sublessees of the Site shall provide the same access and cooperation with the Department. Respondent shall not be responsible for any such parties' failure to comply. The Respondent shall ensure that a copy of this Settlement Agreement is provided to any current lessee or sublessee on the Site as of the effective date of this Settlement Agreement and shall ensure that any subsequent leases, assignments or transfers of the Site or an interest in the Site are consistent with this Paragraph, Paragraph X (Parties Bound/Transfer of Covenant) of this Settlement Agreement.

E. Respondent shall comply with any land use restrictions and institutional controls on the Site in connection with the remedial program for the Site. If Respondent or its successors and assigns propose to change the use of the Site, as defined in ECL 27-1317 and 6 NYCRR Part 375-2.2(a), Respondent must comply with the notice requirements of 6 NYCRR Part 375-1.11(d).

F. Upon sale or other conveyance of the Site or any part thereof, Respondent shall require that any grantee, transferee or other holder of an interest in the Site or any part thereof shall provide access and cooperation to the Department, its authorized officers, employees, representatives, and all other persons implementing the remedial program for the Site under the Department's oversight. Respondent shall require that each grantee, transferee or other holder of an interest in the Site or any part thereof shall comply with any land use restrictions and institutional controls on the Site in connection with the remedial program for the Site.

### III. Due Care/Cooperation

A. Respondent shall exercise due care and shall comply with all applicable local, state and federal laws and regulations with respect to the existing contamination at the Site. Respondent agrees to cooperate fully with the Department in its implementation of any additional response actions at the Site and further agrees not to interfere with such response actions. The Department agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with Respondent's operations by entry

and implementation of response actions. In the event Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous waste, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or the environment, Respondent shall immediately take appropriate action to prevent, abate or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements, or any other law, immediately notify the Department of such release or threatened release.

B. Respondent shall take and maintain all steps necessary to continue its status as a "Bona Fide Prospective Purchaser" as that term is defined in § 101(40) of CERCLA, 42 U.S.C. § 9601(40), for the Site by continuing to comply with all of the requirements for a Bona Fide Prospective Purchaser as set forth in applicable federal and state law, including but not limited to § 101(40) of CERCLA, including without limitation the exercise of "appropriate care" by taking "reasonable steps" as set forth in § 101(40)(D) of CERCLA, 42 U.S.C. § 9601(40)(D), and the implementation and compliance with any land use restrictions and institutional controls as set forth in § 101(40)(F) of CERCLA, 42 U.S.C. § 9601(40)(F) and ECL § 27-1318 for so long as Respondent retains any ownership interest in the Site.

#### IV. Certification

By entering into this Settlement Agreement, Respondent certifies that to the best of its knowledge and belief and other than information that Respondent has obtained from or is based upon public records associated with the Site, it has fully and accurately disclosed to the Department all information known to Respondent and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any existing contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site. Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous waste or pollutants or contaminants at the Site. If the Department determines that the information provided by Respondent is not materially accurate and complete, this Settlement Agreement, within the sole discretion of the State of New York, shall be null and void, and the Department reserves all of its rights.

#### V. Release and Covenant Not to Sue

Subject to the Reservation of Rights in Paragraph VI of this Settlement Agreement, based upon the Respondent's continued cooperation with the Department, and the Respondent's ongoing compliance with the engineering and institutional controls as set forth in the Declaration of Protective Covenant recorded with the Nassau County Clerk on July 26, 1999, the Department hereby releases and covenants not to sue, and shall forbear from bringing any action, proceeding or suit pursuant to New York's Environmental Conservation Law or State Finance Law involving or relating to the release or threatened release of contamination existing on, at, or emanating from the Site as of the effective date of this Settlement Agreement (the "Existing Contamination"), and from referring the New York Attorney General any claim for recovery of costs incurred by the Department against Respondent and Respondent's members, managers, officers, directors, shareholders, lessees

and sublessees, grantees, successors and assigns, successors-in-title and its respective secured creditors for the further investigation and remediation of the Site, and for natural resource damages, based upon the Existing Contamination. The Existing Contamination covered by this Release and Covenant Not to Sue expressly includes the chemicals known as Per- and Poly-Fluoroalkyl Substances (PFAS), 1,4-dioxane, or other emerging contaminants. The Department, however, hereby reserves its rights concerning, and such Release and Covenant Not to Sue shall not extend to, any further investigation or remedial action the Department deems necessary:

- Due to environmental conditions or information related to the Site unrelated to Existing Contamination (whether onsite or offsite) at the time of this Release and Covenant Not to Sue was issued and which indicate that this Order cannot be implemented with sufficient protection of human health and the environment;
- Due to Respondent's failure to comply with this Settlement Agreement; or
- Due to fraud committed by Respondent in entering into or implementing this Settlement Agreement.

Additionally, the Department hereby reserves its rights concerning, and such Release and Covenant Not to Sue shall not extend to Respondent or any of Respondent's lessees, sublessees, successors or assigns or successors-in-title who cause or allow a release or threat of release at the Site of any hazardous waste or petroleum, other than the Existing Contamination; nor to any of Respondent's lessees, sublessees, successors or assigns who are otherwise responsible under state or federal law for the remediation of the Existing Contamination independent of any obligation that party may have respecting the same resulting solely from the Settlement Agreement's execution. Notwithstanding the above, with respect to any claim or cause of action asserted by the Department, the party seeking the benefit of this Release and Covenant Not to Sue shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to the Existing Contamination.

Notwithstanding any other provision in this Release and Covenant Not to Sue:

- If with respect to this Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this Settlement Agreement shall be construed or deemed to preclude the State of New York from recovering such claim;
- Except as provided in this Settlement Agreement, nothing contained in this Settlement Agreement shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including, but not limited to, the right to recover natural resource damages) with respect to any party, including Respondent;
- Nothing contained in this Settlement Agreement shall prejudice any rights of the Department to take investigatory or remedial action it deems necessary if Respondent

fails to comply with the Settlement Agreement or if contamination other than Existing Contamination is encountered at the Site; and

- Nothing contained in this Settlement Agreement shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal rights or claims, actions, suits, causes of action or demands whatsoever that (i) Respondent may have against any party other than the Department, and (ii) the Department may have against any party other than Respondent, its directors, officers, employees, agents and servants, and those successors and assigns of Respondent that were not responsible under applicable law for the development and implementation of a remedial program at the Site prior to the effective date of this Settlement Agreement, and their respective secured creditors.

The Department acknowledges that the 2005 Release and CNS applies to successors-in-title such as Respondent and that nothing in this Agreement is intended to reduce, diminish, or limit in any way the release and other benefits provided to successors-in-title contained within the 2005 Release and CNS. This Agreement is intended to broaden the scope of the release by, among other things, conferring Bona Fide Prospective Purchaser Status on the Respondent and including emerging contaminants within the scope of the release and covenant not to sue.

## VI. Reservation of Rights

A. The Release and Covenant Not to Sue set forth in Paragraph V does not pertain to any matters other than those expressly specified in Paragraph V. The Department reserves and this Settlement Agreement is without prejudice to all rights against Respondent with respect to all other matters, including but not limited to claims based on a failure by Respondent to meet requirements of this Settlement Agreement, including but not limited to Paragraph II (Access/Notice to Successors in Interest), and Paragraph III (Due Care/Cooperation).

B. Except as provided in the Release and Covenant Not to Sue in Paragraph V after its issuance and except as otherwise provided in this Settlement Agreement, nothing contained in this Settlement Agreement shall be construed as barring, diminishing, adjudicating or in any way affecting any of the Department's rights or authorities, including but not limited to the right to take any investigatory or remedial action deemed necessary, and the right to exercise summary abatement powers with respect to any person, including Respondent.

C. Except as otherwise provided in this Settlement Agreement, Respondent expressly reserves all rights and defenses under applicable law to contest, defend against, dispute or disprove any actions, proceedings, allegations, assertions or determinations of the Department, including any assertion of remedial liability by the Department against Respondent, and further

reserves all rights including the rights to notice, to be heard, to appeal and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Settlement Agreement. The existence of this Settlement Agreement or Respondent's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing or violation of law by Respondent, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

D. Except as provided in this Settlement Agreement, Respondent reserves such rights as it may have to seek and obtain contribution, indemnification and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers, for past or future response and/or cleanup costs or other such costs or damages arising from contamination at the Site as provided under applicable law.

## VII. Indemnification

Respondent shall indemnify and hold the Department, the State of New York and their employees and representatives harmless for all third-party claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Settlement Agreement by Respondent and/or any of Respondent's directors, officers, employees, servants, agents, successors and assigns except for liability arising from (i) vehicular accidents occurring during travel to or from the Site; or (ii) willful, wanton or malicious acts or omissions, and acts or omissions constituting gross negligence or criminal behavior by the Department, the State of New York and/or their employees and representatives during the course of any activities conducted pursuant to this Settlement Agreement. The Department shall provide Respondent with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

## VIII. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Respondent shall be sent to:

Michael C. Murphy  
New York State Dept. of Environmental Conservation  
Office of General Counsel  
625 Broadway, 14<sup>th</sup> Floor  
Albany, NY 12233-1500  
518-402-8564  
[michael.murphy1@dec.ny.gov](mailto:michael.murphy1@dec.ny.gov)

2. Communication from the Department to Respondent shall be sent to:



Keith Edwards  
Vice President- Logistics  
Brookfield Properties  
1180 Peachtree Street, NE,  
Suite 3380  
Atlanta GA 30309  
404-941-8467  
[keith.edwards@brookfieldproperties.com](mailto:keith.edwards@brookfieldproperties.com)

Gautam Huded  
Vice President, Counsel - Logistics  
Brookfield Properties  
1180 Peachtree Street, NE  
Suite 3380  
Atlanta GA 30309  
404-941-8475  
[Gautam.huded@brookfieldproperties.com](mailto:Gautam.huded@brookfieldproperties.com)

The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Respondent provide more than one paper copy of any work plan or report.

B. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this Paragraph VIII.

IX. Parties Bound/Transfer of Covenant Not to Sue

A. This Settlement Agreement shall apply to and be binding upon the Department and shall apply to and be binding on the Respondent, its officers, directors, employees and agents. Each signatory of a Party to this Settlement Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to legally bind such Party.

B. In the event of an assignment or transfer of the Site or an assignment or transfer of an interest in the Site, the assignor or transferor shall continue to be bound by all of the terms and conditions, and subject to all the benefits, of this Settlement Agreement except as the Department and the assignor or transferor agree otherwise and modify this Settlement Agreement, in writing, accordingly. Moreover, prior to or simultaneously with any assignment or transfer of the Site, the assignee or transferee must consent in writing to be bound by the terms of this Settlement Agreement, including but not limited to the certification requirement in Paragraph V of this Settlement Agreement in order for the Release and Covenant Not to Sue in Paragraph VI to be available to that party. The Release and Covenant Not to Sue in Paragraph VI shall not be effective with respect to any assignees or transferees who fail to provide such written consent to the Department.

X. Disclaimer

This Order in no way constitutes a finding by the Department as to the risks to human health and the environment which may be posed by the Existing Contamination at the Site nor constitutes any representation by the Department that the Site is fit for any particular purpose.

#### XI. Termination

A. Should the Release and Covenant Not to Sue set forth in Paragraph V herein become null and void, *ab initio*, in the event of fraud relating to the execution or implementation of this Settlement Agreement, or following 20 days' written notice and opportunity to cure, in the event of Respondent's failure to materially comply with any provision of this Settlement Agreement, then neither this Settlement Agreement nor its termination shall affect any liability of Respondent for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA. In no event shall Respondent be liable for payment of costs already recovered as part of the Litigation Consent Decree or from any other party.

B. If any Party to this Settlement Agreement believes that any or all of the obligations under Paragraph II (Site Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of this Settlement Agreement, that Party may request in writing that the other Party agree to terminate the provisions establishing such obligations; provided that the provisions in question shall continue in full force unless and until the Party requesting such termination receives written confirmation from the other Party to terminate such provisions.

#### XII. Miscellaneous

A. Respondent and Respondent's officers, directors, agents, servants, employees, successors and assigns shall be bound by this Settlement Agreement. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall in no way alter Respondent's responsibilities under this Settlement Agreement. Respondent's officers, directors, employees, servants and agents shall be obliged to comply with the relevant provisions of this Settlement Agreement in the performance of their designated duties on behalf of Respondent.

B. All references to "days" in this Settlement Agreement are to calendar days unless otherwise specified.

C. The paragraph headings set forth in this Settlement Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Settlement Agreement.

D. 1. No term, condition, understanding or agreement purporting to modify or vary any term of this Settlement Agreement shall be binding unless made in writing and subscribed by the Party to be bound. No informal advice, guidance, suggestion or comment

by the Department regarding any report, proposal, plan, specification, schedule or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Settlement Agreement

2. If Respondent seeks to change any provision of this Settlement Agreement, Respondent shall make timely written application, signed by Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Department's contacts provided in Paragraph IX.

E. To the extent authorized under 42 U.S.C. Section 9613, New York General Obligations Law § 15-106, 6 NYCRR § 375-1.5(b)(5)(i) and other applicable law, Respondent shall be deemed to have resolved its liability to the State for purposes of contribution protection provided by CERCLA Section 113(f)(2), 42 U.S.C. Section 9613(f)(2), for "matters addressed" pursuant to and in accordance with this Settlement Agreement. "Matters addressed" in this Order shall mean all response actions, as this term is defined at 42 U.S.C. § 9601(25), taken by Respondent to implement this Settlement Agreement for the Site and all response costs incurred and to be incurred by any person or party in connection with the work performed under this Settlement Agreement, which costs have been paid by Respondent, including a Windfall Payment pursuant to this Settlement Agreement. To the extent authorized under 42 U.S.C. § 9613(f)(3)(B), by entering into this administrative settlement of liability, if any, for some or all of the response action and/or for some or all of the costs of such action, Respondent is entitled to seek contribution from any person except those who are entitled to contribution protection under 42 U.S.C. § 9613(f)(2).

C. Respondent agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify the Department in writing no later than sixty (60) days prior to the initiation of such suit or claim.

D. Respondent also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify the Department in writing within ten (10) days of service of the complaint on them.

E. All activities undertaken by Respondent pursuant to this Settlement Agreement shall be performed in accordance with the requirements of all applicable Federal and State laws, regulations and guidance documents.

F. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in ECL Article 27, Title 13 or in regulations promulgated under such statute have the meaning assigned to them under said statute or regulations. Whenever terms defined in this Settlement Agreement are used in this Settlement Agreement, the definitions in this Settlement Agreement shall apply. In the event of a conflict, the definition set forth in this Settlement Agreement shall control. Respondent's obligations under this Settlement Agreement represent payment for or reimbursement of response costs and shall not be deemed to constitute any type of fine or penalty.

G. This order may be executed for the convenience of the Parties hereto, individually or in combination, in one or more counterparts, each of which for all purposes shall be deemed to have the status of an executed original, and all of which shall together constitute one and the same.

H. The effective date of this Settlement Agreement is the date of the closing for the completion of the sale/purchase of the Site between Respondent and One Adams Owner LLC. This Settlement Agreement shall be null and void if closing of the sale/purchase of the Site between Respondent and One Adams Owner does not occur.

DATED: December 9, 2021

BASIL SEGGOS  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By: *Susan Edwards*


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Susan Edwards, Acting Division Director  
Division of Environmental Remediation

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Consent Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Consent Order.

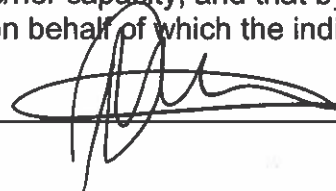
By: OE 100 COMMERCIAL STREET LLC,  
a Delaware limited liability company,  
its Non-Member Manager

By:   
Name: Erica Segal  
Title: Vice President

Date: December 3, 2021

STATE OF NEW YORK )  
  ) ss:  
COUNTY OF New York)

On the 3<sup>rd</sup> day of December in the year 2021, before me, the undersigned, personally appeared Erica Segal personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

By: 



## EXHIBIT A

### PROPERTY DESCRIPTION

#### Schedule A Description

ALL that certain plot, piece or parcel of land situate, lying and being in Plainview, Town of Oyster Bay, County of Nassau, State of New York, and more particularly bounded and described as follows:

BEGINNING at a point on the northerly side of Commercial Street, distant 220.57 feet easterly from the easterly end of an arc or curve connecting the northerly side of Commercial Street with the easterly side of South Terminal Drive, which arc or curve has a radius of 30 feet and a length of 47.12 feet;

RUNNING THENCE from said point of BEGINNING North 30 degrees 18 minutes 14 seconds West, a distance of 350 feet;

THENCE North 59 degrees 41 minutes 46 seconds East, a distance of 435.60 feet;

THENCE South 30 degrees 18 minutes 14 seconds East, a distance of 350 feet to the northerly side of Commercial Street;

THENCE South 59 degrees 41 minutes 46 seconds West along the northerly side of Commercial Street, a distance of 435.60 feet to the said point or place of BEGINNING.

## EXHIBIT "B"

### NOTICE OF BONA FIDE PROSPECTIVE PURCHASER AGREEMENT

OE 100 COMMERCIAL STREET LLC, a Delaware limited liability company, ("Respondent") is subject to a Bona Fide Prospective Purchaser Agreement (Index No. CO 1-20211105-179) (the "Settlement Agreement") issued by the Commissioner of the New York State Department of Environmental Conservation (the "Department" under Article 27, Title 13, and Article 71, Title 27 of the Environmental Conservation Law of the State of New York ("ECL")) for a site located at 100 Commercial Street, Plainview, New York, 11803 (the "Site").

The Department designated the Site as an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2) and listed the Site on the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site #130075. The Site was delisted from the Registry effective April 25, 2006. The Site was in the Voluntary Program, with number V00157. The Site is more particularly described in the legal description attached hereto as Schedule "A."

The purpose of the Settlement Agreement is to provide Bona Fide Prospective Purchaser Status to the purchaser of the Site. The effective date of the Bona Fide Prospective Purchaser Agreement was \_\_\_\_\_.

A copy of the Bona Fide Prospective Purchaser Agreement, as well as any and all Department-approved Work Plans and Reports under this Settlement Agreement may be reviewed at the Department's Central Office located at 625 Broadway, Albany, New York.

This Notice of Bona Fide Prospective Purchaser Agreement is being filed with the Nassau County recording officer to give all parties who may acquire any interest in the Site notice of the Settlement Agreement.

**WHEREFORE**, the undersigned has signed this Notice of Bona Fide Prospective Agreement in compliance with the terms of the Bona Fide Prospective Purchaser Agreement.