

EXECUTION COPY

1 NEW YORK STATE DEPARTMENT OF
2 ENVIRONMENTAL CONSERVATION

In the Matter of an
Addendum to Remedial Program
Orders on Consent for an
Inactive Hazardous Waste Disposal
Site under Article 27, Title 13
of the Environmental Conservation Law
by

**ADDENDUM TO
ORDER ON CONSENT**

Index # W1-1175-13-10

Site # 1-52-139

Bulova Corporation,
Sag Development Partners, LLC,
The Watchcase Factory Condominium, and
The Condominium Board of The Watchcase Factory
Condominium,

Responsible Parties.

3
4 **WHEREAS,**

5
6 1. A. The New York State Department of Environmental Conservation
7 (**"Department"**) is responsible for inactive hazardous waste disposal site remedial programs
8 pursuant to Article 27, Title 13 of the Environmental Conservation Law (**"ECL"**) and Part 375 of
9 Title 6 of the Official Compilation of Codes, Rules and Regulations (**"6 NYCRR"**) and may
10 issue orders consistent with the authority granted to the Commissioner by such statute.

11
12 B. The Department is responsible for carrying out the policy of the State of
13 New York to conserve, improve and protect its natural resources and environment and control
14 water, land, and air pollution consistent with the authority granted to the Department and the
15 Commissioner by Article 1, Title 3 of the ECL.

16
17 C. This Addendum to Remedial Program Orders on Consent (the **"Addendum"** or
18 **"Order"**) is issued pursuant to the Department's authority under, inter alia, ECL Article 27, Title
19 13 and ECL 3-0301, and resolves Respondents' liability to the State as provided at 6 NYCRR
20 375-1.5(b)(5).

21
22 2. The Site is listed in the Registry of Inactive Hazardous Waste Disposal Sites in New
23 York State as Site Number 1-52-139 (the **"Site"**) with a Classification "4" pursuant to ECL 27-
24 1305. The Site is located at 15 Church Street, Sag Harbor, New York designated on the tax map
25 of the County Clerk of Suffolk as tax map parcel numbers: District 0903, Section 003.00, Block
26 04.00, Lot 014.000.
27

1 3. On or about July 30, 2010, the New York Attorney General accepted for filing a
2 Condominium Offering Plan for The Watchcase Factory Condominium (the "**Plan**").¹ The Plan,
3 prepared by SDP as its Sponsor, provides for the conversion of the real property which
4 comprises the Site to condominium ownership as The Watchcase Factory Condominium (the
5 "**Condominium**") under Article 9-B of the New York Real Property Law and the creation and
6 sale of 64 residential units (each a "**Unit**"). The Plan provides for a condominium board to
7 manage the Condominium.
8

9 4. Bulova Corporation ("**Bulova**") is a New York corporation with an office at One Bulova
10 Avenue, Woodside, New York 11377-7874. Bulova is currently under Order on Consent, Index
11 No. W1-0674-94-01, issued to Bulova on September 11, 1995 with respect to the Site (the "**1995**
12 **Order**").
13

14 5. Sag Development Partners, LLC ("**SDP**") is a New York limited liability company with
15 an office at c/o Cape Advisors, Inc., 483 Broadway, 5th Floor, New York, New York, 10013.
16 SDP is currently under Order on Consent and Administrative Settlement, Index No. W1-1130-
17 08-12, issued to SDP on December 31, 2008 with respect to the Site (the "**2008 Order**").
18

19 6. The Condominium Board of The Watchcase Factory Condominium (the "**Condominium**
20 **Board**") will manage and operate the Condominium at the Site commencing on the closing of
21 the sale of the first Unit (such date, the "**Board Control Date**") pursuant to the Plan.
22

23 7. Bulova, SDP, the Condominium and the Condominium Board are collectively referred to
24 as Responsible Parties. The Responsible Parties who are signatories to this Order are hereinafter
25 collectively referred to as Respondents.
26

27 8. Pursuant to the 1995 Order, Bulova is responsible for the Operation, Maintenance, and
28 Monitoring related to the Site.
29

30 9. Pursuant to the 2008 Order, SDP granted to the People of the State of New York an
31 Environmental Easement on the Site dated June 28, 2011, and recorded in the office of the
32 Suffolk County Clerk on July 28, 2011, at Liber 12666, Page 801 (the "**Environmental**
33 **Easement**"). The Environmental Easement requires compliance with the Department-approved
34 Site Management Plan ("**SMP**") and any subsequent amendments thereto as may be approved by
35 the Department. The SMP includes the Site Management Plan document prepared by Roux
36 Associates Inc. ("**Roux**") dated January 27, 2009, the January 28, 2009 response letter to the
37 Department's comments from Roux, and the Site Management Plan Addendum 1, dated May 7,
38 2012.
39

1 Filing with the New York State Department of Law does not mean that the Department of Law or any other government agency has approved the offering.

1 10. The Environmental Easement and the SMP require SDP and the SMP requires Bulova,
2 among other matters, to operate and maintain the required engineering controls and to perform
3 certain on-Site and off-Site monitoring work. The Plan provides that the Condominium Board
4 will, on the Board Control Date, become a party to this Addendum and thereby become obligated
5 on the Board Control Date to perform SDP's obligations under the Environmental Easement and
6 the SMP on behalf of the Condominium.

7
8 11. The 1995 Order, the 2008 Order, the Environmental Easement and the SMP together
9 impose some overlapping obligations on Bulova and SDP. Bulova desires to have transferred to
10 SDP primary responsibility for some of these obligations and SDP is willing, as hereinafter
11 provided, to accept primary responsibility for those transferred obligations. The purpose of this
12 Addendum is to clarify Bulova's and SDP's respective obligations with respect to the specific
13 OM&M requirements as set forth in Section 7 of the SMP, to provide for financial assurance
14 under 6 NYCRR 375-1.11(c) "to ensure the long term implementation, maintenance, monitoring,
15 and enforcement" of the on-Site engineering controls, and to provide for the subsequent transfer
16 to the Condominium of the obligations transferred by Bulova to SDP, as set forth below. The
17 Department and the Respondents recognize that implementation of this Addendum will provide
18 for the orderly implementation of the SMP and may avoid litigation, and that this Addendum is
19 mutually acceptable, fair, reasonable, and in the public interest.

20
21 12. Respondents consent to the issuance of this Order without (i) an admission or finding of
22 liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or
23 standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or
24 threatened release of hazardous waste at or from the Site; and/or (iii) an acknowledgment that a
25 release or threatened release of hazardous waste at or from the Site constitutes a significant threat
26 to the public health or environment.

27
28 13. Solely with regard to the matters set forth below, Respondents hereby waive any right to
29 a hearing as may be provided by law, consent to the issuance and entry of this Order, and agree
30 to be bound by its terms. Respondents consent to and agree not to contest the authority or
31 jurisdiction of the Department to issue or enforce this Order, and agree not to contest the validity
32 of this Order or its terms or the validity of data submitted to the Department by Respondents
33 pursuant to this Order.

34
35 **NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:**

36
37 I. This Order is an Addendum to the 1995 Order with Bulova and an Addendum to the 2008
38 Order with SDP. Except as provided below, all provisions of the 1995 Order and the 2008 Order
39 remain unchanged.
40

1 II. Site Management Plan – Operation, Maintenance, and Monitoring

2
3 Section 7.0 of the SMP sets forth the Operation, Maintenance and Monitoring
4 requirements for the Site ("**OM&M Obligations**"). Except to the extent provided below,
5 nothing contained herein releases Bulova, SDP, the Condominium or the Condominium Board
6 from compliance with the SMP.
7

8 III. Bulova Obligations

9
10 Bulova retains the obligation to implement the soil vapor and ground water monitoring
11 required under Sections 7.1.1 and 7.1.2 of the SMP ("**Retained OM&M Obligations**"). If
12 Bulova fails to implement the Retained OM&M Obligations, the Department will seek
13 enforcement of these obligations solely against Bulova. Neither SDP nor the Condominium
14 Board shall have any responsibility with respect to the Retained OM&M Obligations.
15

16 IV. SDP Obligations

17
18 A. Construction of Engineering Controls.

19
20 Nothing contained herein is intended to release or relieve SDP from the obligation to
21 construct the engineering controls required by Section 5.0 of the SMP.
22

23 B. Operation, Maintenance and Monitoring.

24
25 SDP assumes the primary responsibility to implement all of the SMP OM&M
26 requirements, except for the Retained OM&M Obligations as described in Paragraph III above
27 (such non-excluded OM&M Obligations, the "**Transferred OM&M Obligations**") until such
28 time as the Board Control Date occurs and the Condominium Board becomes a signatory to this
29 Addendum by executing a copy of this document and delivering same to the Department, SDP
30 and Bulova, at which time the Condominium shall have primary responsibility to implement the
31 Transferred OM&M Obligations.
32

33 C. Other obligations under the Environmental Easement.

34
35 SDP shall ensure compliance with all obligations under the Environmental Easement,
36 except the Retained OM&M Obligations, until such time as the Board Control Date occurs and
37 the Condominium Board becomes a signatory to this Addendum by executing a copy of this
38 document and delivering same to the Department, SDP and Bulova.
39

1 D. Condominium Budget Requirement.

2
3 Until the Board Control Date, SDP shall include in each annual budget for the
4 Condominium an amount equal to the cost of complying with the Transferred OM&M
5 Obligations.

6
7 E. Financial Assurance for the Transferred OM&M Obligations after the Board
8 Control Date.

9
10 1. In order to assure the Department that the Condominium Board will
11 perform the Transferred OM&M Obligations, SDP will deliver to the Department no later than
12 ten (10) days after receipt from the Department of a copy of this Addendum executed by the
13 Department, an irrevocable, unconditional evergreen letter of credit² in favor of the Department
14 in the amount of \$68,465.00 and substantially in the form of Exhibit "A" annexed hereto (the
15 "**Letter of Credit**"). SDP will also establish a standby trust agreement substantially in the form
16 of Exhibit "B" annexed hereto (the "**Trust Agreement**") pursuant to which the Trustee under the
17 Trust Agreement shall open a bank account into which the Commissioner shall direct that all
18 draws under the Letter of Credit be deposited. SDP shall keep the Letter of Credit and Trust
19 Agreement in effect until at least the fifth (5th) anniversary of the Board Control Date. No later
20 than the fifth (5th) anniversary of the Board Control Date, the Condominium Board shall deliver
21 to the Department a new letter of credit and a new standby trust agreement substantially identical
22 to the Letter of Credit and Trust Agreement (the new letter of credit, the "**Board Letter of**
23 **Credit**"; the new standby trust agreement, the "**Board Trust Agreement**") to replace the Letter
24 of Credit and Trust Agreement. Upon receipt of the Board Letter of Credit and the Board Trust
25 Agreement, the Department shall either (i) return the Letter of Credit to SDP with such
26 transmittal letter as may be requested by the issuer of the Letter of Credit or (ii) if the Letter of
27 Credit has been drawn on by the Department in accordance with subparagraph IV.E.2, the
28 Commissioner will instruct the Trustee to refund any unapplied proceeds of the Letter of Credit
29 to SDP. The Board Letter of Credit shall be in the principal amount of \$69,000.00.

30
31 2. With respect to the Letter of Credit (and, upon being replaced by the
32 Board Letter of Credit, the Board Letter of Credit), the Department agrees that it shall not draw
33 on the Letter of Credit or the Board Letter of Credit, except:

34
35 (i) if the Letter of Credit (and, upon being replaced by the Board Letter of
36 Credit, the Board Letter of Credit), is set to expire within one hundred and twenty (120) days and
37 the Department has received notice from the issuer of the Letter of Credit (or the issuer of the
38 Board Letter of Credit) that the term of the Letter of Credit (or the Board Letter of Credit) will
39 not be automatically extended at least for one (1) year, in which event the Department may draw
40 down the entire balance of the Letter of Credit (or the Board Letter of Credit); or

2. The letter of credit must be issued by the New York City branch of an institution which has the authority to issue letters of credit, whose letter of credit operations are regulated and examined by the Federal Reserve System, and whose total assets are not less than \$1 billion.

(ii) pursuant to the provisions of Subparagraph VI.

3. The Trustee under the Trust Agreement or the Board Trust Agreement must be either an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State Agency or a law firm or individual attorney whose principal place of business is in the State of New York.

V. The Condominium Board

Provided that the Board Control Date has occurred and the Condominium assumes SDP's obligation to implement the Transferred OM&M Obligations by the Condominium Board becoming a signatory to this Addendum and executing a copy of this document and delivering same to the Department, SDP and Bulova, effective on the Board Control Date, the Condominium shall have the primary responsibility to implement the Transferred OM&M Obligations, and the Condominium Board shall include in each annual budget for the Condominium an amount equal to the cost for such period of complying with the Transferred OM&M Obligations, and shall comply with the Environmental Easement. The Condominium Board will consent to and be bound by this Addendum and will enter into the Board Trust Agreement only as agent for the Condominium and all Unit owners, and with respect to the Addendum and the Board Trust Agreement the members of the Condominium Board shall have no personal liability (except in their capacities as Unit owners), which agency shall be expressly set forth in such consent and Board Trust Agreement.

VI. Enforcement

A. Failure to comply with the SMP, the Environmental Easement or the terms of the Addendum is a violation of this Addendum and of the ECL and 6 NYCRR Part 375.

B. If the Transferred OM&M Obligations are not implemented as required pursuant to the SMP, the Environmental Easement, and this Addendum, the Department will enforce the Transferred OM&M Obligations against the Condominium, against SDP and, only after diligent efforts to compel compliance by the Condominium and by SDP are both unsuccessful, against Bulova as follows:

1. Prior to the Board Control Date, the Department will enforce the Transferred OM&M Obligations solely against SDP.

2. On and after the Board Control Date, and provided that the Condominium Board becomes a signatory to this Addendum by executing a copy of this document and delivering same to the Department, SDP and Bulova, the Department will enforce the Transferred OM&M Obligations against the Condominium; provided, however, in the event that on or after the Board Control Date, the Condominium fails to perform the Transferred OM&M Obligations within the

1 prescribed time period, and if diligent efforts to compel compliance by the Condominium are
2 unsuccessful, the Department may take the following actions but only in the following order:

3
4 (i) Direct its own state contractor to perform the Transferred OM&M
5 Obligations which the Condominium failed to perform and direct the Trustee under the Trust
6 Agreement or the Board Trust Agreement, as applicable, to pay for such work. The Department
7 may draw on the Letter of Credit or the Board Letter of Credit, as applicable, to the extent
8 necessary for the Trustee under the Trust Agreement or the Board Trust Agreement, as
9 applicable, to pay for the cost of performing such work. (If pursuant to Subparagraph IV.E.2(i)
10 the proceeds of the Letter of Credit or the Board Letter of Credit have been deposited into the
11 standby trust fund, the Department will direct the Trustee under the Trust Agreement or the
12 Board Trust Agreement, as applicable, to pay for such work from such proceeds); and
13

14 (ii) Only if the then balance of the Letter of Credit or Board Letter of Credit,
15 as applicable, is insufficient to pay for the cost of performing the Transferred OM&M
16 Obligations which the Condominium failed to perform, apply such remaining proceeds of the
17 Letter of Credit or the Board Letter of Credit, as applicable, to perform the Transferred OM&M
18 Obligations and thereafter enforce against SDP such Transferred OM&M Obligations which
19 remain unperformed; provided, however, DEC may not proceed under this Subparagraph
20 VI.B.(ii) against SDP after the fifth (5th) anniversary of the Board Control Date.
21

22 3. In the event that at any time after the Board Control Date but prior to the fifth (5th)
23 anniversary of the Board Control Date the Condominium has failed to perform the Transferred
24 OM&M Obligations under Subparagraph VI.B., and if SDP is required under Subparagraph
25 VI.B.(ii) to perform the Transferred OM&M Obligations but has failed to do so within the
26 prescribed time period, and if diligent efforts to compel compliance by the Condominium and by
27 SDP are both unsuccessful, the Department may enforce such Transferred OM&M Obligations
28 against Bulova.
29

30 4. The foregoing rights of the Department against SDP under Subparagraph VI.B.(ii)
31 shall end on the fifth (5th) anniversary of the Board Control Date, after which date SDP shall not
32 have any responsibility for the performance of any of the Transferred OM&M Obligations.
33 After such date, the Department shall enforce the Transferred OM&M Obligations solely against
34 the Condominium as provided in Subparagraph VI.B; provided, however, that if diligent efforts
35 to compel compliance by the Condominium are unsuccessful, and if the proceeds of the Letter of
36 Credit (or, upon being replaced by the Board Letter of Credit, the Board Letter of Credit) are
37 insufficient to pay for the cost of performing the Transferred OM&M Obligations which the
38 Condominium failed to perform, the Department shall apply such remaining proceeds of the
39 Letter of Credit or the Board Letter of Credit, as applicable, to perform the Transferred OM&M
40 Obligations and thereafter the Department may enforce such Transferred OM&M Obligations
41 which remain unperformed against Bulova.
42

43 C. Nothing contained in this Addendum shall be construed as barring, diminishing,
44 adjudicating, or in any way affecting any of the Department's rights or authorities, including, but

not limited to, to exercise any summary abatement powers with respect to any person, including Respondents.

VII. Right to Enter the Site

A. The Department's and the State's right to enter the Site pursuant to the Environmental Easement and the 2008 Order is in no way limited by this Addendum.

B. Prior to the Board Control Date, SDP shall grant Bulova access to the Site as may be needed to implement the Retained OM&M Obligations.

C. Concurrent with the Condominium Board's execution of this Addendum, the Condominium Board grants access to the Site to Bulova and to SDP as needed to implement any OM&M Obligations.

VIII. Communications

A. All written communications with respect to this Addendum, the 1995 Order, the 2008 Order, the SMP or the Environmental Easement shall be in writing and shall be transmitted by (i) electronic mail with copy by United States Postal Service, (ii) private courier service, or (iii) by nationally recognized overnight delivery service for delivery on the next business day as follows:

If to SDP:

Sag Development Partners, LLC
c/o Cape Advisors, Inc.
485 Broadway, 5th Floor
New York, NY 10013
Attn: Craig D. Wood
cwood@capeadvisors.com

Sive, Paget & Riesel, P.C.
460 Park Avenue
New York, NY 10022-1906
Attn: Mark A. Chertok, Esq.
mchertok@sprlaw.com

Pryor Cashman LLP
7 Times Square
New York, NY 10036- 6569
Attn: Thomas J. Malmud, Esq.
tmalmud@pryorcashman.com

If to Bulova:

Bulova Corporation
One Bulova Avenue
Woodside, NY 11377-7874
Attn: Warren J. Neitzel, Esq.
General Counsel & Corporate Secretary
wneitzel@bulova.com

Van Ness Feldman, LLP
1050 Thomas Jefferson Street, NW
Suite 700
Washington, DC 20007-3877
Attn: Mitchell H. Bernstein, Esq.
mhb@vnf.com

1 If to the Condominium Board:

2
3 Condominium Board of the Watchcase Factory Condominium
4 c/o Cape Advisors, Inc.
5 485 Broadway
6 New York, New York 10013
7 Attn: Craig D. Wood
8 cwood@capeadvisors.com
9

10 If to the Department:

11
Rosalie K. Rusinko, Esq.
Office of General Counsel
New York State Department of Environmental
Conservation
100 Hillside Avenue, Suite 1W
White Plains, New York 10603-2860
rkrusink@gw.dec.state.ny.us

Girish Desai, P.E.
New York State Department of Environmental
Conservation
Division of Environmental Remediation, Reg. 1
SUNY at Stony Brook
50 Circle Road
Stony Brook, NY 11790
gvdesai@gw.dec.state.ny.us

12
13
14 B. The Department and Respondents reserve the right to designate additional or
15 different addressees for communication upon written notice to the others.

16
17 C. Each party shall notify the others within thirty (30) days after any change in the
18 addresses in this Paragraph VIII.

19
20 D. This Paragraph VIII does not modify the notification requirement in the Letter of
21 Credit.

22
23 IX. Miscellaneous
24

25 A. Respondents agree to comply with and be bound by the provisions of 6 NYCRR
26 Subparts 375-1 and 375-2; the provisions of such Subparts that are referenced herein are
27 referenced for clarity and convenience only and the failure of this Addendum to specifically
28 reference any particular regulatory provision is not intended to imply that such provision is not
29 applicable to activities performed under this Addendum.
30

31 B. The paragraph headings set forth in this Addendum are included for convenience
32 of reference only and shall be disregarded in the construction and interpretation of any provisions
33 of this Addendum.
34

35 C. 1. The terms of this Addendum shall constitute the complete and entire
36 agreement between the Department and Respondents concerning the Respondents'

1 responsibilities for the implementation of the OM&M Obligations required by the SMP and the
2 Environmental Easement. No term, condition, understanding, or agreement purporting to modify
3 or vary any term of this Addendum shall be binding unless made in writing and, after compliance
4 with Subparagraph IX.C.2, such modification or variance is subscribed by the party to be bound.
5 No informal advice, guidance, suggestion, or comment by the Department shall be construed as
6 relieving Respondents of Respondents' obligation to obtain such formal approvals. Respondents
7 consent to and agree not to contest the authority and jurisdiction of the Department to enter into
8 or enforce this Addendum.

9
10 2. If any Respondent desires that any provision of this Addendum be
11 changed, such Respondent shall make timely written application to the Commissioner with
12 copies to the parties listed in Subparagraph VIII.A.

13
14 D. 1. If any Respondent is a partnership, the obligations of all general partners
15 (including limited partners who act as general partners) under this Addendum are joint and
16 several and the insolvency or failure of any general partner to implement any obligations under
17 this Addendum shall not affect the obligations of the remaining partner(s) under this Addendum.

18
19 2. To the maximum extent permitted by law, the members of the
20 Condominium Board shall have no personal liability with respect to this Addendum or the acts or
21 omissions of the Condominium Board with respect thereto (except as owners of Units which
22 liability is limited pursuant to Section 4.12 of the by-laws of the Condominium.)

23
24 E. Unless otherwise expressly provided herein, terms used in this Addendum which
25 are defined in ECL Article 27 or in regulations promulgated there under shall have the meaning
26 assigned to them under said statute or regulations.

27
28 F. Respondents' obligations under this Addendum represent payment for or
29 reimbursement of response costs, and shall not be deemed to constitute any type of fine or
30 penalty.

31
32 G. Respondents and Respondents' successors and assigns shall be bound by this
33 Order. Any change in ownership or corporate status of any Respondent shall in no way alter
34 Respondents' responsibilities under this Addendum.

35
36 H. This Addendum may be executed for the convenience of the parties hereto,
37 individually or in combination, in one or more counterparts, each of which shall be deemed to
38 have the status of an executed original and all of which shall together constitute one and the
39 same instrument.

1 I. The effective date of this Addendum is the 10th Day after it is signed by the
2 Commissioner or the Commissioner's designee.
3
4

5 DATED:

6
7 MAR 05 2014
8
9

JOSEPH J. MARTENS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

10 By:



11
12 Robert W. Schick, Director
13 Division of Environmental Remediation
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CONSENT BY RESPONDENT

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

Bulova Corporation

By: 

Warren J. Neitzel

Title: General Counsel and Corporate Secretary


Date: February 10, 2014

STATE OF NEW YORK)

) ss:

COUNTY OF)

On the 10th day of February, in the year 2014, before me, the undersigned, personally appeared Warren J. Neitzel, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Signature and Office of individual
taking acknowledgment

JAMES ANTHONY GREGUS

Notary Public - State of New York

No. 01GR6194727

Qualified in Queens County

My Commission Expires October 6, 2016

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CONSENT BY RESPONDENT

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

Sag Development Partners, LLC

By: 

Craig D. Wood

Title: Duly Authorized

Date: February 7, 2014

STATE OF NEW YORK)

) ss:

COUNTY OF NEW YORK)

On the 7 day of February, in the year 2014, before me, the undersigned, personally appeared Craig D. Wood, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Signature and Office of individual
taking acknowledgment

MARGARET CROWELL
NOTARY PUBLIC-STATE OF NEW YORK
No. 01CR6065125
Qualified In New York County
My Commission Expires October 9, 2017

1 CONSENT BY RESPONDENT

2
3
4 Respondent hereby consents to the issuing and entering of this Order, waives
5 Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.
6 This Consent is made by the Condominium Board only as agent for the Condominium and all
7 Unit owners and the members of the Condominium Board shall have no personal liability
8 hereunder (or pursuant to the Order) (except in their capacities as Unit Owners).
9

10 **The Watchcase Factory Condominium**

11
12 **By the Condominium Board of The Watchcase**
13 **Factory Condominium**
14

15 By: _____

16
17 Title: _____

18
19 Date: _____
20

21
22 STATE OF NEW YORK)
23) ss:
24 COUNTY OF)
25

26
27 On the _____ day of _____, in the year 201__, before me, the undersigned, personally
28 appeared _____, personally known to me or proved to me on the basis of
29 satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within
30 instrument and acknowledged to me that he/she/they executed the same in his/her/their
31 capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the
32 person upon behalf of which the individual(s) acted, executed the instrument.
33
34
35
36

37 _____
38 Signature and Office of individual
39 taking acknowledgment
40



IRREVOCABLE STANDBY LETTER OF CREDIT
NON-NEGOTIABLE DRAFT
PREPARED 8/12/13 VS
REVISED DRAFT 10/3/13 MM

EXHIBIT "A" - FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT

TO:
SAG DEVELOPMENT PARTNERS, LLC
C/O CAPE ADVISORS, INC.
485 BROADWAY, 5TH FLOOR
NEW YORK, NEW YORK 10013

FROM:
SIGNATURE BANK
TRADE FINANCE DEPARTMENT
TELEPHONE: 646-822-1713
FAX NO.: 646-758-8192
E-MAIL: LCADMIN@SIGNATURENY.COM

PLEASE PROVIDE US WITH THE NAME OF THE COMPANY, ADDRESS, TELEPHONE NUMBER AND CONTACT PERSON RECEIVING THE ORIGINAL STANDBY LETTER OF CREDIT. THIS WILL ENSURE A TIMELY DELIVERY.

COMPANY NAME: _____

COMPANY ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE NUMBER: _____

NOTE: BOTH APPLICANT AND BENEFICIARY MUST INITIAL EACH PAGE

Non Negotiable

Initials of Applicant: _____

Initials of Beneficiary: _____



IRREVOCABLE STANDBY LETTER OF CREDIT
NON-NEGOTIABLE DRAFT
PREPARED 8/12/13 VS
REVISED DRAFT 10/3/13 MM

IRREVOCABLE NON TRANSFERABLE
STANDBY LETTER OF CREDIT
NUMBER S _____

PLACE OF ISSUE:
NEW YORK

DATE OF ISSUE:

BENEFICIARY:
COMMISSIONER
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ATTN: DIVISION OF ENVIRONMENTAL REMEDIATION
625 BROADWAY
ALBANY, NEW YORK 12233-5500

APPLICANT:
SAG DEVELOPMENT PARTNERS, LLC
C/O CAPE ADVISORS, INC.
485 BROADWAY, 5TH FLOOR
NEW YORK, NEW YORK 10013

Gentlemen/Ladies:
We hereby issue this non transferable irrevocable credit in your favor available with SIGNATURE BANK
29 WEST 38TH STREET 12TH FLOOR
NEW YORK, NY 10018
By Payment.

DRAFTS AT SIGHT DRAWN ON SIGNATURE BANK, NEW YORK, NY

TO THE EXTENT OF USD68,465.00

EXPIRY DATE

PLACE OF EXPIRY SIGNATURE BANK

Non Negotiable

Initials of Applicant: _____

Initials of Beneficiary: _____

Exhibit A – Page 2

1 DOCUMENTS REQUIRED:

2 FUNDS UNDER THIS CREDIT ARE AVAILABLE AGAINST YOUR SIGHT DRAFT DRAWN ON US IN THE
3 FORM OF ANNEX 1 ATTACHED HERETO, WHICH IS AN INTEGRAL PART HEREOF, ACCOMPANIED
4 BY A WRITTEN STATEMENT CERTIFYING THAT "I CERTIFY THAT THE AMOUNT OF THE DRAFT IS
5 PAYABLE PURSUANT TO REGULATIONS ISSUED UNDER AUTHORITY OF THE NEW YORK STATE
6 ENVIRONMENTAL CONSERVATION LAW." THE DRAFT AND STATEMENT MUST BE PURPORTEDLY
7 SIGNED BY AN AUTHORIZED SIGNATORY OF THE BENEFICIARY.

8
9 THE ORIGINAL OF THIS STANDBY LETTER OF CREDIT, AND ALL AMENDMENTS, IF ANY, MUST
10 ACCOMPANY ALL DRAWINGS OR OTHER TRANSACTIONS HEREUNDER.
11
12
13

14 SPECIAL INSTRUCTION(S):

15
16 ALL BLANKS ON STATEMENTS, DRAFTS OR ANY OTHER DOCUMENTS MUST BE FILLED IN. ALL
17 DRAFTS AND DOCUMENTS MUST BE MARKED "DRAWN UNDER SIGNATURE BANK STANDBY
18 LETTER OF CREDIT NO. S _____ DATED _____."
19

20 ANY REFERENCE IN THIS STANDBY LETTER OF CREDIT TO THE REGULATIONS ISSUED UNDER
21 AUTHORITY OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW IS FOR
22 IDENTIFICATION PURPOSES ONLY AND DOES NOT INCORPORATE HEREIN BY REFERENCE THE
23 TERMS OF SUCH REGULATIONS ISSUED UNDER AUTHORITY OF THE NEW YORK STATE
24 ENVIRONMENTAL CONSERVATION LAW.
25

26 THE ISSUER IS AUTHORIZED TO ACCEPT AND SHALL ACCEPT ANY STATEMENT, DOCUMENT OR
27 INSTRUMENT FURNISHED HEREUNDER AS BINDING AND CORRECT WITHOUT INVESTIGATION OR
28 RESPONSIBILITY FOR THE ACCURACY, VERACITY, CONCLUSORY CORRECTNESS, OR VALIDITY OF
29 THE SAME OR ANY PART THEREOF, OR OF ANY SIGNATURE THEREON.
30

31 PARTIAL AND MULTIPLE DRAWINGS UNDER THIS LETTER OF CREDIT ARE PERMITTED. THE
32 AMOUNT AND DATE OF PRESENTATION OF ANY DRAFT DRAWN AND PRESENTED PURSUANT TO
33 THE TERMS OF THIS LETTER OF CREDIT SHALL BE NOTED ON THIS LETTER OF CREDIT. AFTER
34 MAKING SUCH NOTATION, WE SHALL RETURN THIS LETTER OF CREDIT TO YOU, UNLESS ANY
35 SUCH DRAFT PRESENTED AND PAID SHALL EXHAUST THIS CREDIT, IN WHICH CASE THIS LETTER
36 OF CREDIT SHALL BE RETAINED BY US.
37

38 IT IS A CONDITION OF THIS STANDBY LETTER OF CREDIT THAT IT SHALL BE DEEMED
39 AUTOMATICALLY RENEWED AND EXTENDED WITHOUT ANY AMENDMENT, FOR PERIODS OF ONE
40 YEAR FROM THE EXPIRY DATE HEREOF, OR ANY ANNIVERSARY OF SAID EXPIRY DATE, UNLESS
41 AT LEAST ONE HUNDRED TWENTY (120) DAYS PRIOR TO ANY EXPIRY DATE OR ANNIVERSARY
42 THEREOF WE NOTIFY BOTH YOU AND SAG DEVELOPMENT PARTNERS, LLC (WITH A COPY TO
43 BULOVA CORPORATION, ONE BULOVA AVENUE, WOODSIDE, NY 11377-7874, ATTN: WARREN J.
44 NEITZEL, ESQ., GENERAL COUNSEL & CORPORATE SECRETARY) IN WRITING BY NATIONALLY

Non Negotiable

Initials of Applicant: _____

Initials of Beneficiary: _____

1 RECOGNIZED COURIER, THAT WE ELECT NOT TO RENEW AND EXTEND OUR STANDBY LETTER OF
2 CREDIT FOR ANY ADDITIONAL PERIOD. OUR NOTICE IS DEEMED TO HAVE BEEN GIVEN ON THE
3 DATE IT IS MAILED.

4 UPON RECEIPT OF A NOTICE THAT WE HAVE ELECTED NOT TO RENEW, YOU MAY DRAW
5 HEREUNDER BY MEANS OF YOUR DRAFT IN THE FORM OF ANNEX 1 ACCOMPANIED BY A
6 WRITTEN STATEMENT CERTIFYING THAT: "WE HAVE RECEIVED NOTICE FROM SIGNATURE BANK
7 OF ITS DECISION NOT TO EXTEND LETTER OF CREDIT NO. S _____ FOR ANY ADDITIONAL
8 TIME AND A SUBSTITUTE LETTER OF CREDIT HAS NOT BEEN PROVIDED." THE DRAFT AND
9 STATEMENT MUST BE PURPORTEDLY SIGNED BY AN AUTHORIZED SIGNATORY OF THE
10 BENEFICIARY.

11
12 THIS LETTER OF CREDIT IS NOT TRANSFERABLE.

13
14 ALL BANKING FEES CHARGED BY OR INCURRED TO SIGNATURE BANK ARE FOR THE ACCOUNT
15 OF THE APPLICANT. BANKING FEES CHARGED BY OR INCURRED TO ANY OTHER PERSON OR
16 ENTITY ARE NOT THE SUBJECT OF, NOR COVERED BY, THIS CREDIT.

17
18 PLEASE BE ADVISED THAT WE WILL NOT MAKE ANY PAYMENT UNDER THIS LETTER OF CREDIT,
19 OR TRANSFER THIS LETTER OF CREDIT, 1) TO OR AT THE REQUEST OF ANY ENTITY OR PERSON
20 WHO IS SUBJECT TO SANCTIONS ISSUED BY THE U.S. DEPARTMENT OF COMMERCE, OR 2) TO OR
21 AT THE REQUEST OF ANY ENTITY OR PERSON TO WHOM ANY PAYMENT IS PROHIBITED BY THE
22 FOREIGN ASSET CONTROL REGULATION OF THE U.S. DEPARTMENT OF THE TREASURY, OR 3)
23 WHICH IS OTHERWISE IN CONTRAVENTION OF U.S. LAWS OR REGULATIONS.

24
25 THIS LETTER OF CREDIT IS SUBJECT TO THE PROVISIONS OF THE UNIFORM CUSTOMS AND
26 PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF
27 COMMERCE PUBLICATION NO. 600 AND, TO THE EXTENT NOT INCONSISTENT THEREWITH, SHALL
28 ALSO BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, U.S.A (WITHOUT GIVING
29 EFFECT TO THE CONFLICTS OF LAW PROVISIONS THEREOF) INCLUDING BUT NOT LIMITED TO
30 ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE AS IN EFFECT ON THE DATE OF ISSUANCE OF
31 THIS LETTER OF CREDIT.

32
33 WE HEREBY ENGAGE WITH THE DRAWERS OF DRAFTS AND DOCUMENTS PRESENTED DRAWN
34 UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT,
35 THAT THE SAME SHALL BE DULY HONORED ON PRESENTATION TO US AT OUR OFFICE LOCATED
36 AT 29 WEST 38TH STREET 12TH FLOOR NEW YORK, NY 10018, ATTENTION: MANAGER, STANDBY
37 LETTER OF CREDIT, NOT LATER THAN _____ OR ANY AUTOMATICALLY
38 EXTENDED DATE PROVIDED FOR HEREIN.

39
40 IN CASE OF ANY INQUIRIES IN CONNECTION WITH THIS LETTER OF CREDIT, YOU MAY CONTACT
41 US AT (646) 822-1713 OR 1-866-SIG-LINE.

42
43 THIS IRREVOCABLE STANDBY LETTER OF CREDIT CONSISTS OF XXX (X) PAGES.

Non Negotiable

Initials of Applicant: _____

Initials of Beneficiary: _____

1
2
3
4
5
6
7

SIGNATURE BANK

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

Non Negotiable

Initials of Applicant: _____

Initials of Beneficiary: _____

Exhibit A – Page 5

This is an integral part of the Standby Letter of Credit No. S _____

ANNEX 1

SIGHT DRAFT

FOR VALUE RECEIVED

Dated: _____

PAY AT SIGHT TO

THE SUM OF _____

US DOLLARS (USD _____).

DRAWN UNDER SIGNATURE BANK STANDBY LETTER OF CREDIT NO. S _____, DATED
_____, 20__.

ALL PAYMENTS WILL BE MADE BY WIRE TRANSFER ONLY; NO PAYMENTS WILL BE MADE BY CHECK. TO
EXPEDITE PAYMENT, PLEASE INCLUDE CLEAR AND CORRECT WIRE TRANSFER INSTRUCTIONS (E.G. NAME
OF RECEIVING BANK, ACCOUNT NAME OF BENEFICIARY AND BENEFICIARY ACCOUNT NUMBER AT
RECEIVING BANK). WE DISCLAIM ANY RESPONSIBILITY IN THE EVENT UNCLEAR AND/OR INACCURATE
WIRE TRANSFER INSTRUCTIONS ARE PROVIDED TO US.

TO:
SIGNATURE BANK
ATTN: MANAGER, STANDBY LETTER OF CREDIT
29 WEST 38TH STREET 12TH FLOOR
NEW YORK, NY 10018

AUTHORIZED SIGNATORY

PRINT NAME AND TITLE

THE SIGNATURE BELOW CONSTITUTES AN ENDORSEMENT OF THIS SIGHT DRAFT.

AUTHORIZED SIGNATORY

PRINT NAME AND TITLE

Non Negotiable

Initials of Applicant: _____

Initials of Beneficiary: _____

EXHIBIT "B" - FORM OF TRUST AGREEMENT

STANDBY TRUST AGREEMENT

This Trust Agreement (this "**Agreement**") is entered into as of the ____ day of February, 2014 by and between Sag Development Partners, LLC, a limited liability company organized and existing under the laws of the State of New York (the "**Settlor**"), and Citibank, N.A., a national banking association organized and existing under the laws of the United States of America, (the "**Trustee**").

Whereas, the New York State Department of Environmental Conservation (hereinafter referred to as "**NYSDEC**") and the Settlor have entered into an Addendum to Remedial Program Orders on Consent, Index No. W1-1175-13-10, for the Bulova Watch Factory Site, Site No. 152139 (hereinafter the "**Addendum**");

Whereas, the Addendum provides that the Settlor shall provide assurance that funds will be available pursuant to 6 NYCRR 375-1.11(c) "to ensure the long term implementation, maintenance, monitoring, and enforcement" of the on-Site engineering controls;

Whereas, in order to provide such financial assurance, Settlor has agreed to provide an irrevocable standby letter of credit in the amount of \$68,465.00 from Signature Bank (hereinafter the "**Letter of Credit**") and to establish the trust created by this Agreement to accept the deposit of the draft amount against the Letter of Credit; and

Whereas, the Settlor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this Agreement, and the Trustee has agreed to act as trustee hereunder.

Now, therefore, the Settlor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "**Settlor**" means Sag Development Partners, LLC and its successors and assigns.

(b) The term "**Trustee**" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "**Commissioner**" means the individual who is, from time to time, the Commissioner of the New York State Department of Environmental Conservation, or the commissioner's duly appointed designee.

Section 2. Identification of Facilities and Costs. This Agreement pertains to costs for the operation, maintenance, monitoring, and enforcement of the on-Site engineering controls required at the Bulova Watch Factory Site in Sag Harbor, Suffolk County, New York (hereinafter the "**Site**"), pursuant to the above referenced Addendum.

Section 3. Establishment of Trust Fund. The Settlor and the Trustee hereby establish a trust fund for the benefit of NYSDEC. The Settlor and the Trustee intend that no third party shall have access

to monies or other property in the Fund except as expressly provided herein. The Trust is established initially as consisting of the amount paid pursuant to a draft of the Commissioner under the terms of the Letter of Credit. (The initial principal amount of the Letter of Credit is \$68,465 U.S. Dollars.) Such funds, along with any other monies hereafter deposited into the Trust, and together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement, are referred to herein collectively as the "**Fund**." The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Settlor, any payments necessary to discharge any liabilities of the Settlor established by NYSDEC.

Section 4. *Payment for Work Required Under the Addendum.* The Trustee shall make payments from the Fund as the Commissioner shall direct, in writing, to provide for the payment of costs for the implementation, maintenance, and monitoring of the on-Site engineering controls covered by the Addendum. The Trustee shall reimburse such persons as specified in writing by the Commissioner from the Fund for the expenditures of such covered activities in such amounts as the Commissioner shall direct in writing. In addition, the Trustee shall refund to the Settlor such amounts as the Commissioner specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein. Upon the termination of this Trust and Agreement, as provided in Section 16, the Commissioner shall direct the refund to the Settlor of the entire remaining balance of the Fund.

Section 5. *Payments Comprising the Fund.* Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. *Trust Management.* The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Settlor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) securities or other obligations of the Settlor, or any other past or present owner or operator of the Site, or any of their affiliates as defined in the Investment Company Act of 1940, 15 USCA 80a-2(a) shall not be acquired or held, unless they are securities or other obligations of the Federal or State government;
- (b) the Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent such deposits are insured by an agency of the Federal or State government; and
- (c) the Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. *Commingling and Investment.* The Trustee is expressly authorized in its discretion:

(a) to transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) to purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USCA 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. *Express Powers of Trustee.* Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) to sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) to register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) to deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government;

(e) to accept additions to the Fund from sources other than the Settlor of the Trust; and

(f) to contest, compromise, or otherwise settle any claim in favor of the Fund or Trustee, or in favor of third persons and against the Fund or Trustee.

Section 9. *Taxes and Expenses.* All taxes of any kind that may be assessed or levied against or in respect of the Fund shall be paid by the Settlor. All other expenses and charges incurred by the Trustee in connection with the administration of the Fund and this Trust shall be paid by the Settlor.

Section 10. *Annual Valuation.* The Trustee shall annually, no more than thirty (30) days after the anniversary date of establishment of the Fund, furnish, to the Settlor and to the Commissioner, a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The annual valuation shall include an accounting of any fees or expenses levied against the Fund. The Trustee shall also provide such information concerning the Fund and this Trust as NYSDEC may request from time to time.

Section 11. *Advice of Counsel.* The Trustee may from time to time consult with counsel, who may be counsel to the Settlor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. *Trustee Compensation.* The Trustee's compensation for its services shall be paid by the Settlor.

Section 13. *Successor Trustee.* The Trustee may resign or the Settlor may replace the Trustee, but such resignation or replacement shall not be effective until the Settlor has appointed a successor trustee approved in writing by NYSDEC and this successor accepts such appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Settlor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to NYSDEC or a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the Fund and the Trust in a writing sent to the Settlor, the Commissioner, and the present Trustee by certified mail, return receipt requested, no less than 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. *Instructions to the Trustee.* All orders, requests and instructions by the Settlor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Settlor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Settlor's orders, requests and instructions. All orders, requests and instructions by the Commissioner to the Trustee shall be in writing, signed by the Commissioner, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Settlor or NYSDEC hereunder has occurred. The Trustee shall have no duty to act in the absence of such written orders, requests and instructions from the Settlor and/or NYSDEC except as provided for herein.

Section 15. *Amendment of Agreement.* This Agreement may be amended only by an instrument in writing executed by the Settlor and the Trustee, and the Commissioner, or by the Trustee and the Commissioner if the Settlor ceases to exist.

Section 16. *Irrevocability and Termination.* Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated upon the earlier to occur of (a) the written agreement of the Settlor, the Trustee and the Commissioner, or by the Trustee and the Commissioner if the Settlor ceases to exist, (b) the complete exhaustion of the Fund comprising the Trust as certified in writing by the Trustee to NYSDEC and the Settlor and (c) replacement of this Trust and Agreement with a new trust and agreement provided by the Board of Managers of the Condominium as required by the Addendum. Upon termination of the Trust pursuant to Section 16(a) or 16(c) as applicable, all remaining trust property (if any), less final trust administration expenses, shall be delivered to the Settlor.

Section 17. *Immunity and Indemnification.* The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Settlor or the Commissioner issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Settlor or by the Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct made by the Trustee in its official capacity, including all expenses reasonably incurred in its defense in the event the Settlor fails to provide such defense.

Section 18. *Choice of Law.* This Agreement shall be administered, construed, and enforced according to the laws of the State of New York.

Section 19. *Interpretation.* As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties hereto have caused this Agreement to be executed by their respective officers duly authorized and attested as of the date first above written:

SETTLOR

SAG DEVELOPMENT PARTNERS, LLC

By: _____
Craig D. Wood, Duly Authorized

TRUSTEE
CITIBANK, N.A.

By: _____
Name Patricia Gallagher
Title Vice President

State of New York County of New York

On this ____ day of February, 2014, before me personally came Craig D. Wood, to me known, who, being by me duly sworn, did depose and say that he is the chief executive of Sag Development Partners, LLC, the entity described in and which executed the above instrument; and that he signed his name thereto.

Notary Public

State of New York County of New York

On this February ____, 2014, before me personally came Patricia Gallagher , to me known, who, being by me duly sworn, did depose and say that she is Vice President of Citibank, N.A., the corporation described in and which executed the above instrument; and that she signed her name thereto.

Notary Public

EXHIBIT A – AUTHORIZED LIST

AUTHORIZED LIST OF SIGNERS OR OFFICER'S CERTIFICATE

This form supplements the Standby Trust Agreement dated as of February , 2014 (as amended, amended and restated, supplemented or otherwise modified from time to time, (the "**Agreement**") and related documents and applies to instructions given by facsimile (or e-mail with .pdf attachment) for securities or funds transfers and for other purposes under the Agreement. In giving any facsimile (or e-mail with .pdf attachment) instruction as specified in the Agreement, the Grantor under the Agreement ("**Grantor**") acknowledges that facsimile (or e-mail with .pdf attachment) present a high degree of risk or error, security and privacy. Nevertheless the Grantor wishes to use facsimile (or e-mail with .pdf attachment) as a means of instruction. The Grantor hereby designates the Commissioner of New York State Department of Environmental Conservation as the individual who is authorized to initiate transfers or other instructions by facsimile (or e-mail with .pdf attachment) on behalf of the Grantor and Craig D. Wood and Curtis Bashaw are the individuals who may execute the Agreement on behalf of Grantor and selects the security procedures specified herein. The Grantor accepts the associated risks of unauthorized or erroneous instructions and agrees to be bound by such instructions whether or not actually authorized by the Grantor, provided the Trustee has complied with the stated security procedure. The Grantor is responsible for keeping confidential the contents of this Authorized List. The Grantor should be careful in completing this Authorized List of Signers as it may be rejected if it contains erasures or white outs.

☒ New ☐ Addition ☐ Supersede

Specimen Signature

Name and Title JOSEPH J. MARTENS, Commissioner, New York State Department of
Environmental Conservation
By: Robert W. Schick, Director Division of Environmental Remediation

Phone (914) 428-2505 ext.315
(Rosalie Rusinko, Esq.)
E-mail Address rkrusink@gw.dec.state.ny

--

Name Craig D. Wood [For Grantor]
Title Authorized Signatory
Phone (212) 343-1700
E-mail Address cwood@capeadvisors.com

--

Name Curtis Bashaw [For Grantor]
Title Authorized Signatory
Phone (212) 343-1700
E-mail Address cbashaw@capeadvisors.com

--

Where applicable, the Trustee will confirm the instructions received by return call to one of the telephone numbers listed below.

Telephone Number (including Country code)

Name

Test Word

Test Words must contain at least 8 alphanumeric characters, and should be established at document execution and changed each time the List of Authorized Signers/Approvers is updated. All instructions should clearly display the Test Word, which may be used in lieu of a callback to confirm the authenticity of the instruction. However, Citi reserves the right to perform the callback in addition to the Test Word if circumstances warrant.

**AUTHORIZED LIST OF SIGNERS
OR OFFICER'S CERTIFICATE**

This form supplements the Standby Trust Agreement dated as of February , 2014 (as amended, amended and restated, supplemented or otherwise modified from time to time, (the "**Agreement**") and related documents and applies to instructions given by facsimile (or e-mail with .pdf attachment) for securities or funds transfers and for other purposes under the Agreement. In giving any facsimile (or e-mail with .pdf attachment) instruction as specified in the Agreement, the Grantor under the Agreement ("**Grantor**") acknowledges that facsimile (or e-mail with .pdf attachment) present a high degree of risk or error, security and privacy. Nevertheless the Grantor wishes to use facsimile (or e-mail with .pdf attachment) as a means of instruction. The Grantor hereby designates the Commissioner of New York State Department of Environmental Conservation as the individual who is authorized to initiate transfers or other instructions by facsimile (or e-mail with .pdf attachment) on behalf of the Grantor and Craig D. Wood and Curtis Bashaw are the individuals who may execute the Agreement on behalf of Grantor and selects the security procedures specified herein. The Grantor accepts the associated risks of unauthorized or erroneous instructions and agrees to be bound by such instructions whether or not actually authorized by the Grantor, provided the Trustee has complied with the stated security procedure. The Grantor is responsible for keeping confidential the contents of this Authorized List. The Grantor should be careful in completing this Authorized List of Signers as it may be rejected if it contains erasures or white outs.

☒ New ☐ Addition ☐ Supersede

Specimen Signature

Name and Title JOSEPH J. MARTENS, Commissioner, New York State Department of
Environmental Conservation
By: Robert W. Schick, Director Division of Environmental Remediation

Phone (914) 428-2505 ext.315
(Rosalie Rusinko, Esq.)
E-mail Address rkrusink@gw.dec.state.ny

--

Name Craig D. Wood [For Grantor]
Title Authorized Signatory
Phone (212) 343-1700
E-mail Address cwood@capeadvisors.com

--

Name Curtis Bashaw [For Grantor]
Title Authorized Signatory
Phone (212) 343-1700
E-mail Address cbashaw@capeadvisors.com

--

Where applicable, the Trustee will confirm the instructions received by return call to one of the telephone numbers listed below.

Telephone Number (including Country code)

Name

Test Word

Test Words must contain at least 8 alphanumeric characters, and should be established at document execution and changed each time the List of Authorized Signers/Approvers is updated. All instructions should clearly display the Test Word, which may be used in lieu of a callback to confirm the authenticity of the instruction. However, Citi reserves the right to perform the callback in addition to the Test Word if circumstances warrant.



IRREVOCABLE STANDBY LETTER OF CREDIT
NON-NEGOTIABLE DRAFT
PREPARED 8/12/13 VS
REVISED DRAFT 10/3/13 MM

TO:
SAG DEVELOPMENT PARTNERS, LLC
C/O CAPE ADVISORS, INC.
485 BROADWAY, 5TH FLOOR
NEW YORK, NEW YORK 10013

FROM:
SIGNATURE BANK
TRADE FINANCE DEPARTMENT
TELEPHONE: 646-822-1713
FAX NO.: 646-758-8192
E-MAIL: LCADMIN@SIGNATURENY.COM

PLEASE PROVIDE US WITH THE NAME OF THE COMPANY, ADDRESS, TELEPHONE NUMBER AND CONTACT PERSON RECEIVING THE ORIGINAL STANDBY LETTER OF CREDIT. THIS WILL ENSURE A TIMELY DELIVERY.

COMPANY NAME: New York State Department of Environmental Conservation

COMPANY ADDRESS: 625 Broadway, Albany, NY 12233-5500

CONTACT PERSON: Benjamin Conlon, Esq., Office of General Counsel

TELEPHONE NUMBER: (518) 402 - 9538

NOTE: BOTH APPLICANT AND BENEFICIARY MUST INITIAL EACH PAGE

Initials of Applicant:

Initials of Beneficiary:

Non Negotiable



IRREVOCABLE STANDBY LETTER OF CREDIT
NON-NEGOTIABLE DRAFT
PREPARED 8/12/13 VS
REVISED DRAFT 10/3/13 MM

IRREVOCABLE NON TRANSFERABLE
STANDBY LETTER OF CREDIT
NUMBER S _____

PLACE OF ISSUE:
NEW YORK

DATE OF ISSUE:

BENEFICIARY:
COMMISSIONER
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ATTN: DIVISION OF ENVIRONMENTAL REMEDIATION
625 BROADWAY
ALBANY, NEW YORK 12233-5500

APPLICANT:
SAG DEVELOPMENT PARTNERS, LLC
C/O CAPE ADVISORS, INC.
485 BROADWAY, 5TH FLOOR
NEW YORK, NEW YORK 10013

Gentlemen/Ladies:
We hereby issue this non transferable irrevocable credit in your favor available with SIGNATURE BANK
29 WEST 38TH STREET 12TH FLOOR
NEW YORK, NY 10018
By Payment.

DRAFTS AT SIGHT DRAWN ON SIGNATURE BANK, NEW YORK, NY

TO THE EXTENT OF USD68,465.00

EXPIRY DATE

PLACE OF EXPIRY SIGNATURE BANK

DOCUMENTS REQUIRED:
FUNDS UNDER THIS CREDIT ARE AVAILABLE AGAINST YOUR SIGHT DRAFT DRAWN ON US IN THE FORM OF ANNEX 1 ATTACHED HERETO, WHICH IS AN INTEGRAL PART HEREOF, ACCOMPANIED BY A WRITTEN STATEMENT CERTIFYING THAT "I CERTIFY THAT THE AMOUNT OF THE DRAFT IS PAYABLE PURSUANT TO REGULATIONS ISSUED UNDER AUTHORITY OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW." THE DRAFT AND STATEMENT MUST BE PURPORTEDLY SIGNED BY AN AUTHORIZED SIGNATORY OF THE BENEFICIARY.

THE ORIGINAL OF THIS STANDBY LETTER OF CREDIT, AND ALL AMENDMENTS, IF ANY, MUST ACCOMPANY ALL DRAWINGS OR OTHER TRANSACTIONS HEREUNDER.

SPECIAL INSTRUCTION(S):

Non Negotiable

Initials of Applicant: _____

Initials of Beneficiary: _____



IRREVOCABLE STANDBY LETTER OF CREDIT
NON-NEGOTIABLE DRAFT
PREPARED 8/12/13 VS
REVISED DRAFT 10/3/13 MM

ALL BLANKS ON STATEMENTS, DRAFTS OR ANY OTHER DOCUMENTS MUST BE FILLED IN. ALL DRAFTS AND DOCUMENTS MUST BE MARKED "DRAWN UNDER SIGNATURE BANK STANDBY LETTER OF CREDIT NO. S _____ DATED _____."

ANY REFERENCE IN THIS STANDBY LETTER OF CREDIT TO THE REGULATIONS ISSUED UNDER AUTHORITY OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW IS FOR IDENTIFICATION PURPOSES ONLY AND DOES NOT INCORPORATE HEREIN BY REFERENCE THE TERMS OF SUCH REGULATIONS ISSUED UNDER AUTHORITY OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW.

THE ISSUER IS AUTHORIZED TO ACCEPT AND SHALL ACCEPT ANY STATEMENT, DOCUMENT OR INSTRUMENT FURNISHED HEREUNDER AS BINDING AND CORRECT WITHOUT INVESTIGATION OR RESPONSIBILITY FOR THE ACCURACY, VERACITY, CONCLUSORY CORRECTNESS, OR VALIDITY OF THE SAME OR ANY PART THEREOF, OR OF ANY SIGNATURE THEREON.

PARTIAL AND MULTIPLE DRAWINGS UNDER THIS LETTER OF CREDIT ARE PERMITTED. THE AMOUNT AND DATE OF PRESENTATION OF ANY DRAFT DRAWN AND PRESENTED PURSUANT TO THE TERMS OF THIS LETTER OF CREDIT SHALL BE NOTED ON THIS LETTER OF CREDIT. AFTER MAKING SUCH NOTATION, WE SHALL RETURN THIS LETTER OF CREDIT TO YOU, UNLESS ANY SUCH DRAFT PRESENTED AND PAID SHALL EXHAUST THIS CREDIT, IN WHICH CASE THIS LETTER OF CREDIT SHALL BE RETAINED BY US.

IT IS A CONDITION OF THIS STANDBY LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY RENEWED AND EXTENDED WITHOUT ANY AMENDMENT, FOR PERIODS OF ONE YEAR FROM THE EXPIRY DATE HEREOF, OR ANY ANNIVERSARY OF SAID EXPIRY DATE, UNLESS AT LEAST ONE HUNDRED TWENTY (120) DAYS PRIOR TO ANY EXPIRY DATE OR ANNIVERSARY THEREOF WE NOTIFY BOTH YOU AND SAG DEVELOPMENT PARTNERS, LLC (WITH A COPY TO BULOVA CORPORATION, ONE BULOVA AVENUE, WOODSIDE, NY 11377-7874, ATTN: WARREN J. NEITZEL, ESQ., GENERAL COUNSEL & CORPORATE SECRETARY) IN WRITING BY NATIONALLY RECOGNIZED COURIER, THAT WE ELECT NOT TO RENEW AND EXTEND OUR STANDBY LETTER OF CREDIT FOR ANY ADDITIONAL PERIOD. OUR NOTICE IS DEEMED TO HAVE BEEN GIVEN ON THE DATE IT IS MAILED.

UPON RECEIPT OF A NOTICE THAT WE HAVE ELECTED NOT TO RENEW, YOU MAY DRAW HEREUNDER BY MEANS OF YOUR DRAFT IN THE FORM OF ANNEX 1 ACCOMPANIED BY A WRITTEN STATEMENT CERTIFYING THAT: "WE HAVE RECEIVED NOTICE FROM SIGNATURE BANK OF ITS DECISION NOT TO EXTEND LETTER OF CREDIT NO. S _____ FOR ANY ADDITIONAL TIME AND A SUBSTITUTE LETTER OF CREDIT HAS NOT BEEN PROVIDED." THE DRAFT AND STATEMENT MUST BE PURPORTEDLY SIGNED BY AN AUTHORIZED SIGNATORY OF THE BENEFICIARY.

THIS LETTER OF CREDIT IS NOT TRANSFERABLE.

Non Negotiable

Initials of Applicant: _____

Initials of Beneficiary: _____



IRREVOCABLE STANDBY LETTER OF CREDIT
NON-NEGOTIABLE DRAFT
PREPARED 8/12/13 VS
REVISED DRAFT 10/3/13 MM

ALL BANKING FEES CHARGED BY OR INCURRED TO SIGNATURE BANK ARE FOR THE ACCOUNT OF THE APPLICANT. BANKING FEES CHARGED BY OR INCURRED TO ANY OTHER PERSON OR ENTITY ARE NOT THE SUBJECT OF, NOR COVERED BY, THIS CREDIT.

PLEASE BE ADVISED THAT WE WILL NOT MAKE ANY PAYMENT UNDER THIS LETTER OF CREDIT, OR TRANSFER THIS LETTER OF CREDIT, 1) TO OR AT THE REQUEST OF ANY ENTITY OR PERSON WHO IS SUBJECT TO SANCTIONS ISSUED BY THE U.S. DEPARTMENT OF COMMERCE, OR 2) TO OR AT THE REQUEST OF ANY ENTITY OR PERSON TO WHOM ANY PAYMENT IS PROHIBITED BY THE FOREIGN ASSET CONTROL REGULATION OF THE U.S. DEPARTMENT OF THE TREASURY, OR 3) WHICH IS OTHERWISE IN CONTRAVENTION OF U.S. LAWS OR REGULATIONS.

THIS LETTER OF CREDIT IS SUBJECT TO THE PROVISIONS OF THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600 AND, TO THE EXTENT NOT INCONSISTENT THEREWITH, SHALL ALSO BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, U.S.A (WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAW PROVISIONS THEREOF) INCLUDING BUT NOT LIMITED TO ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE AS IN EFFECT ON THE DATE OF ISSUANCE OF THIS LETTER OF CREDIT.

WE HEREBY ENGAGE WITH THE DRAWERS OF DRAFTS AND DOCUMENTS PRESENTED DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, THAT THE SAME SHALL BE DULY HONORED ON PRESENTATION TO US AT OUR OFFICE LOCATED AT 29 WEST 38TH STREET 12TH FLOOR NEW YORK, NY 10018, ATTENTION: MANAGER, STANDBY LETTER OF CREDIT, NOT LATER THAN _____ OR ANY AUTOMATICALLY EXTENDED DATE PROVIDED FOR HEREIN.

IN CASE OF ANY INQUIRIES IN CONNECTION WITH THIS LETTER OF CREDIT, YOU MAY CONTACT US AT (646) 822-1713 OR 1-866-SIG-LINE.

THIS IRREVOCABLE STANDBY LETTER OF CREDIT CONSISTS OF XXX (X) PAGES.

SIGNATURE BANK

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

Non Negotiable

Initials of Applicant: _____

Initials of Beneficiary: _____



IRREVOCABLE STANDBY LETTER OF CREDIT
NON-NEGOTIABLE DRAFT
PREPARED 8/12/13 VS
REVISED DRAFT 10/3/13 MM

This is an integral part of the Standby Letter of Credit No. S _____

ANNEX I

SIGHT DRAFT

FOR VALUE RECEIVED

Dated: _____

PAY AT SIGHT TO

THE SUM OF _____

US DOLLARS (USD _____).

DRAWN UNDER SIGNATURE BANK STANDBY LETTER OF CREDIT NO. S _____, DATED
_____, 20__.

ALL PAYMENTS WILL BE MADE BY WIRE TRANSFER ONLY; NO PAYMENTS WILL BE MADE BY CHECK.
TO EXPEDITE PAYMENT, PLEASE INCLUDE CLEAR AND CORRECT WIRE TRANSFER INSTRUCTIONS (E.G.
NAME OF RECEIVING BANK, ACCOUNT NAME OF BENEFICIARY AND BENEFICIARY ACCOUNT NUMBER
AT RECEIVING BANK). WE DISCLAIM ANY RESPONSIBILITY IN THE EVENT UNCLEAR AND/OR
INACCURATE WIRE TRANSFER INSTRUCTIONS ARE PROVIDED TO US.

TO:
SIGNATURE BANK
ATTN: MANAGER, STANDBY LETTER OF CREDIT
29 WEST 38TH STREET 12TH FLOOR
NEW YORK, NY 10018

AUTHORIZED SIGNATORY

PRINT NAME AND TITLE

THE SIGNATURE BELOW CONSTITUTES AN ENDORSEMENT OF THIS SIGHT DRAFT.

AUTHORIZED SIGNATORY

PRINT NAME AND TITLE

Non Negotiable

Initials of Applicant: _____

Initials of Beneficiary: _____

**AUTHORIZED LIST OF SIGNERS
OR OFFICER'S CERTIFICATE**


This form supplements the Standby Trust Agreement dated as of February 19, 2014 (as amended, amended and restated, supplemented or otherwise modified from time to time, (the "Agreement") and related documents and applies to instructions given by facsimile (or e-mail with .pdf attachment) for securities or funds transfers and for other purposes under the Agreement. In giving any facsimile (or e-mail with .pdf attachment) instruction as specified in the Agreement, the Grantor under the Agreement ("Grantor") acknowledges that facsimile (or e-mail with .pdf attachment) present a high degree of risk or error, security and privacy. Nevertheless the Grantor wishes to use facsimile (or e-mail with .pdf attachment) as a means of instruction. The Grantor hereby designates the Commissioner of New York State Department of Environmental Conservation as the individual who is authorized to initiate transfers or other instructions by facsimile (or e-mail with .pdf attachment) on behalf of the Grantor and Craig D. Wood and Curtis Bashaw are the individuals who may execute the Agreement on behalf of Grantor and selects the security procedures specified herein. The Grantor accepts the associated risks of unauthorized or erroneous instructions and agrees to be bound by such instructions whether or not actually authorized by the Grantor, provided the Trustee has complied with the stated security procedure. The Grantor is responsible for keeping confidential the contents of this Authorized List. The Grantor should be careful in completing this Authorized List of Signers as it may be rejected if it contains erasures or white outs.

☒ New ☐ Addition ☐ Supersede


Specimen Signature

Name and Title JOSEPH J. MARTENS, Commissioner, New York State Department of
Environmental Conservation
By: Robert W. Schick, Director Division of Environmental Remediation

Phone (914) 428-2505 ext.315
(Rosalie Rusinko, Esq.)
E-mail Address rkrusink@gw.dec.state.ny



Name Craig D. Wood [For Grantor]
Title Authorized Signatory
Phone (212) 343-1700
E-mail Address cwood@capeadvisors.com



Name Curtis Bashaw [For Grantor]
Title Authorized Signatory
Phone (212) 343-1700
E-mail Address cbashaw@capeadvisors.com



Where applicable, the Trustee will confirm the instructions received by return call to one of the telephone numbers listed below.

<i>Telephone Number (including Country code)</i>	<i>Name</i>

Test Word

Test Words must contain at least 8 alphanumeric characters, and should be established at document execution and changed each time the List of Authorized Signers/Approvers is updated. All instructions should clearly display the Test Word, which may be used in lieu of a callback to confirm the authenticity of the instruction. However, Citi reserves the right to perform the callback in addition to the Test Word if circumstances warrant.