

Department of Environmental Conservation

BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION FORM

DEC requires an application to request major changes to the description of the property set forth in a Brownfield Cleanup Agreement, or "BCA" (e.g., adding a significant amount of new property, or adding property that could affect an eligibility determination due to contamination levels or intended land use). Such application must be submitted and processed in the same manner as the original application, including the required public comment period. Is this an application to amend an existing BCA?						
Yes No	The state of the state of the same of the					
ART A (note: application is separated into Parts A and B for DEC review purposes) BCP App Rev 10 Section I. Requestor Information - See Instructions for Further Guidance BCP SITE #						
NAME 458 East 99th Street	LLC					
ADDRESS 3333 Royal Ave						
CITY/TOWN Oceanside	ZIP CODE 1	F 20 - 100 N N				
PHONE 718-272-2780	FAX 718-272-2789	E-MAIL info@bialy.com				
Is the requestor authorized to conduct business in New York State (NYS)? • If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear, exactly as given above, in the NYS Department of State's Corporation & Business Entity Database. A print-out of entity information from the database must be submitted to the New York State Department of Environmental Conservation (DEC) with the application to document that the requestor is authorized to do business in NYS. Please note: If the requestor is an LLC, the members/owners names need to be provided on a separate attachment. Do all individuals that will be certifying documents meet the requirements detailed below? ✓ Yes No • Individuals that will be certifying BCP documents, as well as their employers, meet the requirements of Section 1.5 of DER-10: Technical Guidance for Site Investigation and Remediation and Article 145 of New York State Education Law. Documents that are not properly certified will be not approved under the BCP.						
Section II. Project Description	ting at? Investigation	Remediation				
1. What stage is the project starting at? NOTE: If the project is proposed to start at the remediation stage, a Remedial Investigation Report (RIR) at a minimum is required to be attached, resulting in a 30-day public comment period. If an Alternatives Analysis and Remedial Work Plan are also attached (see DER-10 / Technical Guidance for Site Investigation and Remediation for further guidance) then a 45-day public comment period is required.						
2. If a final RIR is included, please verify it meets the requirements of Environmental Conservation Law (ECL) Article 27-1415(2): Yes ✓ No						
Please attach a short description of the overall development project, including: the data that the remedial program is to start; and						
 the date that the remedial program is to start; and the date the Certificate of Completion is anticipated. 						

Section III. Property's Environmental History				
All applications must include an Investigation Report (per ECL 27-1407(1)). The report must be sufficient to establish contamination of environmental media on the site above applicable Standards, Criteria and Guidance (SCGs) based on the reasonably anticipated use of the property.				
following (please submit ti	he information requeste	s are available to the requesto d in this section in electron	ic format only):	
Reports: an example of prepared in accordance	of an Investigation Report	is a Phase II Environmental S Society for Testing and Mate copy of each report in Portal	lite Assessment report rials standard (ASTM	
		ANTS AND THE MEDIA WHICH D BE REFERENCED AND COPI		
Contaminant Category	Soil	Groundwater	Soil Gas	
Petroleum				
Chlorinated Solvents	See Appendix "C"	See Appendix "C"	See Appendix "C"	
Other VOCs				
SVOCs				
Metals				
Pesticides				
PCBs	PCBs			
Other*				
*Please describe:				
3. FOR EACH IMPACTED MEDIUM INDICATED ABOVE, INCLUDE A SITE DRAWING INDICATING: • SAMPLE LOCATION • DATE OF SAMPLING EVENT • KEY CONTAMINANTS AND CONCENTRATION DETECTED • FOR SOIL, HIGHLIGHT IF ABOVE REASONABLY ANTICIPATED USE • FOR GROUNDWATER, HIGHLIGHT EXCEEDANCES OF 6NYCRR PART 703.5 • FOR SOIL GAS/ SOIL VAPOR/ INDOOR AIR, HIGHLIGHT IF ABOVE MITIGATE LEVELS ON THE NEW YORK STATE DEPARTMENT OF HEALTH MATRIX THESE DRAWINGS ARE TO BE REPRESENTATIVE OF ALL DATA BEING RELIED UPON TO MAKE THE CASE THAT THE SITE IS IN NEED OF REMEDIATION UNDER THE BCP. DRAWINGS SHOULD NOT BE BIGGER THAN 11" X 17". THESE DRAWINGS SHOULD BE PREPARED IN ACCORDANCE WITH ANY GUIDANCE PROVIDED. ARE THE REQUIRED MAPS INCLUDED WITH THE APPLICATION?* (*answering No will result in an incomplete application)				
4. INDICATE PAST LAND USES (CHECK ALL THAT APPLY):				
□ Coal Gas Manufacturing □ Agricultural Co-op ☑ Dry Cleaner □ Salvage Yard □ Bulk Plant □ Pipeline □ Service Station □ Landfill □ Tannery □ Electroplating □ Unknown				

Sec	ction IV. Property Information - See Instructions	for Fu	ther Guidar	nce		
PRO	OPOSED SITE NAME 458 East 99th Street					
ΑDΙ	DRESS/LOCATION 458 East 99th Street					
CIT	Y/TOWN Brooklyn ZIP C	ODE 11	234			
MU	NICIPALITY(IF MORE THAN ONE, LIST ALL):					
СО	UNTY Kings	S	TE SIZE (AC	RES) 0.137	741	
LAT	TTUDE (degrees/minutes/seconds)	LONG	TUDE (degre	es/minutes/se	econds)	
	0 ° 38 ′ 59.14 "	73	0	54	1	17.42
pro	nplete tax map information for all tax parcels included posed, please indicate as such by inserting "P/O" in foude the acreage for that portion of the tax parcel in the THE APPLICATION INSTRUCTIONS.	ont of the	e lot number i	in the approp	riate box be	elow, and only
I	Parcel Address		Section No.	Block No.	Lot No.	Acreage
	458 East 99th Street, Brooklyn, NY			8131	56	0.137741
1.0)	Do the proposed site boundaries correspond to tall If no, please attach an accurate map of the propse	x map med site.	etes and bo	unds?	√ Yes	No
2.	2. Is the required property map attached to the application? (application will not be processed without map) ✓ Yes No					No
3.	3. Is the property within a designated Environmental Zone (En-zone) pursuant to Tax Law 21(b)(6)? (See <u>DEC's website</u> for more information) Yes V No)(6)? D	
	If yes, identify census tract ; 352					
	Percentage of property in En-zone (check one):	0-49		50-99%	√ 100	%
4.	4. Is this application one of multiple applications for a large development project, where the development project spans more than 25 acres (see additional criteria in BCP application instructions)? Yes V No					elopment Yes
If yes, identify name of properties (and site numbers if available) in related BCP applications:						
5.	5. Is the contamination from groundwater or soil vapor solely emanating from property other than the site subject to the present application? Yes Vo					an the site ∕es
6.	6. Has the property previously been remediated pursuant to Titles 9, 13, or 14 of ECL Article 27, Title 5 of ECL Article 56, or Article 12 of Navigation Law? [Yes V No If yes, attach relevant supporting documentation.					7, Title 5 of Yes ☑ No
7.	Are there any lands under water? If yes, these lands should be clearly delineated or	n the site	e map.			Yes ✓ No

Section IV. Property Information (continued)						
8. Are there any easements or existing rights of way that would preclude remediation in these areas? If yes, identify here and attach appropriate information. Yes V						
Easement/Right-of-way Holder	<u>Des</u>	<u>cription</u>				
List of Permits issued by the DEC or information)	 List of Permits issued by the DEC or USEPA Relating to the Proposed Site (type here or attach information) 					
<u>Type</u>	Issuing Agency	<u>Description</u>				
Property Description and Environme the proper format of <u>each</u> narrativ	ntal Assessment – please refer to application e requested.	on instructions for				
Are the Property Description and Er in the prescribed format ?	nvironmental Assessment narratives included	✓ Yes No				
Note: Questions 11 through 13 only pert	ain to sites located within the five counties compris	ing New York City				
credits?	ation that the site is eligible for tangible proper ons on the supplement at the end of this form					
	• •					
12. Is the Requestor now, or will the that the property is Upside Down	Requestor in the future, seek a determina?	tion Yes Mo				
of the value of the property, as of	estion 12, above, is an independent appra f the date of application, prepared under the operty is not contaminated, included with	he L				
participate in the BCP, the applicant	dit determination is not being requested in t may seek this determination at any time the the BCP Amendment Application, <u>except</u> tegory.	before issuance of				
If any changes to Section IV are required prior to application approval, a new page, initialed by each requestor must be submitted. Initials of each Requestor: Compared Compared						

BCP application - PART B (note: application is separated into Parts A and B for DEC review purposes) DEC USE ONLY Section V. Additional Requestor Information BCP SITE NAME: BCP SITE # See Instructions for Further Guidance NAME OF REQUESTOR'S AUTHORIZED REPRESENTATIVE Wolfgang Michelitsch ADDRESS 458 East 99th Street ZIP CODE 11236 CITY/TOWN Brooklyn E-MAIL Eurowoodworking@aol.com PHONE 718-272-2780 FAX NAME OF REQUESTOR'S CONSULTANT Soil Mechanics Environmental Services ADDRESS 3770 Merrick Road CITY/TOWN Seaford **ZIP CODE 11783** FAX 516-679-1900 E-MAIL Agulum@soilmechanicscorp.com PHONE 516-221-7500 NAME OF REQUESTOR'S ATTORNEY Aaron Gershonowitz Forchelli, Deegan, Terrana ADDRESS 333 Earle Ovington Blvd. **ZIP CODE 11553** CITY/TOWN Uniondale E-MAIL Agershonowitz@forcellilaw.com FAX 516-248-1729 PHONE 516-248-1700 Section VI. Current Property Owner/Operator Information – if not a Requestor OWNERSHIP START DATE: 9/17/16 CURRENT OWNER'S NAME 458 East Owners, LLC ADDRESS 458 East 99th Street ZIP CODE 11236 CITY/TOWN Brooklyn E-MAIL Eurowoodworking@aol.com FAX PHONE 917-861-5369 CURRENT OPERATOR'S NAME Wolfgang Michelitsch ADDRESS 458 East 99th Street **ZIP CODE 11236** CITY/TOWN Brooklyn E-MAIL Eurowoodworking@aol.com PHONE 917-861-5369 FAX PROVIDE A LIST OF PREVIOUS PROPERTY OWNERS AND OPERATORS WITH NAMES, LAST KNOWN ADDRESSES AND TELEPHONE NUMBERS AS AN ATTACHMENT. DESCRIBE REQUESTOR'S RELATIONSHIP, TO EACH PREVIOUS OWNER AND OPERATOR, INCLUDING ANY RELATIONSHIP BETWEEN REQUESTOR'S CORPORATE MEMBERS AND PREVIOUS OWNER AND OPERATOR. IF NO RELATIONSHIP, PUT "NONE". IF REQUESTOR IS NOT THE CURRENT OWNER, DESCRIBE REQUESTOR'S RELATIONSHIP TO THE CURRENT OWNER, INCLUDING ANY RELATIONSHIP BETWEEN REQUESTOR'S CORPORATE MEMBERS AND THE CURRENT OWNER. Section VII. Requestor Eligibility Information (Please refer to ECL § 27-1407) If answering "yes" to any of the following questions, please provide an explanation as an attachment. Yes ✓ No 1. Are any enforcement actions pending against the requestor regarding this site? 2. Is the requestor subject to an existing order for the investigation, removal or remediation of contamination Yes / No

3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? Any questions regarding whether a party is subject to a spill claim should be discussed with the Spill Fund Administrator. ☐Yes☑No

Se	Section VII. Requestor Eligibility Information (continued)				
4.	4. Has the requestor been determined in an administrative, civil or criminal proceeding to be in violation of i) any provision of the ECL Article 27; ii) any order or determination; iii) any regulation implementing Title 14; or iv) any similar statute, regulation of the state or federal government? If so, provide an explanation on a separate attachment. ☐ Yes ✓ No				
5.	Explanation of a separate attachment. 5. Has the requestor previously been denied entry to the BCP? If so, include information relative to the application, such as name, address, DEC assigned site number, the reason for denial, and other relevant information. ☐ Yes ✓ No				
6.	Has the requestor been found in a civil proceeding to act involving the handling storing treating disposing				
	act involving the handling, storing, treating, disposing or transporting of contaminants?				
9.	3. Has the requestor knowingly falsified statements or concealed material facts in any matter within the jurisdiction of DEC, or submitted a false statement or made use of or made a false statement in connection with any document or application submitted to DEC?				
	by a court for failure to substantially comply with an	agreement or order?			
11	. Are there any unregistered bulk storage tanks on-si	te which require registration? ☐ Yes ✓No			
	HE REQUESTOR MUST CERTIFY THAT HE/SHE IS EITH ITH ECL 27-1405 (1) BY CHECKING ONE OF THE BOXE	HER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE ES BELOW:			
С] PARTICIPANT	VOLUNTEER A requestor other than a participant, including a			
	requestor who either 1) was the owner of the site at time of the disposal of hazardous waste or	requestor whose liability arises solely as a result of ownership, operation of or involvement with the			
dis res	scharge of petroleum or 2) is otherwise a person sponsible for the contamination, unless the liability	site subsequent to the disposal of hazardous waste or discharge of petroleum.			
inv	ises solely as a result of ownership, operation of, or volvement with the site subsequent to the disposal hazardous waste or discharge of petroleum.	NOTE: By checking this box, a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.			
	If a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site, submit a statement describing why you should be considered a volunteer — be specific as to the appropriate care taken.				

Section VII. Requestor Eligibility Information (continued)				
Requestor Relationship to Property (check one): Previous Owner Current Owner Potential /Future Purchaser Other				
If requestor is not the current site owner, proof of site access sufficient to complete the remediation must be submitted . Proof must show that the requestor will have access to the property before signing the BCA and throughout the BCP project, including the ability to place an easement on the site. Is this proof attached?				
✓Yes No				
Note: a purchase contract does not suffice as proof of access.				
Section VIII. Property Eligibility Information - See Instructions for Further Guidance				
 Is / was the property, or any portion of the property, listed on the National Priorities List? If yes, please provide relevant information as an attachment.				
2. Is / was the property, or any portion of the property, listed on the NYS Registry of Inactive Hazardous Waste Disposal Sites pursuant to ECL 27-1305? If yes, please provide: Site # Class #				
3. Is / was the property subject to a permit under ECL Article 27, Title 9, other than an Interim Status facility? If yes, please provide: Permit type: EPA ID Number: Permit expiration date:				
4. If the answer to question 2 or 3 above is yes, is the site owned by a volunteer as defined under ECL 27-1405(1)(b), or under contract to be transferred to a volunteer? Attach any information available to the requestor related to previous owners or operators of the facility or property and their financial viability, including any bankruptcy filing and corporate dissolution documentation. ☐ Yes ☑ No				
5. Is the property subject to a cleanup order under Navigation Law Article 12 or ECL Article 17 Title 10? ☐ Yes ☑ No				
6. Is the property subject to a state or federal enforcement action related to hazardous waste or petroleum? If yes, please provide explanation as an attachment. ☐ Yes ✓ No				
Section IX. Contact List Information				
 To be considered complete, the application must include the Brownfield Site Contact List in accordance with DER-23 / Citizen Participation Handbook for Remedial Programs. Please attach, at a minimum, the names and addresses of the following: The chief executive officer and planning board chairperson of each county, city, town and village in which the property is located. Residents, owners, and occupants of the property and properties adjacent to the property. Local news media from which the community typically obtains information. The public water supplier which services the area in which the property is located. Any person who has requested to be placed on the contact list. The administrator of any school or day care facility located on or near the property. The location of a document repository for the project (e.g., local library). If the site is located in a city with a population of one million or more, add the appropriate community board as an additional document repository. In addition, attach a copy of an acknowledgement from each repository indicating that it agrees to act as the document repository for the site. 				

Section X. Land Use Factors					
1.	What is the current municipal zoning designation for the site? Commercial/Manufacturing What uses are allowed by the current zoning? (Check boxes, below) Residential Commercial Industrial If zoning change is imminent, please provide documentation from the appropriate zoning and appropriate zoning appropriate zoning and appropriate zoning and appropriate zoning and appropriate zoning appropriate zoning and appropriate zoning	_			
2.	Current Use: Residential Commercial Industrial Vacant Recreational (checapply) Attach a summary of current business operations or uses, with an emphasis on iden possible contaminant source areas. If operations or uses have ceased, provide the d	tifying			
	Reasonably anticipated use Post Remediation: Residential Commercial Industrial that apply) Attach a statement detailing the specific proposed use.	(check all			
	If residential, does it qualify as single family housing?]Yes			
4.	Do current historical and/or recent development patterns support the proposed use?	v Yes∏No			
	Is the proposed use consistent with applicable zoning laws/maps? Briefly explain below, or attach additional information and documentation if necessary.	∠ Yes No			
	Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, or other adopted land use plans? Briefly explain below, or attach additional information and documentation if necessary.	v Yes ∏No			

XI. Statement of Certification and Signatures					
(By requestor who is an individual)					
If this application is approved, I hererby acknowledge and agree: (1) to execute a Brownfield Cleanup Agreement (BCA) within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the <i>DER-32</i> , <i>Brownfield Cleanup Program Applications and Agreements</i> ; and (3) that in the event of a conflict between the general terms and conditions of participation and the terms contained in a site-specific BCA, the terms in the site-specific BCA shall control. Further, I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law.					
Date: Signature:					
Print Name:					
(By a requestor other than an individual) I hereby affirm that I am Managing Member (title) of 458 East 99th Street LLC (entity); that I am authorized by that entity to make this application and execute the Brownfield Cleanup Agreement (BCA) and all subsequent amendments; that this application was prepared by me or under my supervision and direction. If this application is approved, I acknowledge and agree: (1) to execute a BCA within 60 days of the date of DEC's approval letter; (2) to the general terms and conditions set forth in the DER-32, Brownfield Cleanup Program Applications and Agreements; and (3) that in the event of a conflict between the general terms and conditions of participation and the terms contained in a site-specific BCA,					
the terms in the site-specific BCA shall control. Further, I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any					
false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.					
Date: 10/4/19 Signature: Warren Bell Print Name: Warren Bell					
SUBMITTAL INFORMATION:					
 Two (2) copies, one paper copy with original signatures and one electronic copy in Portable Document Format (PDF), must be sent to: 					
o Chief, Site Control Section					
 New York State Department of Environmental Conservation 					
Division of Environmental Remediation					
o 625 Broadway					
o Albany, NY 12233-7020					
FOR DEC USE ONLY BCP SITE T&A CODE: LEAD OFFICE:					

Supplemental Questions for Sites Seeking Tangible Property Credits in New

York City ONLY. Sufficient information to demonstrate that the site meets one or more of the criteria identified in ECL 27 1407(1-a) must be submitted if requestor is seeking this determination.

BCP	Ap	p	Re	V	1	0
-----	----	---	----	---	---	---

Property is in Bronx, Kings, New York, Queens, or Richmond counties.	✓ Yes No					
Requestor seeks a determination that the site is eligible for the tangible brownfield redevelopment tax credit.	e property credit component of the Yes V No					
Please answer questions below and provide documentation necess	sary to support answers.					
Is at least 50% of the site area located within an environmental zone Please see <u>DEC's website</u> for more information.	pursuant to NYS Tax Law 21(b)(6)? ✓ Yes ☐ No					
2. Is the property upside down or underutilized as defined below?	Upside Down? Yes V No					
From ECL 27-1405(31):	Underutilized? Tes V No					
From ECL 21-1405(31):						
"Upside down" shall mean a property where the projected and incurred cost of the investigation and remediation which is protective for the anticipated use of the property equals or exceeds seventy-five percent of its independent appraised value, as of the date of submission of the application for participation in the brownfield cleanup program, developed under the hypothetical condition that the property is not contaminated.						
From 6 NYCRR 375-3.2(I) as of August 12, 2016: (Please note: Eligibunderutilized category can only be made at the time of application)	oility determination for the					
375-3.2: (I) "Underutilized" means, as of the date of application, real property on which no more than fifty percent of the permissible floor area of the building or buildings is certified by the applicant to have been used under the applicable base zoning for at least three years prior to the application,						
which zoning has been in effect for at least three years; and (1) the proposed use is at least 75 percent for industrial uses; or (2) at which:						
 (i) the proposed use is at least 75 percent for commercial or commercial and industrial uses; (ii) the proposed development could not take place without substantial government assistance, as certified by the municipality in which the site is located; and (iii) one or more of the following conditions exists, as certified by the applicant: 						
(a) property tax payments have been in arrears for at least five year application;	ars immediately prior to the					
(b) a building is presently condemned, or presently exhibits docum certified by a professional engineer, which present a public health (c) there are no structures.						
"Substantial government assistance" shall mean a substantial loan land purchase cost exemption or waiver, or tax credit, or some congovernmental entity.						

Su	pplemental Questions for Sites Seeking Tangible Property Credits in New York City (continued)
3.	If you are seeking a formal determination as to whether your project is eligible for Tangible Property Tax Credits based in whole or in part on its status as an affordable housing project (defined below), you must attach the regulatory agreement with the appropriate housing agency (typically, these would be with the New York City Department of Housing, Preservation and Development; the New York State Housing Trust Fund Corporation; the New York State Department of Housing and Community Renewal; or the New York State Housing Finance Agency, though other entities may be acceptable pending Department review). Check appropriate box, below:
	Project is an Affordable Housing Project - Regulatory Agreement Attached;
	Project is Planned as Affordable Housing, But Agreement is Not Yet Available* (*Checking this box will result in a "pending" status. The Regulatory Agreement will need to be provided to the Department and the Brownfield Cleanup Agreement will need to be amended prior to issuance of the CoC in order for a positive determination to be made.);
	☑ This is Not an Affordable Housing Project.
Fr	rom 6 NYCRR 375- 3.2(a) as of August 12, 2016:
se) "Affordable housing project" means, for purposes of this part, title fourteen of article twenty even of the environmental conservation law and section twenty-one of the tax law only, a project at is developed for residential use or mixed residential use that must include affordable sidential rental units and/or affordable home ownership units.
re re	(1) Affordable residential rental projects under this subdivision must be subject to a federal, ate, or local government housing agency's affordable housing program, or a local government's gulatory agreement or legally binding restriction, which defines (i) a percentage of the residential ntal units in the affordable housing project to be dedicated to (ii) tenants at a defined maximum ercentage of the area median income based on the occupants' households annual gross income.
st	(2) Affordable home ownership projects under this subdivision must be subject to a federal, rate, or local government housing agency's affordable housing program, or a local government's egulatory agreement or legally binding restriction, which sets affordable units aside for home wners at a defined maximum percentage of the area median income.
sta	(3) "Area median income" means, for purposes of this subdivision, the area median income rethe primary metropolitan statistical area, or for the county if located outside a metropolitan attistical area, as determined by the United States department of housing and urban avelopment, or its successor, for a family of four, as adjusted for family size.

BCP Application Summary (for DEC use only)						
Site Name: 458 East 99th Street City: Brooklyn	Site Address: 458 East 99th Street County: Kings	Zip : 11234				
Tax Block & Lot Section (if applicable): Block:	0131	56				
Requestor Name: 458 East 99th Street LLC City: Oceanside	Requestor Address: Zip: 11572	3333 Royal Ave Email: info@bialy.com				
Requestor's Representative (for billing purpose Name: Wolfgang Michelitsch Address: City: Brooklyn	ses) 458 East 99th Street Zip : 11236	Email: Eurowaodworkling@sal.com				
Requestor's Attorney Name: Aaron Gershonowitz Forchelli, Deegan, Terrana Address: City: Uniondale	333 Earle Ovington Blvd. Zip: 11553	Email: Agershonowitz@forceiliiaw.com				
Requestor's Consultant Name: Soil Mechanics Environmental Services Address: 3770 Merrick Road City: Seaford Percentage claimed within an En-Zone: 0%						
For NYC Sites, is the Requestor Seeking Tangible Property Credits:Yes						
Does Requestor Claim Property is Unde DER/OGC Determination: Agree	rutilized: Yes No Disagree Undetermined					
Does Requestor Claim Affordable Housing Status: ☐ Yes ☑ No ☐ Planned, No Contract DER/OGC Determination: ☐ Agree ☐ Disagree ☐ Undetermined Notes:						

BROWNFIELD CLEANUP PROGRAM (BCP) INSTRUCTIONS FOR COMPLETING A BCP APPLICATION

The New York State Department of Environmental Conservation (DEC) strongly encourages all applicants to schedule a pre-application meeting with DEC staff to review the benefits, requirements, and procedures for completing a project in the BCP. Contact your Regional office to schedule a meeting. To add a party to an existing BCP Agreement and/or Application, use the BCP Agreement Amendment Application. See guidance at the end of these instructions regarding the determination of a complete application.

SECTION I

REQUESTOR INFORMATION

Requestor Name

Provide the name of the person(s)/entity requesting participation in the BCP. (If more than one, attach additional sheets with requested information. If an LLC, the members/owners names need to be provided on a separate attachment). The requestor is the person or entity seeking DEC review and approval of the remedial program.

If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the requestor's name must appear exactly as given in the NYS Department of State's Corporation & Business Entity Database. A print-out of entity information from the database must be submitted to DEC with the application, to document that the requestor is authorized to do business in NYS.

Address, etc.

Provide the requestor's mailing address, telephone number; fax number and e-mail address.

Document Certification

All documents, which are prepared in final form for submission to DEC for approval, are to be prepared and certified in accordance with Section 1.5 of <u>DER-10</u>. Persons preparing and certifying the various work plans and reports identified in Section 1.5 include:

- New York State licensed professional engineers (PEs), as defined at 6 NYCRR 375-1.2(aj) and paragraph 1.3(b)47. Engineering documents must be certified by a PE with current license and registration for work that was done by them or those under their direct supervision. The firm by which the PE is employed must also be authorized to practice engineering in New York State;
- qualified environmental professionals as defined at 6 NYCRR 375-1.2(ak) and DER-10 paragraph 1.3(b)49;
- remedial parties, as defined at 6 NYCRR 375-1.2(ao) and DER-10 paragraph 1.3(b)60; or
- site owners, which are the owners of the property comprising the site at the time of the certification.

SECTION II

PROJECT DESCRIPTION

As a <u>separate attachment</u>, provide complete and detailed information about the project, including the purpose of the project, the date the remedial program is to start, and the date the Certificate of Completion is anticipated..

SECTION III

PROPERTY'S ENVIRONMENTAL HISTORY

Please follow instructions on application form.

SECTION IV

PROPERTY INFORMATION

Proposed Site Name

Provide a name for the proposed site. The name could be an owner's name, current or historical operations (i.e. ABC Furniture) or the general location of the property. Consider whether the property is known by DEC by a particular name, and if so, use that name.

Site Address

Provide a street address, city/town, zip code, and each municipality and county in which the site is located.

Site Size

Provide the approximate acreage of the site.

GIS Information

Provide the latitude and longitude for the approximate center of the property. Show the latitude and longitude in degrees, minutes and seconds.

Tax Parcel Information

Provide the tax parcel address/section/block/lot information and map. Tax map information may be obtained from the tax assessor's office for all tax parcels that are included in the property boundaries. Attach a county tax map with identifier numbers, along with any figures needed to show the location and boundaries of the property. Include a USGS 7.5 minute quad map on which the property appears and clearly indicate the proposed site's location.

1. Tax Map Boundaries

State whether the boundaries of the site correspond to the tax map boundaries. If no, a metes and bounds description of the property must be attached. The site boundary can occupy less than a tax lot or encompass portions of one or more tax lots and may be larger or smaller than the overall redevelopment/ reuse project area. A site survey with metes and bounds will be required to establish the site boundaries before the Certificate of Completion can be issued.

2. Map

Provide a property base map(s) of sufficient detail, clarity and accuracy to show the following: i) map scale, north arrow orientation, date, and location of the property with respect to adjacent streets and roadways; and ii) proposed brownfield property boundary lines, with adjacent property owners clearly identified.

SECTION IV (continued)

3. En-zone

Is any part of the property in an En-zone? If so, what percentage? For information on En-zones, please see DEC's website.

4. Multiple applications

Generally, only one application can be submitted, and one BCA executed, for a development project. In limited circumstances, the DEC may consider multiple applications/BCAs for a development project where 1) the development project spans more than 25 acres; 2) the approach does not negatively impact the remedial program, including timing, ability to appropriately address areas of concern, and management of off-site concerns; and 3) the approach is not advanced to increase the value of future tax credits (i.e., circumvent the tax credit caps provided under New York State Tax Law Section 21).

10. Property Description Narrative

Provide a property description in the format provided below. Each section should be no more than one paragraph long.

Location

Example: "The XYZ Site is located in an {urban, suburban, rural} area." {Add reference points if address is unspecific; e.g., "The site is approximately 3.5 miles east of the intersection of County Route 55 and Industrial Road."}

Site Features:

Example: "The main site features include several large abandoned buildings surrounded by former parking areas and roadways. About one quarter of the site area is wooded. Little Creek passes through the northwest corner."

<u>Current Zoning and Land Use</u>: (Ensure the current zoning is identified.)

Example: "The site is currently inactive, and is zoned for commercial use. The surrounding parcels are currently used for a combination of commercial, light industrial, and utility right-of-ways. The nearest residential area is 0.3 miles east on Route 55."

<u>Past Use of the Site</u>: include source(s) of contamination and remedial measures (site characterizations, investigations, Interim Remedial Measures, etc.) completed outside of the current remedial program (e.g., work under a petroleum spill incident).

Example: "Until 1992 the site was used for manufacturing wire and wire products (e.g., conduit, insulators) and warehousing. Prior uses that appear to have led to site contamination include metal plating, machining, disposal in a one-acre landfill north of Building 7, and releases of wastewater into a series of dry wells."

When describing the investigations/actions performed outside of the remedial program, include the major chronological remedial events that lead to the site entering a remedial program. The history should include the first involvement by government to address hazardous waste/petroleum disposal. Do not cite reports. Only include remedial activities which were implemented PRIOR to the BCA. Do not describe sampling information.

SECTION IV (continued)

Property Description Narrative (continued)

Site Geology and Hydrogeology:

As appropriate, provide a very brief summary of the main hydrogeological features of the site including depth to water, groundwater flow direction, etc.

Environmental Assessment

The goal of this section is to describe the nature and extent of contamination at the site. When describing the nature of contamination, identify just the primary contaminants of concern (i.e., those that will likely drive remedial decisions/ actions). If there are many contaminants present within a group of contaminants (i.e., volatile organic compounds, semivolatile organic compounds, metals), identify the group(s) and one or two representative contaminants within the group. When addressing the extent of contamination, identify the areas of concern at the site, contaminated media (i.e., soil, groundwater, etc.), relative concentration levels, and a broad-brush description of contaminated areas/depths.

The reader should be able to know if contamination is widespread or limited and if concentrations are marginally or greatly above Standards, Criteria and Guidance (SGCs) for the primary contaminants. If the extent is described qualitatively (e.g., low, medium, high), representative concentrations should be given and compared with appropriate SCGs. For soil contamination, the concentrations should be compared with the soil cleanup objectives (SCOs) for the intended use of the site.

A typical Environmental Assessment would look like the following:

Based upon investigations conducted to date, the primary contaminants of concern for the site include cadmium and trichloroethene (TCE).

Soil - Cadmium is found in shallow soil, mostly near a dry well at the northeast end of the property. TCE is found in deeper soil, predominantly at the north end of the site. Concentrations of cadmium found on site (approximately 5 ppm) slightly exceed the soil cleanup objective (SCO) for unrestricted use (2.5 ppm). Concentrations of TCE found on site (5 ppm to 300 ppm) significantly exceed the soil cleanup objectives for the protection of groundwater (0.47 ppm).

Groundwater - TCE and its associated degradation products are also found in groundwater at the north end of the site, moderately exceeding groundwater standards (typically 5 ppb), with a maximum concentration of 1500 ppb. A moderate amount of TCE from the site has migrated 300 feet down-gradient off-site. The primary contaminant of concern for the off-site area is TCE, which is present at a maximum concentration of 500 ppb, at 10 feet below the groundwater table near Avenue A.

Soil Vapor & Indoor Air - TCE was detected in soil vapor at elevated concentrations and was also detected in indoor air at concentrations up to 1,000 micrograms per cubic meter.

If any changes to Section IV are required prior to application approval, a new page, initialed by each requestor, must be submitted.

SECTION V

ADDITIONAL REQUESTOR INFORMATION

Representative Name, Address, etc.

Provide information for the requestor's authorized representative. This is the person to whom all correspondence, notices, etc. will be sent, and who will be listed as the contact person in the BCA. Invoices will be sent to the representative of Applications determined to be Participants unless another contact name and address is provided with the application.

Consultant and Attorney Name, Address, etc.

Provide requested information.

SECTION VI CURRENT PROPERTY OWNER/OPERATOR INFORMATION (IF NOT A REQUESTOR)

Owner Name, Address, etc.

Provide requested information of the current owner of the property. List <u>all</u> parties holding an interest in the Property and, if the Requestor is not the current owner, describe the Requestor's relationship to the current owner.

Operator Name, Address, etc.

Provide requested information of the current operator (if different from the requestor or owner).

Provide a list of previous property owners and operators with names, last known addresses, telephone numbers and the Requestor's relationship to each owner and operator as a separate attachment

SECTION VII REQUESTOR ELIGIBILITY INFORMATION

As a <u>separate attachment</u>, provide complete and detailed information in response to any eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that such information be summarized. For properties with multiple addresses or tax parcels, please include this information for each address or tax parcel.

SECTION VIII PROPERTY ELIGIBILITY INFORMATION

As a <u>separate attachment</u>, provide complete and detailed information in response to the following eligibility questions answered in the affirmative. It is permissible to reference specific sections of existing property reports; however, it is requested that that information be summarized.

1, CERCLA / NPL Listing

Has any portion of the property ever been listed on the National Priorities List (NPL) established under CERCLA? If so, provide relevant information.

2. Registry Listing

Has any portion of the property ever been listed on the New York State Registry of Inactive Hazardous Waste Disposal Sites established under ECL 27-1305? If so, please provide the site number and classification. See the Division of Environmental Remediation (DER) <u>website</u> for a database of sites with classifications.

3. RCRA Listing

Does the property have a Resource Conservation and Recovery Act (RCRA) TSDF Permit in accordance with the ECL 27-0900 *et seq*? If so, please provide the EPA Identification Number, the date the permit was issued, and its expiration date. Note: for purposes of this application, interim status facilities are not deemed to be subject to a RCRA permit.

4. Registry / RCRA sites owned by volunteers

If the answer to question 2 or 3 above is yes, is the site owned by a volunteer as defined under ECL 27-1405(1)(b), or under contract to be transferred to a volunteer? Attach any information available to the requestor related to previous owners or operators of the facility or property and their financial viability, including any bankruptcy filing and corporate dissolution documentation.

SECTION VIII (continued)

5. Existing Order

Is the property subject to an order for cleanup under Article 12 of the Navigation Law or Article 17 Title 10 of the ECL? If so, please provide information on an attachment. Note: if the property is subject to a stipulation agreement, relevant information should be provided; however, property will not be deemed ineligible solely on the basis of the stipulation agreement.

6. Enforcement Action Pending

Is the property subject to an enforcement action under Article 27, Titles 7 or 9 of the ECL or subject to any other ongoing state or federal enforcement action related to the contamination which is at or emanating from the property? If so, please provide information on an attachment.

SECTION IX CONTACT LIST INFORMATION

Provide the names and addresses of the parties on the Site Contact List (SCL) and a letter from the repository acknowledging agreement to act as the document repository for the proposed BCP project.

SECTION X LAND USE FACTORS

In addition to eligibility information, site history, and environmental data/reports, the application requires information regarding the current, intended and reasonably anticipated future land use.

- 1. This information consists of responses to the "land use" factors to be considered relative to the "Land Use" section of the BCP application. The information will be used to determine the appropriate land use in conjunction with the investigation data provided, in order to establish eligibility for the site based on the definition of a "brownfield site" pursuant to ECL 27-1405(2).
- 2. This land use information will be used by DEC, in addition to all other relevant information provided, to determine whether the proposed use is consistent with the currently identified, intended and reasonably anticipated future land use of the site at this stage. Further, this land use finding is subject to information regarding contamination at the site or other information which could result in the need for a change in this determination being borne out during the remedial investigation.

SECTION XI SIGNATURE PAGE

The Requestor must sign the application, or designate a representative who can sign. The requestor's consultant or attorney cannot sign the application. If there are multiple parties applying, then each must sign a signature page. If the requestor is a Corporation, LLC, LLP or other entity requiring authorization from the NYS Department of State to conduct business in NYS, the entity's name must appear exactly as given in the NYS Department of State's Corporation & Business Entity Database.

DETERMINATION OF A COMPLETE APPLICATION

- 1. The first step in the application review and approval process is an evaluation to determine if the application is complete. To help ensure that the application is determined complete, requestors should review the list of <u>common application deficiencies</u> and carefully read these instructions.
- 2. DEC will send a notification to the requestor within 30 calendar days of receiving the application, indicating whether such application is complete or incomplete.
- 3. An application must include the following information relative to the site identified by the application, necessary for making an eligibility determination, or it will be deemed incomplete. (Please note: the application as a whole requires more than the information outlined below to be determined complete). The application must include:
 - a. for all sites, an investigation report sufficient to demonstrate the site requires remediation in order to meet the requirements of the program, and that the site is a brownfield site at which contaminants are present at levels exceeding the soil cleanup objectives or other health-based or environmental standards, criteria or guidance adopted by DEC that are applicable based on the reasonably anticipated use of the property, in accordance with applicable regulations. Required data includes site drawings requested in Section III, #3 of the BCP application form.
 - b. for those sites described below, documentation relative to the volunteer status of all requestors, as well as information on previous owners or operators that may be considered responsible parties and their ability to fund remediation of the site. This documentation is required for:
 - i. real property listed in the registry of inactive hazardous waste disposal sites as a class 2 site, which may be eligible provided that DEC has not identified any responsible party for that property having the ability to pay for the investigation or cleanup of the property prior to the site being accepted into the BCP; or
 - ii. real property that was a hazardous waste treatment, storage or disposal facility having interim status pursuant to the Resource Conservation and Recovery Act (RCRA) program, which may be eligible provided that DEC has not identified any responsible party for that property having the ability to pay for the investigation or cleanup of the property prior to the site being accepted into the BCP.
 - c. for sites located within the five counties comprising New York City, in addition to (a) and if applicable (b) above, if the application is seeking a determination that the site is eligible for tangible property tax credits, sufficient information to demonstrate that the site meets one or more of the criteria identified in ECL 27 1407(1-a). If this determination is not being requested in the application to participate in the BCP, the applicant may seek this determination at any time before issuance of a certificate of completion, using the BCP Amendment Application, except for sites seeking eligibility under the underutilized category.
 - d. for sites previously remediated pursuant to Titles 9, 13, or 14 of ECL Article 27, Title 5 of ECL Article 56, or Article 12 of Navigation Law, relevant documentation of this remediation.

DETERMINATION OF A COMPLETE APPLICATION (continued)

- 4. If the application is found to be incomplete:
 - a. the requestor will be notified via email or phone call regarding minor deficiencies. The requestor must submit information correcting the deficiency to DEC within the 30-day review time frame; or
 - b. the requestor will receive a formal Letter of Incomplete Application (LOI) if an application is substantially deficient, if the information needed to make an eligibility determination identified in #4 above is missing or found to be incomplete, or if a response to a minor deficiency is not received within the 30-day period. The LOI will detail all of the missing information and request submission of the information. If the information is not submitted within 30 days from the date of the LOI, the application will be deemed withdrawn. In this case, the requestor may resubmit the application without prejudice.
- 5. If the application is determined to be complete, DEC will send a Letter of Complete Application (LOC) that includes the dates of the public comment period. The LOC will:
 - a. include an approved public notice to be sent to all parties on the Contact List included with the application;
 - b. provide instructions for publishing the public notice in the newspaper on the date specified in the letter, and instructions for mailing the notice to the Contact List;
 - c. identify the need for a certification of mailing form to be returned to DEC along with proof of publication documentation; and
 - d. specify the deadline for publication of the newspaper notice, which must coincide with, or occur before, the date of publication in the Environmental Notice Bulletin (ENB).
 - i. DEC will send a notice of the application to the ENB. As the ENB is only published on Wednesdays, DEC must submit the notice by the Wednesday before it is to appear in the ENB.
 - ii. The mailing to parties on the Contact List must be completed no later than the Tuesday prior to ENB publication. If the mailings, newspaper notice and ENB notice are not completed within the time-frames established by the LOC, the public comment period on the application will be extended to insure that there will be the required comment period.
 - iii. Marketing literature or brochures are prohibited from being included in mailings to the Contact List.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION BROWNFIELD CLEANUP PROGRAM

BROWNFIELD CLEANUP PROGRAM APPLICATION SUPPLEMENTAL AND SUPPORTING INFORMATION/DOCUMENTATION

For

458 EAST 99th STREET, BROOKLYN, NY 11236 458 East 99th Street, LLC

SEPTEMBER 2018
REVISED June 14, 2019
REVISED July 25, 2019

Table of Contents

Section I – Requestor Information

Section II – Project Description

Section III - Property's Environmental History

- Environmental Reports
- Sampling Data
- Site Drawings

Section IV - Property Information

- Site Maps
- Property Description Narrative

Section V – Additional Requestor Information

Section VI – Previous Owners and Operators

Section VII – Requestor Eligibility Information

Section VIII - EMPTY

Section IX – Contact List Information

Section X – Land Use Factors

List of Appendices

Appendix A: Site Maps & Drawings

- Figure #1 Project Location Plan
- Figure #2 USGS. 7.5 Minute Quadrangle Map
- Figure #3 NYC Tax Assessors Map
- Figure #4 Base Map
- Figure #5 "Spider Map"

Appendix B: Entity Information

Appendix C: Environmental Reports

Appendix D: Title Report - 2012

Appendix E: Title Report - 2016

Appendix F: Deed Search - 2018

Appendix G: Brownfield Site Contact List

Appendix H: Description of Overall Project

Appendix I: NYC DOB Records and Certificate of Occupancy

Appendix J: See Appendix A

Appendix K: Owner's Authorization Letter

Section I - Requestor Information

- 458 East 99th Street LLC is a NYS business entity. A copy of the New York State Department of State's Corporation & Business Entity Database printout is attached in Appendix B.
- Mr. Warren Bell is the owner and Managing Member of the LLC. The following are the only members/owners of 458 East 99th Street LLC:

Mr. Warren Bell 3333 Royal Ave. Oceanside, N.Y. 11572

- Please see Appendix E Title Report (2016).
- Requestor/Owner Relationship: The requestor is the immediate past owner of the subject site. The requester, 458 East 99th Street LLC, sold the subject site to the current owner, 458 East Owners LLC in 2016.

Section II - Project Description

- The overall development project is described as follows: The existing subject site and subject building are to be maintained as they exist at this time, specifically an office/warehouse. The current owner of the property (458 East Owners LLC) has no plans to redevelop, renovate or implement any new construction at the subject site or in association with the subject building, which is utilized as a woodworking/cabinet shop. As such, there is no proposed development of the subject site.
- The investigation phase of the remedial program will start immediately upon approval of the Remedial Investigation Work Plan (RIWP) by the NYSDEC, which should be submitted for their review by July 1, 2019. Implementation of the RIWP should begin no later than August 1, 2019.
- The RIWP will be comprehensive in nature and build upon currently available information. Upon its completion, the RIWP will provide a full characterization of the environmental quality of the subject property and confirm, if possible, any on-site source(s) for currently identified adverse impacts to the Site's groundwater and soil-vapor. At a minimum, the RIWP include: (i) further investigation of the property to identify all potential conduits for release of contaminants into the environment, i.e., sumps, pits, cracks in on-grade slabs, etc.; (ii) preparation of a site-specific a ground water contour map; (iii) collection of additional soil and groundwater assessment samples; and (iv) collection of additional soil vapor intrusion assessment samples. The RIWP will be approved by the NYSDEC prior to commencing the field investigation activities.

• The RIWP will fully characterize the environmental quality of the subject property and allow for the preparation of Remedial Action Work Plan (RAWP), which address all environmental concerns. The Certificate of Completion should be issued subsequent to completion of the RAWP and acceptance of the Final Engineering Report by the NYSDEC, on or about August 1, 2020

Section III - Property's Environmental History

The Certificate of Occupancy, dated November 17, 1966, for the subject site states that the first floor of the subject building would be used for "Storage Warehouse for dry cleaning supplies and equipment (No fire hazardous materials stored). No flammable materials in building, or used." The historical records identified the subject site as occupied by a dry-cleaning chemicals warehouse from at least 1966 through at least 1973. It is not known if chlorinated solvents were stored at the subject site.

Environmental Reports:

The following environmental reports have been prepared for the subject site and are enclosed in Appendix C:

- Phase I Environmental Site Assessment (ESA), dated January 19, 2012.
 Prepared by Middleton Environmental Inc.
- Phase I Environmental Site Assessment (ESA), dated May 18, 2016.
 Prepared by EFI Global, Inc.
- Phase II Limited Subsurface Investigation Report, dated June 14, 2016.
 Prepared by EFI Global, Inc.
- Soil Vapor Sampling, dated January 3, 2017.
 Prepared by Long Island Analytical Laboratories, Inc. (LIAL)

Sampling Data

The laboratory reports containing sampling data and data summary tables are contained in the investigation reports referenced above.

Site Drawings

All Site plans and drawings are presented in Appendix A. The "Spider Diagram" depicting soil, groundwater and soil vapor/indoor air analytical results are presented as Figure #5 in Appendix A. The original data shown on these drawings is contained in the reports and laboratory deliverables referenced above.

Section IV - Property

Information Site Maps

The following maps, plans and/or drawings presented in Appendix A:

- Figure #1 Project Location Plan
- Figure #2 USGS. 7.5 Minute Quadrangle Map
- Figure #3 NYC Tax Assessors Map
- Figure #4 Base Map
- Figure #5 "Spider Map"

The latitude and longitude for the subject site is as follows:

Latitude: 40 38 59.1468 (degrees/minutes /seconds) Longitude: 73 54 17.4276 (degrees/minutes/seconds)

Property Description Narrative

Location:

The subject site is located on the southwest side of East 99th Street, Brooklyn. The subject site is located 180 feet northwest of the intersection of East 99th Street and Foster Avenue, on the southwest side of East 99th Street. The surrounding area is generally commercial and industrial along East 99th Street and the surrounding neighborhood. The surrounding area consists of manufacturing, commercial and warehouse facilities.

Site Features:

The subject site is a single lot, 6,000 square foot, parcel, improved by a one (1) story office / warehouse building, with no basement, and an alleyway on the north side of the subject building. The subject building covers the majority of the lot, with the exception of the alleyway.

Past Uses of the Site:

The subject site was unimproved land as early as 1907 through at least 1950 and developed with the existing structure by 1952. The subject site was occupied by a drycleaning chemical warehouse between at least 1966 and 1973.

Current Zoning and Land Use:

The subject site is zoned El-Warehouse. The subject building is currently occupied by "Euro Woodworking" as a woodworking shop and storage areas.

Current Business Operations and Uses:

The current business operations and uses of the subject site are as follows:

"Euro Woodworking" - This is the only tenant and operation of the subject site at this time. The uses are typical wood working, assembling of cabinets, etc. There is no manufacturing conducted at the subject site.

Proposed Use:

The proposed use of the subject site is the same as it exists at this time. There is no proposed change to the use. Euro Woodworking will continue to operate at the subject site.

Site Geology and Hydrogeology:

Based on site-specific sampling, the depth to groundwater is approximately 11 feet below grade. Based upon topographic map interpretation and site observations, the shallow groundwater in the vicinity of the subject site, the inferred direction of groundwater flow is to the east-southeast.

Environmental Assessment - Soil and Groundwater:

The laboratory analytical report prepared by EFI Global, Inc., (dated June 2016) indicated that PCE was detected in groundwater samples GW-1, GW-2, and GW-3 at concentrations exceeding the State standard. Further, 1,1- DCA and cis-1,2-DCE were also detected in groundwater sample GW-3 at concentrations exceeding State standards. Notably, soil samples collected from the aforementioned groundwater sampling locations, while marginally compromised by selected VOCs, were not impacted at concentration exceeding NYSDEC 6NYCRR part 375 unrestricted use, residential use, or protection of groundwater soil cleanup objective. Accordingly, the source of the identified impacts to the groundwater beneath the subject property are currently unknown.

Environmental Assessment - Soil Vapor and Indoor Air:

Long Island Analytical Laboratories of Holbrook, NY conducted a soil vapor intrusion assessment at the subject property during 12/16 (see Soil Vapor Sampling results, dated 1/3/17). The noted assessment was conducted in conformance with the New York State Department of Health (NYS DOH) "Guidance for Evaluating Soil Vapor Intrusion in the State of New York", dated October 2006.

Comparison of the acquired sub-slab soil vapor sample to the correlating indoor air sample, utilizing the decision-making matrices appended to the aforementioned NYS DOH guidance document mandated the following actions:

•	Carbon Tetrachloride (CT)		No Further Action
•	Tetrachloroethylene (PCE)		Mitigate***
•	1,1,1 - Trichloroethane (1,1,1-TCA)		No Further Action
•	Trichloroethene (TCE)		Mitigate ***
•	Vinyl chloride (VC)		No Further Action
•	1,1-dichlorethene (1,1-DCE)		No Further Action
•	cis-1,2- dichlorethene (cis-1,2-DCE)		No Further Action
•	Methylene chloride (CH ₂ Cl ₂)		Monitor***

^{***} Notably, the detected concentrations of CH₂Cl₂, PCE and TCE were within NYS DOH Indoor Air Guidance values.

Section V - Additional Requestor Information

The email address for the requestor's authorized representative is the current owner of the property: Wolfgang Michelitsch <u>eurowoodworking@aol.com</u>

Section VI – Previous Owners and Operators

The following is a list of the previous owners and operators of the subject site, as well as their relationship to the requestor:

Previous Owners						
Dates	Owner Name	Address	Relationship to Requestor			
1951 and Prior	Sylvia Bates	959 East 89 th Street Brooklyn, NY	None			
1951 – 1956	Dave Snyder Lumber Corp.	85-50 Chevy Chase Street Jamaica, NY	None			
1956 – 1975	Ruday Realty Corp.	I04-43 115 th Street Richmond Hill, NY	None			
1975 – 2012	Abe's Radio, Inc.	1396 Rockaway Parkway Brooklyn, NY	None			
2012 – 2016	458 East 99th Street LLC	10013 Foster Avenue Brooklyn, NY 11236	Requestor			
2016 – 2018	458 East Owners LLC	458 East 99 th Street Brooklyn, NY 11236	None			

Previous Operators					
Dates	Owner Name	Operation	Relationship to Requestor		
1951 and Prior	Sylvia Bates	Unknown. Site was vacant until circa 1952.	None		
1951 – 1956	Dave Snyder Lumber Corp.	Unknown	None		
1956-1975	Ruday Realty Corp.	dry-cleaning chemicals warehouse	None		
1975 – 2012	Abe's Radio, Inc.	Abe 's Radio, Inc. (Incorporated in 1945) acquired the subject site on November 14, 1975. Abe's Radio was reportedly an electronics and appliance business.	None		
2012 – 2016	458 East 99 th Street LLC	Bagels By Bell / Brooklyn Bagels occupied the subject site.	Requestor		
2016 -2018 458 East Owners LLC		Euro Woodworking is the tenant.	None		

Please see Appendix D -Title Report (2012), Appendix E -Title Report (2016), and Appendix F – Deed Search (2018).

Section VII - Requestor Eligibility formation Volunteer Eligibility Statement

The requestor is the immediate past owner of the subject site. The requestor has owned the subject site from 2012 to 2016. The requestor's operation of the subject site did not contribute to the suspected contamination at the subject site. The prior uses, prior to 2012, are the operations which are suspected to be the possible cause of the suspected contamination. The requestor's liability is from ownership of the subject site from 2012 to 2016. The requestor has exercised appropriate care with respect to the investigation of the subject site.

The current owner and occupant. Wolfgang Michelitsch, has issued a letter, dated September 8, 2018, indicating that he is aware of the pending investigation and that he has granted full access to the subject site in order to conduct the field work. Please see Appendix K.

Section IX - Contact List Information

Please see contact list in Appendix G.

Section X - Land Use Factors

Summary of Current Business Operations or Uses:

The existing subject site and subject building are currently utilized as a woodworking and cabinet shop by Eurowoodworking. Prior to Eurowoodworking, the property was occupied by Pinnacle Lift of NY, a forklift sales, services, parts and rental company. Based on currently available information there are no reported conduits for contaminants being released into the environment, i.e., pits, floor drains, poorly constructed concrete control joints or cracks in the on-grade concrete slab. Identified impacts to the groundwater quality beneath the property by selected chlorinated contaminants and associated soil vapor intrusion concerns appear to be associated with historic land usage during the time period 1966 to 1973, wherein the existing building and grounds were utilized as a dry-cleaning chemical warehouse.

There is no proposed renovation or construction planned for the subject site or the subject building. As such, there is no proposed development of the subject site and the existing operation of the subject building is to remain

Reasonably Anticipated Use Post-Remediation:

The anticipated post-remedial use of the subject site is the same as today, specifically an office warehouse building.

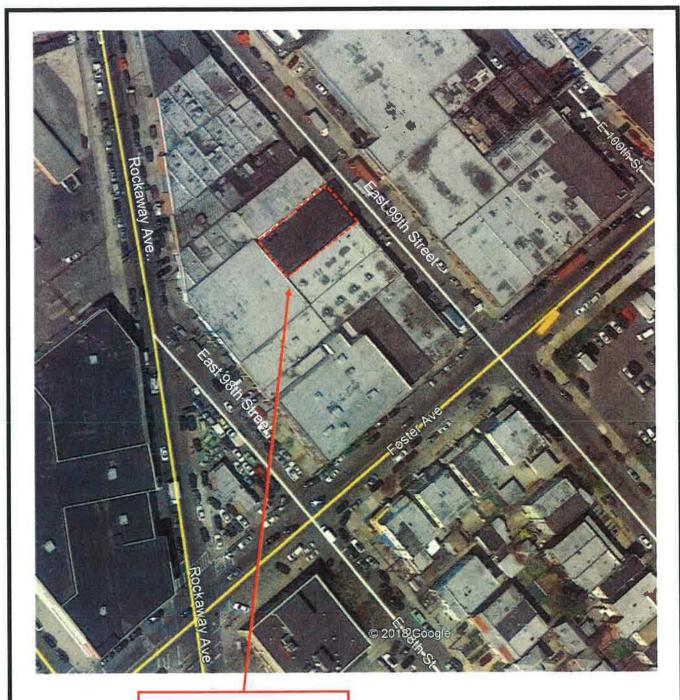
Is the proposed use consistent with applicable zoning laws/maps?

The proposed use of the subject site is consistent with the existing El-Warehouse zoning.

Is the proposed use consistent with applicable comprehensive community master plans, local revitalization plans, or other adopted land use plans? The site's use is consistent with the community master plans and/or other land use plans. The proposed use is not inconsistent with any applicable comprehensive community master plans, designated Brownfield Opportunity Area plans or other adopted land use plans.

This Page Intentionally Blank

Appendix A
Site Maps



Subject Property 458 E. 99th St. Brooklyn, N.Y.

SOIL MECHANICS ENVIRONMENTAL SERVICES

3770 Merrick Road, Seaford, NY 11783 P 516 221 7500 Email Scilmech@optonline.net



DATE:

5/19

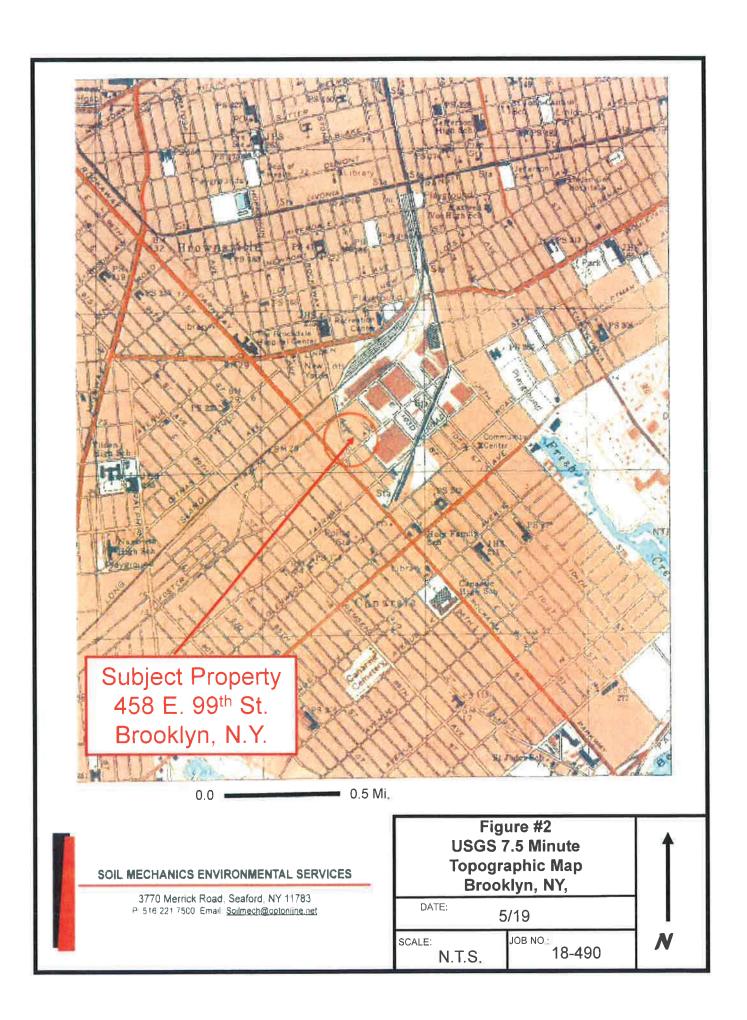
SCALE

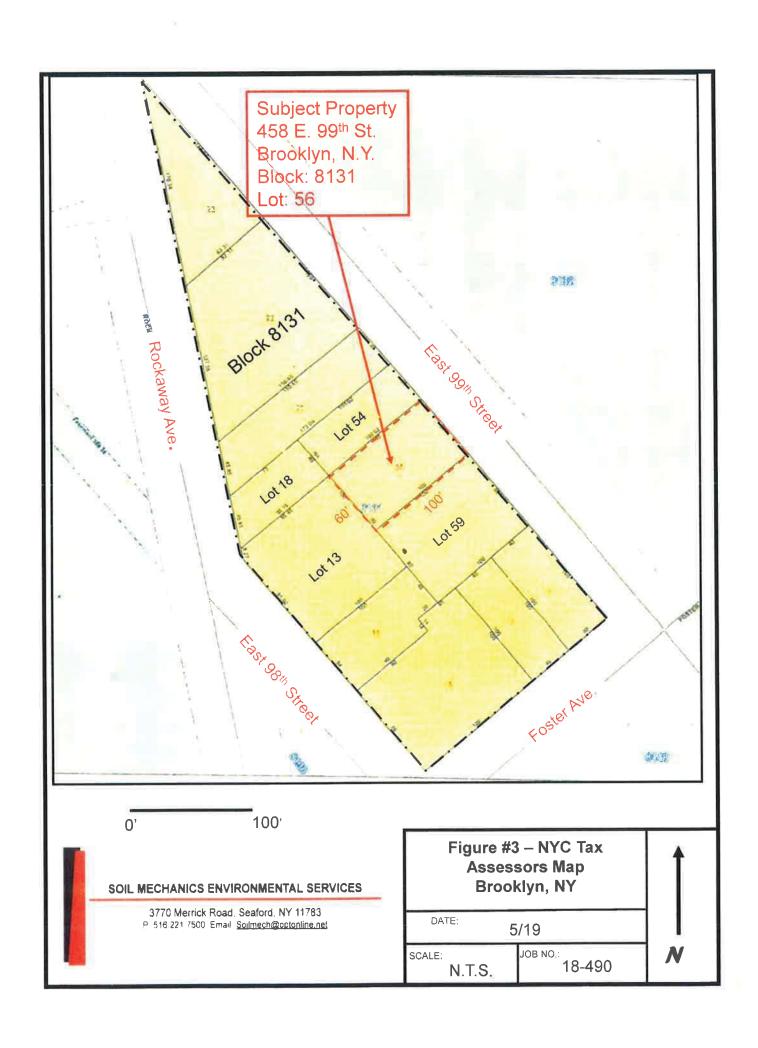
N.T.S.

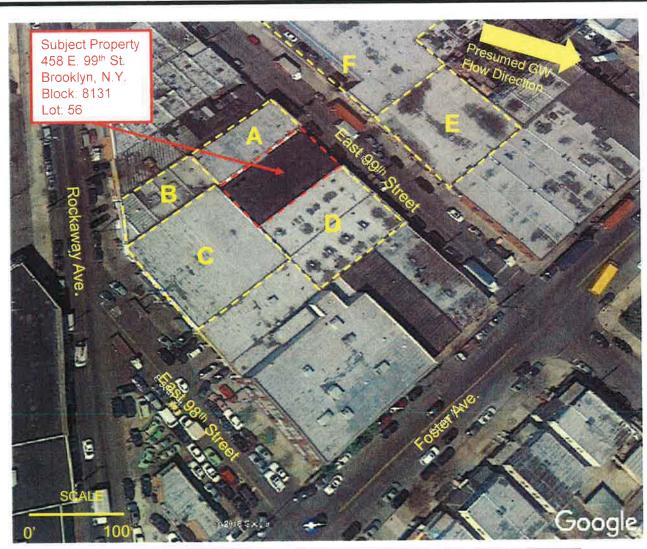
JOB NO.:

18-490









	Adjacent Property Owners						
Letter ID	Bk/Lot	Property Address	Owner				
Α	8131/54	452 E. 99th St.	452 E. 99th St., LLC				
		(office/warehouse)	3711 Neptune Ave., Brooklyn, NY 11224				
	8131/18	1227 Rockaway Ave	Ahmed Mused				
В		(Saba Live poultry)	1251 E. 92 nd St., Brooklyn, NY 11236				
С	8131/13	857 E, 98th St,	734 Foch Blvd. Realty Corp.				
		(commercial warehouse)	734 Foch Blvd., Williston Park, NY 11596				
	8131/59	464-470 E, 99th St. (commercial)	Four Start Assoc				
D			9777 Queens Blvd, #1120				
			Queens, NY 11374				
E	8132/11	461 E. 99 th St. (Whiskey Shippers and Movers)	462 Carrol St, Realty Corp.				
			c/o Crosstown Mgmt. Corp.				
			9777 Queens Blvd_#1120				
			Queens, NY 11374				
	8132/16	455 E, 99 th St (warehouse)	Aquilina Ind.				
F			443 E. 100th St.				
			Brooklyn, NY 11236				

SOIL MECHANICS ENVIRONMENTAL SERVICES

3770 Merrick Road, Seaford, NY 11783 P 516 221 7500 Email Scilmech@optontine.net

Figure #4 – Base Map Brooklyn, NY

DATE:

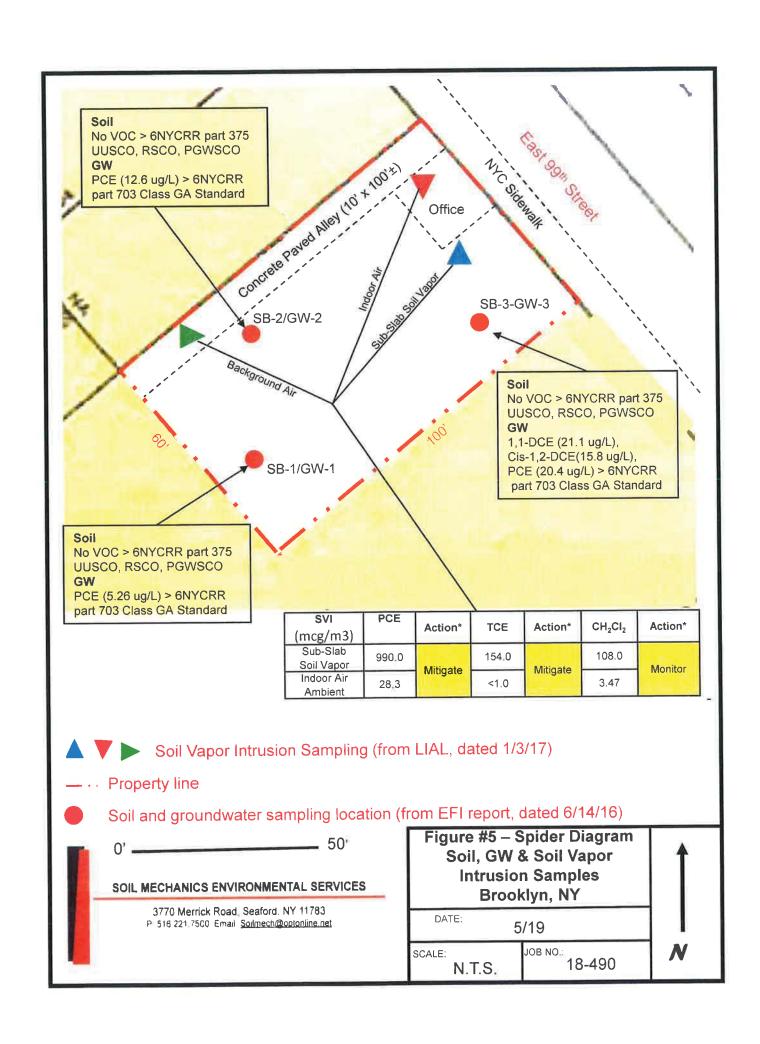
5/19

SCALE:

N.T.S.

јов no... 18-490





This Page Intentionally Blank

Appendix B

Entity Information for 458 East 99th Street LLC

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through August 1, 2018.

Selected Entity Name: 458 EAST 99TH STREET LLC

Selected Entity Status Information

Current Entity Name: 458 EAST 99TH STREET LLC

DOS ID #: 4147514

Initial DOS Filing Date: SEPTEMBER 28, 2011

County:

KINGS

Jurisdiction:

NEW YORK

Entity Type:

DOMESTIC LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

458 EAST 99TH STREET LLC **10013 FOSTER AVENUE** BROOKLYN, NEW YORK, 11236

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by viewing the certificate.

*Stock Information

of Shares

Type of Stock \$ Value per Share

No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date Name Type Entity Name

FEB 09, 2012 Actual 458 EAST 99TH STREET LLC

SEP 28, 2011 Actual 790 EAST 91ST STREET LLC

A Fictitious name must be used when the Actual name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

Search Results New Search

Services/Programs | Privacy Policy | Accessibility Policy | Disclaimer | Return to DOS | Homepage | Contact Us

This Page Intentionally Blank

Appendix C

Environmental Reports

Please see Appendix C of Electronic Copy of BCP application for all referenced environmental reports

This Page Intentionally Blank

Appendix D

Title Report - 2012



Jennifer Nicoletta djennifer nicoletta@gmail.com>

RE: 458 East 99th St Wire Confirmation

Lonnie Tishman < lonniegtishman@hotmail.com>

Tue, Jul 17, 2012 at 5:31 PM

To: aeconomon@ricksteinerlaw.com Cc: jennifer.nicoletta@gmail.com

On this Closing, I am still holding escrow against removal of violations. They have been removed and Ram Abstract has issued a clear report dated 7/12/12. Kindly authorize my release of the Escrow. Thanks.

Law Office of Lonnie G. Tishman P.O. Box 340 White Plains, NY 10603 (347)271-2377

CONFIDENTIALITY NOTICE: The information contained in this e-mail is attorney privileged and confidential information. It is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are notified that any disclosure, copying, distribution, electronic storage or use of this communication is prohibited. If you received this communication in error, please notify us immediately by e-mail, attaching the original message, and delete the original message from your computer, and any network to which your computer is connected.

Communications from our firm may contain or incorporate federal tax advice. Under recently promulgated US Internal Revenue Service (IRS) standards, we are required to inform you that only formal, written tax opinions meeting IRS requirements may be relied upon by taxpayers for the purpose of avoiding tax-related penalties. Accordingly, this communication is not intended or written to be used, and it cannot be used, for the purpose of avoiding tax-related penalties under the Internal Revenue Code.

From: aeconomon@ricksteinerlaw.com
To: lonniegtishman@hotmail.com

Subject: RE: 458 East Wire Confirmation Date: Thu, 5 Apr 2012 14:10:22 -0400

OK, will do. Thanks

From: Lonnie Tishman [mailto:lonniegtishman@hotmail.com]

Sent: Thursday, April 05, 2012 2:01 PM To: aeconomon@ricksteinerlaw.com Subject: RE: 458 East Wire Confirmation

Thanks. BIS website now shows all 3 Violations cleared. I put in a call to RAM to send out a new search showing no existing Violations. Since I am not the atty for their clients, the Purchaser or the Lender, it may be helpful if you would follow up with them.

Law Office of Lonnie G. Tishman P.O. Box 340 White Plains, NY 10603 (347)271-2377

CONFIDENTIALITY NOTICE: The information contained in this e-mail is attorney privileged and confidential information. It is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are notified that any disclosure, copying, distribution, electronic storage or use of this communication is prohibited. If you received this communication in error, please notify us immediately by e-mail, attaching the original message, and delete the original message from your computer, and any network to which your computer is connected.

Communications from our firm may contain or incorporate federal tax advice. Under recently promulgated US Internal Revenue Service (IRS) standards, we are required to inform you that only formal, written tax opinions meeting IRS requirements may be relied upon by taxpayers for the purpose of avoiding tax-related penalties. Accordingly, this communication is not intended or written to be used, and it cannot be used, for the purpose of avoiding tax-related penalties under the Internal Revenue Code.

From: aeconomon@ricksteinerlaw.com

To: lonnlegtishman@hotmail.com; seddiolaw@gmail.com CC: jsteiner@ricksteinerlaw.com; asteiner@ricksteinerlaw.com

Subject: 458 East Wire Confirmation Date: Thu, 5 Apr 2012 09:51:41 -0400

Wire confirmation from yesterday's closing is attached.

Ariane C. Economon, Esq. Rick Steiner Fell & Benowitz LLP

LONNIE G. TISHMAN, ESQ.

ATTORNEY AT LAW P.O. BOX 340 WHITE PLAINS, NY 10603

TELEPHONE: (347)271-2377 TELECOPIER: (212)388-3064

FACSIMILE COVER SHEET

DATE: July 18, 2012

PLEASE DELIVER THE FOLLOWING TO:

TO:

Frank Seddio, Esq., Attn: Jennifer

Ariane C. Economon, Esq.

Fax No.: (347)750-8344

Fax No.: (212)422-0158

FROM: Lonnie G. Tishman, Esq.

SUBJECT:

Clear Search Report

THE NUMBER OF PAGES, INCLUDING THIS COVER SHEET, IS: 4.

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL AS SOON AS POSSIBLE AT (212) 697-2993.

COMMENTS: Please confirm my authorization to release the escrowed funds I am holding.

THIS FACSIMILE CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS FACSIMILE IS NOT THE INTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR COPYING OF THIS FACSIMILE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL FACSIMILE TO US AT THE ABOVE ADDRESS VIA THE U.S.

No. 0774 P. 1 212-388-3064

RAM ABSTRACT LTD.

TEL.-718,846,7800

TAX - 118,846,7807

Facsimile Transmittal

				•	
ii.	To C	fani	Tish	wan	<u></u>
	From: CYN	THA	Date;	7/17	
			Peges:	2	
	cconp				
	⊡urgent S	☐ For Review	☐ Please Comment	C Please Reply	☐ Please Recycle
		llgadal	ted H-	1 B X	learch
	L A	Some I	ed.	P	4 1112 1
PL	ease	emai	lane.	war.	A COLOR
Cynti	hia ABSTRAC			Cegnia	har
157.7401	un norren 3				

IF YOU'D PREFER TO EMAIL ME, cmccormick@ramtitle.com

THANKSI

7/17/2012 12:11 PM FROM: (718) 596-7341 Team Research TO: 1-716-646-7801 PAGE: 002 OF 002

TEAM RESEARCH

189 MONTAGUE ST * SUITE 801A * BROOKLYN, NY 11201

PHONE: (718) 596-8500 FAX: (718) 596-3500

WEB: WWW.TEAM-RESEARCH.COM

E-MAIL: ORDERS@TEAM-RESEARCH.COM

DATE: 07/12/2012

TITLE NUMBER: RF12332

TN: 471447

COMPANY: RAM ABSTRACT LTD.

COUNTY: KINGS

BLOCK: 8131

LOT: 56

PREMISES: 458 / 462 EAST 99 STREET

HOUSING and BUILDING DEPARTMENT SEARCH

A SEARCH OF THE RECORDS OF THE DEPARTMENT OF BUILDINGS, AND THE DEPARTMENT OF HENT AND HOUSING MAINTENANCE OF THE CITY OF NEW YORK WAS MADE AND THE FOLLOWING VIOLATIONS WERE REPORTED PENDING AS OF THE LAST DATE OF POSTING: 28-APR-2012

BUILDING DEPARTMENT:

NONE

RENT AND HOUSING MAINTENANCE DEFARTMENT:

NOME

BUILDING CLASSIFICATION:

COMMERCIAL BUILDING

THIS REPORT IS SUBMITTED FOR INFORMATION PURPOSES ONLY AND FOR THE EXCLUSIVE USE OF RAM ABSTRACT LED.

TEAM RESEARCH DOES HEREBY CERTIFY THAT THE RECORDS OF THE ABOVE GOVERNMENTAL AGENCIES WERE EXAMINED. THE INFORMATION REPORTED ABOVE IS A TRUE AND ACCURATE ABSTRACT OF THE INFORMATION CONTAINED HEREIN, AND NO LIABILITY IS ASSUMED.

CAPT



SPECIAL REPORT

BOROUGH OF: BROOKLYN

	(c) (*)
TO: Chilf Inspector	
FROM: Construction	- A - A - A - A - A - A - A - A - A - A
PREMISES: 458 E 99 8freet	
RE: Vacale of der + 171/10	
DATE OF INSPECTION: 05/24/12	
INSPECTOR: Soyle BADGE#	2349
DATE OF REPORT: 5/24/12	400
	* 1
Regarding Inspection that whente	alder
and the state of t	
Unsale condition do Longer Exist.	
	e black
Will Remails and Rebild premit &	320 NO923
Work persons and the	
lessend to Lift vacate seder	17//10
fectiment to lift vacate seder	
	1
Signature:	
Signature: John	
	

OP-4 Rev. (REV.6/03)

RAM ABSTRACT, LTD.

New York

100 Merrick Road, Suite 214W Rockville Centre, NY 11570

Phone: 718-846-7800 Fax: 718-846-7801

New Jersey

521 Gotham Parkway Carlstadt, New Jersey

07072

Phone: 973-672-8803

Fax: 973-672-8804

Title Closer Copy

Title No:

RF12332

Premises:

458/462 East 99th Street

New York, NY

Seller/Owner: Abe's Radio Inc.

Purchaser:

458 East 99th Street, LLC and Warren Bell

Report typed by: Melinda DeMaio February 13, 2012

This copy remains in our file until closing.

CERTIFICATE OF TITLE

Fidelity National Title Insurance Company

Certifies to

that an examination of title to the premises described in Schedule A has been made in accordance with its usual procedure and agrees to issue its standard form of insurance policy in the amount of \$1.00 insurance.

and the marketability thereof, after the closing of the transaction in conformance with procedures approved by the Company excepting (a) all loss or damage by reason of the estates, interests, defects, objections, liens, encumbrances and other matters set forth herein that are not disposed of to the satisfaction of the Company prior to such closing or issuance of the policy (b) any question or objection coming to the attention of the Company before the date of closing, or if there be no closing, before the issuance of said policy.

This Certificate shall be null and void (1) if the fees therefor are not paid (2) if the prospective insured, his attorney or agent makes any untrue statement with respect to any material fact or suppresses or fails to disclose any material fact or if any untrue answers are given to material inquiries by or on behalf of the Company (3) upon delivery of the policy. Any claim arising by reason of the issuance hereof shall be restricted to the terms and conditions of the standard form of insurance policy. If the title, interest or lien to be insured was acquired by the prospective insured prior to delivery hereof, the Company assumes no liability except under its policy when issued.

THIS CERTIFICATE IS INTENDED FOR LAWYERS ONLY. SUCH EXCEPTIONS AS MAY BE SET FORTH HEREIN MAYAFFECT MARKETABLITY OF TITLE. YOUR LAWYER SHOULD BE CONSULTED BEFORE TAKING ANY ACTION BASED UPON THE CONTENTS HEREOF. THE COMPANY'S REPRESENTATIVE AT THE CLOSING HEREUNDER MAY NOT ACT AS LEGAL ADVISOR TO ANY OF THE PARTIES OR DRAW LEGAL INSTRUMENTS FOR THEM. SUCH REPRESENTATIVE IS PERMITTED TO BE OF ASSISTANCE ONLY TO AN ATTORNEY. IT IS ADVISABLE TO HAVE YOUR ATTORNEY PRESENT AT THE CLOSING.

IF ANY OF THE CLOSING INSTRUMENTS WILL BE OTHER THAN COMMONLY USED FORMS OR CONTAIN UNUSUAL PROVISIONS, THE CLOSING CAN BE SIMPLIFIED AND EXPEDITED BY FURNISHING THE COMPANY WITH COPIES OF THE PROPOSED DOCUMENTS IN ADVANCE OF CLOSING.

Dated

Premises in Section

Block

Lot

Redated

On the land/tax map of the County of

NY2782 Ram Abstract Ltd. 100 Merrick Rd, Ste 214W Rockville Centre, NY 11570 Tel:(718) 846-7800 Fax:(718) 846-7801

Fidelity National Title Insurance Company

Authorized Signature

Will be pleased to confer on any questions concerning this certificate

IF THE INSURED CONTEMPLATES MAKING IMPROVEMENTS TO THE FROPERTY COSTING MORE THAN TWENTY PER CENTUM OF THE AMOUNT OF INSURANCE TO BE ISSUED HEREUNDER, WE SUGGEST THAT THE AMOUNT OF INSURANCE BE INCREASED TO COVER THE COST THEREOF; OTHERWISE, IN CERTAIN CASES THE INSURED WILL BECOME A CO-INSURER.

The following matters are expressly excluded from the coverage of our standard form of policy and the Company will not

pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or enoumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land

has been recorded in the public records at Date of Policy.

Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of
Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding
on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:

(a) created, suffered, assumed or agreed to by the insured claimant;

 (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

(c) resulting in no loss or damage to the insured claimant;

(d) attaching or created subsequent to the Date of Policy; or

(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the

estate or interest insured by this policy.

4. Any claim, which arises out of the transaction vesting in the insured the estate or interest [or interest of the mortgagee] insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditor's rights laws that is based on; (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or (ii) the transaction creating the estate or interest [or interest of the mortgagee] insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure;

(a) to timely record the instrument of transfer; or

(b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

[For mortgage policies add] (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination, or (iii) [see (4)(ii)(a) and (b), above]

[applicable to mortgage policies only] Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.

Our policy will except from coverage any state of facts which an accurate survey might show, unless survey coverage is ordered. When such coverage is ordered, this certificate will set forth the specific survey exceptions which we will include in our policy. Whenever the word "trim" is used in any survey exceptions from coverage, it shall be deemed to include roof comices, show window comices, lintels, sills, window trim, entrance trim, bay window comices, moldings, belt courses, water tables, keystones, pilasters, porticos, balconies all of which project beyond the street line.

In certain areas, our policy will except from coverage any state of facts which a personal inspection might disclose unless survey coverage is ordered. In these cases a specific exception will appear in this certificate.

Our examination of the title includes a search for any unexpired financing statements which affect fixtures and which have been properly filed and indexed pursuant to the Uniform Commercial Code in the office of the recording officer of the county in which the real property lies.

No search has been made for other financing statements because we do not insure title to personal property. We will on request, in connection with the issuance of a title insurance policy, prepare such search for an additional charge. Our liability in connection with such search is limited to \$1,000.00.

RAM ABSTRACT LTD.

as Agent for Fidelity National Title Insurance Company

SCHEDULE A

Effective Date: January 25, 2012

Title No.

RF12332

Policy and/or Policies to be issued:

ALTA Owners Policy (2006) (with N.Y. Endorsement Modifications)

Proposed Insured: 458 East 99th Street, LLC and Warren Bell

ALTA Loan Policy (2006) (with N.Y. Endorsement Modifications)

Proposed Insured: Banco Popular

14100

458 East 99th Street, LLC and-Warren Bell

The Estate or interest in the land described or referred to in this Certificate and covered herein is: Fee Simple

THIS COMPANY CERTIFIES that a good and marketable title to the premises described in Schedule A, subject to the liens, encumbrances and other matters, if any, set forth in this certificate may be conveyed and/or mortgaged by:

Abe's Radio Inc. who acquired title by deed dated 11/14/1975, recorded 11/21/1975 in the New York City Register's Office in Reel 815 Page 1608 made by Ruday Realty Corp.

Premises described Schedule A are known as:

Address:

458/462 East 99th Street, Brooklyn

County of KINGS, State of NEW YORK

County:

Kings

City:

New York

Block:

8131

Lot: 56

For any Title Clearance questions on this report please call: (718) 846-7800/ (718) 434-9000

De ontify to 458 East 99th street, LLC by deed dated 4/4/12 to be duly recorded.

4/4/12

\$675,000.00

\$575,000.00

RAM ABSTRACT LTD.

fast.

as Agent for Fidelity National Title Insurance Company

SCHEDULE A (Description)

Title Number: RF12332

All that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, known and designated as and by Lot Numbers 34, 35 and 36 in Block 8131 as shown and designated on a certain map entitled, "Map of property of Brooklyn and Philadelphia Realty Company" located in the Thirty-second Ward of the Borough of Brooklyn, City of New York, surveyed May 15th, 1906 by Alex D. Murphy, Civil Engineer and Surveyor and filed in the Office of the Register of Kings County on February 7th, 1911, as Map Number 1555, which said lots according to said map being more particularly bounded and described as follows:

BEGINNING at a point on the westerly side of East 99th Street, distant 180 feet northerly from the corner formed by the intersection of the westerly side of East 99th Street with the northerly side of Foster Avenue;

RUNNING THENCE westerly through a party wall and parallel with the northerly side of Foster Avenue, 100 feet to a point;

RUNNING THENCE northerly parallel with the westerly side of East 99th Street, 60 feet;

RUNNING THENCE easterly parallel with the northerly side of Foster Avenue, 100 feet to the westerly side of East 99th Street;

RUNNING THENCE southerly along the westerly side of East 99th Street, 60 feet to the point or place of BEGINNING.

INS WAS

495

PF 49 [AZS] Stabilish A.C.A.T.E. Form \$003 Becycle and Salv Deck with Coresent updated Grintar's Actividated and act Computation Single Street COMSDET TOUR LAWVER EXPORE STRICKS TOURS INSTRUMENT—THIS MESTRUMENT SHOULD BE USED BY LAWYERS DONLY.

att 815 at 1608

This Indianam, made the 14th day of November, ninetun hundred and seventy-five Setment RUDAY REALTY CORP., a describe comporation, with office at 104-43 115th Street, Richard Hill, New York,

putyofthefortput, and ABE'S RADIO, INC., a domestic corporation, with office at 1396 Rocksway Parkway, Brooklyn, New York,

party of the stoomd part.

Witnesseth, that the party of the first part, no consideration of Ten Dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and essigns of the party of the second part forever.

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and baing in the Borough of Excoklyn, County of Kings, City and State of New York, known and designated as and by lot numbers 34, 35 and 36 in Block 8131 as shown and designated on a certain map entitled "Map of property of Brooklyn and Philadelphia Realty Company" located in the Thirty-second Ward of the Borough of Brooklyn, City of New York, surveyed May 15th, 1906 by Alex D. Murphy, C.B. and C.S. and filed in the Office of the Register of Kings County of February 7th, 1911, as Map No. 1555, which said lots according to said map are bounded and described as follows:

BEGINNING At a point on the westerly side of East 99th Street, distant 180 feat northerly from the corner formed by the intersection of the mesterly side of East 99th Street with the northerly side of Foster Avenue; running thence westerly through a party wall and parallel with the northerly side of Foster Avenue 180 feet to a point; running thence northerly parallel with the westerly side of East 99th Street 60 feet to a point; running thence asterly parallel with the northerly side of Foster Avenue 100 feet to the westerly side of East 99th Street; and thence southerly along the westerly side of East 99th Street 60 feet to the point or place of BEGINNING. Said premises known as 454-450 East 99th Street, Exooklyn, New York.

Together with all eight, title and interest, if any, of the party of the first part in and to any streets and reads abutting the above depended premises to the center lines thresoft Together with the appartenances and old the estate and eights of the party of the first part in and to said permises; To Have And To Hold the pomises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part foreigns.

And the party of the first part coverants that the party of the first part has not done or suffered anything whereby the said promises have been encumbered in any way whatever, except as aforesaid.

And the party of the first part, in compliance with Section 13 of the Lien Law, covenant that the party of the list part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The world "party" shall be construed as if it read "parties" whenever the same of this lodinture so requires.

In Witnesse Whierwal; the party of the first part has duly executed this deed the day and your first above written,

to Dames Ol

RUDAY REALTY CORP

or the buffer in

Y

STATE OF NEW YORK, COUNTY OF 931 STATE OF NEW YORK, COUNTY OF On the day of On the , before me day of , before me personally came personally come to me known to be the individual essential form on the executed the framework. to me known to be the individual described in and who executed the foregoing instrument, and ticknowledged that executed the foregoing instrument, and acknowledged that executed the same. exacuted the same. REAL ESTATE TO STATE OF bout of location newspares a location 148.50 STATE OF NEW YORK, COUNTY OF QUEENS STATE OF NEW YORK, COUNTY OF On the 14th day of November 1975, before me personally came PAVE SAYDER to me known, who, being by me duly sworn, dist depose and say that he resides at No.

104-13 135 PT. RICHMOND HILA WY that he is the PRES. On the day of , before me personally, came the subscribing witness to the feregoing instrument, with whom I am personally acquainted, who, being by me duty sworn, did depose and say that he resides at No. of RUDAY REALTY CORP, the corporation described that he knows in and which executed the foregoing instrument; that he to be the individual described in and who executed the foregoing instrument; knows the seaf of said corporation; that the soal affixed to seid instrument is such corporate seel; that it was so that he said subscribing witness, was present and saw affixed by order of the board of directors of said copid tors, and that he signed is sname than to by like of executed the same; and that fre, said witness, at the same time subscribed to name as witness thereto. ANTHONY D. POTONE HOTARY MULIC, State of New York No. 30-31 (3/20) - Teach Canny Tenn bower Morth 50, 19-77 Burgatu and Sale Berd With Covenant Against Granter's Acts NO. 75-24-01442 This No. USLICE TISE INS. Co. of N.Y. 320030 B131 56 101 RUDAY REALTY CORP. eprilä anencurrumon COMPANY OF SHIP TOPE ABE'S RADIO, INC. Anthony D. Pistone, Esm. Distributed by 37-94 103rd Street **USLIFETITLE INSURANCE** Corona, M.Y. 11368 COMPANY of New York 8 12. T 52 # 5 .7

1

RAM ABSTRACT LTD

as Agent for Fidelity National Title Insurance Company

SCHEDULE B

Title Number: RF12332

Hereinaster set forth are the additional matters which will appear in our policy as exceptions from coverage unless disposed of to the Company's satisfaction prior to the closing or delivery of the policy.

DISPOSITION

Taxes, tax liens, tax sales, water rates, sewer rents and assessments set forth in schedule herein.

Mortgage(s) (0) held by: SEE ATTACHED SCHEDULE "MORTGAGES"

Any state of facts which an accurate survey may show.

Survey exceptions set forth herein.

Rights of tenants or persons in possession.

Covenants, conditions, easements, leases, agreements of record, etc., more fully set forth herein.

NONE FOUND OF RECORD.

Without a guaranteed survey, policy will not insure the exact courses and distances of premises herein.

Fee policy excepts all loss or damage arising from the imposition of any lien resulting from the restoration of Real Property taxes upon the premises or the rescission of tax abatements as is provided for pursuant to the provision of the Administrative Code of the City of New York.

Searches have been run against 458 East 99th Street LLC and Warren Bell, the proposed mortgagor(s) herein, for judgments and federal tax liens for the sole purpose of disposition of possible liens, which may affect any future real property proceedings. The following item(s) of record were found: NOTHING FOUND.

FOR INFORMATION ONLY: Searches run against 458 East 99th Street LLC and Warren Bell in the bankruptcy courts for the sole purpose of disposition of possible liens which may affect any future real property proceedings. The following was found: SEE ATTACHED. NOTE: If any bankruptcies are found against any of the above -mentioned names, the following must

be produced:

a) an affidavit stating that this is not against the individual

b) the individual's social security number.



RAM ABSTRACT LTD.

as Agent for Fidelity National Title Insurance Company

SCHEDULE B

Title Number: RF12332

10. Searches have been run against Abe's Radio Inc., the certified owner(s) herein, for judgments and federal tax liens for the sole purpose of disposition of possible liens which may affect any future real property proceedings. The following item(s) of record were found:

(1) Judgment(s) against Abest Radios and Communications Inc. to be satisfactorily disposed of: (See Attached)

11. Subject to:

- (1) Environmental Control Board liens against Abe's Radio, Inc. Said violations will be treated as Judgments and must be properly disposed of.
- 12. FOR INFORMATION ONLY: Searches run against Abe's Radio, Inc. in the bankruptcy courts for the sole purpose of disposition of possible liens which may affect any future real property proceedings. The following was found: SEE ATTACHED.

NOTE: If any bankruptoies are found against any of the above -mentioned names, the following must be produced:

- a) an affidavit stating that this is not against the individual
- b) the individual's social security number.

13. In New York City, if there is a STREET VAULT, it is suggested that applicant investigate possible unpaid license fees by the City of New York for such vault, because the right to maintain it is NOT INSURED, nor does the Company insure that the vault charges have been paid.

Right to maintain vault or vault space, if any, in the streets and charges therefore are not insured against. (See Title "Z" of the New York City Administrative Code.)

14. This policy does not insure against any charges due the City of New York for charges issued by the Department of Rent and Housing Maintenance, the Department of Environmental Protection, the Department of health or any other city agency, unless filed with the county clerk's office prior to closing. This is required due to the inability to search for these liens because of New York City's failure to properly file notices of these charges.

NOTE: CLOSERS ARE UNDER NO CIRCUMSTANCES PERMITTED TO OMIT THIS EXCEPTION FROM THE OWNER'S POLICY.

15. Policy will except water meter charges from the date of the last actual reading, and policy will further except entries for meter readings as well as frontage charges, water rents and sewer charges entered and billed subsequent to closing for periods prior to closing, not shown in the City Collector's records at or prior to closing.

NOTE: Because DEP has taken over the water departments, there may be multiple open water and sewer charges. This company will take escrow for All open items. While it is the owner's responsibility to clear these items, we will try to help any way we can.

Schedule B Exceptions Page 2 of

as Agent for Fidelity National Title Insurance Company

SCHEDULE B

Title Number: RF12332

16. NYC Properties only: In order for the NYC Dept. for Environmental Protection (DEP) to bring all remaining unmetered properties into compliance with the meter requirement, they intend to levy a surcharge on tax year 2000-2001 annual frontage bills which remain unmetered. This surcharge on tax year 2000-2001 annual frontage bills which remain unmetered. This surcharge is expected to be at least 100% of the annual frontage charge and will probably be a recurring charge, effective on or about July 1, 2000. This charge will be imposed until such a time as meter has been installed on the property in question. To request meter installation, you can call 718-595-7700 or 718-595-7000.

Affidavit must be furnished showing whether any work has been done by City of New York or any demand being made by the City for any such work which may result in charges by Dept. of Health, whether or not such charges are liens against which this policy insures. (Section 17, Chapter 1, NYC Administrator code).

18. Effective 6/01/2005 the tax for recording a mortgage in the 5 boroughs has increased by .05%. The deduction allowed for a 1 or 2 family dwelling also increased to \$30.

19. Deed to contain the following recital: "being the same premises conveyed to grantors herein by deed dated 11/14/1975 recorded 11/21/1975 in Reel 815 Page 1608."

20. Proof is required to show that the person executing the deed or mortgage at closing is the same person as the grantee in Reel 815 Page 1608, the certified owner herein.

21. A copy of the certificate of incorporation, and unanimous written consent of stockholders of the following named corporation to the proposed sale must be submitted, or alternative proof must be furnished that the holders of 2/3 of its stock have consented to the sale at a meeting duly called. Corporation: Abe's Radio, Inc.

22. Proof of payment of New York City General Corporation Tax on Abe's Radio, Inc. from date of incorporation to date of closing is required. NOTE: Proof of payment of these taxes may be established by requesting a tax status report from the New York City Department of Finance. Failure to supply this information will result in an exception in our policy. In those instances where the above information is not furnished, a minimum of \$600.00 for each and every year must be deposited with this company. In no event will we omit on a fee transaction. We will affirmatively insure against the collection when escrow is accepted.

23. Proof of payment of franchise tax on Abe's Radio, Inc. from incorporation to date of closing is required.

24. Proof is required of filing of the Articles of Organization of 458 East 99th Street, LLC with the New York Department of State, and said Articles must be produced to the company.

The operating agreement of 458 East 99th Street, LLC must be presented to the company prior to closing.

Proof is required that the publication requirement has been complied with. Certification from a



as Agent for Fidelity National Title Insurance Company

SCHEDULE B

Title Number: RF12332

member or manager is required that there have been no amendments to the operating agreement. If there have been changes, they must be disclosed and reviewed by the company prior to closing.

Proof of payment of the New York State annual fee pursuant to Section 658(C) of the Tax Law will re

Proof of payment of the New York City annual fee pursuant to Section 130K(C) of the Tax Law will be required.

A certificate of good standing from the secretary of State of New York is required.

26. NOTE: Personal checks will NOT be accepted by this company at closing under any circumstance. Please do not call requesting otherwise. All charges must be paid by cash, certified check, bank check or attorney's escrow check made payable to this company. Checks made payable to another party and endorsed to this company are unacceptable.

For your convenience, this company accepts most major credit cards.

27. All municipal departmental searches are for information only. They are NOT insurable items, and this company assumes no liability for the accuracy of same.

NOTE: Closers are under no circumstances permitted to ornit this exception from the owner's policy.

- 28. * NOTE: If the consideration for this transaction is equal to or more than \$400,000.00, a copy of the Contract of Sale or closing statement must be provided to this company at closing.
 - * NOTE: If a pre-signed deed or power of attorney is to be used at closing, said document must be submitted to this company for review prior to setting a closing date.
 - * NOTE: Photo identification is required at closing from all parties executing documents.

Acceptable forms of identification consist of:

- A) A governmental issue of a driver's license, passport or "green card"
- B) Credit card with signature and photo thereon.

* NOTE: The notation that an exception is "under investigation" does not mean that the exception has been omitted. This company has contacted the prior insurer in an effort to ascertain how the exception was disposed of. If the owner of the premises (or attorney) has any information, including a copy of the owners fee policy, to enable us to dispose of the exception this company should be advised as soon as possible.

* NOTE: If you have any questions pertaining to these objections, please contact us at 718-846-7800.

RAM ABSTRACT LTD.

as Agent for Fidelity National Title Insurance Company

MORTGAGE SCHEDULE

Title Number: RF12332

This Mortgage affects premises in Schedule A

NONE FOUND OF RECORD

01/09/2002 02:25 00000 0000000000 9121VN1CEOD PAGE 01/01

USER: KINGS COUNTY CLERKS OFFICE KINGS DATE: 02/08/2012

TERM: PP84 JUDGMENT DOCKET BOOK INQUIRY TIME: 09:11:58

CONTROL NUMBER: 002961803 - 01

*** DOCKETING DATA *** *** SOURCE DOCUMENT ***

DOCKETING DATE: 01/10/2012 TYPE: ST NY STATE TAX WARRANT COUNTY: 24 KINGS

TIME: 10:00:00 COUNTY: 24 KINGS EFFECTIVE DATE: 01/07/2012 COURT:

TIME: 10:00:00 TOTAL DEBTORS: 01 UPDATED:/N
CLERK/SEQ # : NYSTAX 057 INDEX NUMBER: E0350546130001

*** DEBTOR/CORPORATION ***

NAME FORMAT C : ABEST RADIOS AND COMMUNICATIONS INC.

ADDRESS NUMBER: 32 STREET: TAAFFE PL

CITY : BROOKLYN NY ZIP CODE: 11205 / 1409

OCCUPATION : *** CREDITOR ***

NAME FORMAT C : NY STATE DEP'T OF TAXATION AND FINANCE

ADDRESS NUMBER: STREET:

CITY: ZIP CODE: 00000

AMOUNT: \$1615.35

INTERIM DISPOSITION: ENTER CONTROL NUMBER FOR NEXT INQUIRY

PRESS: PF1- HELP, PF2- CANCEL INQUIRY PF8- 2ND PAGE DATA, ENTER- INQUIRE RECORD

I

ENVIRONMENTAL CONTROL BOARD MONTHLY JUDGEMENT FILE PERIOD ENDING: NOVEMBER 30 - 2011

PART 1 OF 2: CASES IN JUDGESHINT

PROGRAM-ID: CVPBE09B

	Satisf/Vacat																ي د		₹,	الم الم	くろう	>	<u>_</u>					*5
	Balancie Due	\$300.00	\$300.00	00.0064	\$300.00	\$300.00	\$300.00	\$300.60	\$300.00	\$300.00	\$350.00	\$300.00	\$300,00	A 2000 100		\$300 00	\$300.00	\$300.00	\$300.00	4300	2300-00	4300	\$300.00	\$300,00	\$3,000,00	\$2,000,00	\$1,000.00	
	DOCKET	10/06	07/00	4X 11211 07/07	NX 11211 10/07	MY 11211 10/07	NY 11211 10/07	MY 11211 04/08	10/06	04/04	07/04 07/04	10/06 10/06	MY 11368	BX 11368	04/05 NY 11368	04/05 NY 00011	04/06	MT 11358	NY 11368	mat in	04/ac NY 11368	01/05 NY 11200	01/06 NV 11219	01/04	NY 11236 10/07	NY 11215 01/07	NY 11224 09/10	11205
	HOFICE DATE	05/26/06	63/23/07	BROOKLYN 04/13/07	BROOKLYN. 05/18/07	BROOKLYN 06/08/07	BROOKLYB 07/27/07	BROOKLYN 12/07/07	BROCKLYN 07/17/06	QUEENS 01/20/04	OUNENS 04/23/04	QURRNS 08/11/06	CORONA	CORONA	02/13/06 COROWA	01/11/05 Officers	01/12/06	CORONA 12/28/07	CORONIA	BROOKLYN	12/29/05 COROWA	10/14/04 BROOKLYM	08/25/05	10/30/03	BROOKLYN 08/09/07	BROOKLYR 05/11/06	BROOKL'YN 07/29/10	8
	ORDER DATE	04/11/06	02/06/07	T0/127/07	04/03/07	04/24/07	06/12/07	10/23/01	05/31/06	12/03/03	40/60/60	06/27/06	100,000	50/50/04	12/28/05	10/03/08	11/28/05	11/14/07		12/28/06	11/14/05	08/30/04	01/11/05	09/12/03	06/25/07	01/31/06	06/14/10	
							141				/	/	/															
December	RESPONDENT ADDRESS		267 RUTLEDGE STREET	267 RUTLEDGE STREET	267 RUTLEDGE STREET	267 ROTLEDGE STREET	267 RUTLEDGE STREET	267 RUTLEDGE STREET	267 RUTLEDGE STREET	102 16 35 AVE	102-18 39 AVE	102 16 35TH AVE	102-16 35 AVENUE	102-16 35 AVENUE			102 16 35 AVE	102-16 35 AVENUE	102-16 35 AVENUE	267 RUTERDGE STREET	102-16 35 AVENUE	2	THE ANALOGUETY OF THE	4315 15 AVENUE	458 EAST 99 STREET	538 6 AVENUE	1902 SURF AVENUE	27 SKILLMAN STREET
PART 1 OF 2: CASES IN JUNEAUDING	RESPONDENT NAME VIOLATION NUMBER	ANDER INC	0151460			ABE MANDEL INC 0157992836	0156185217			0152240083			ABE MANDEL INCONCEONATED 0152177200	ABE MANDEL INCORPORATED 0148752872	AGE NAMBEL INCORPORATED	ABE MANDEL INCORPORATED	0148756090 nor wanter. Ter		abe mendel inc 0158404777	ARE MENDEL INC 0156692306	ABE MEDEL INCORPORATED	ABE REALTY CORP	are s froits				ADS STARM AREAN 010992038K	ABB STELM Olli74733Y
		P	ų s	4	FF	4 (1 "	• (4 1				rie .	PN	Più	**	F	•	~	r4	7	-	-		•	•	, ,	-

74 K 1

10 3년 - 불

Names Searched

Results Found

Stewart Special Alerts

458 East 99th Street LLC

Results returned for user search on all key words

No Results Found for Specially Designated Nationals No Results Found for Closing/Fraud Alerts

Information on this site has been obtained by Stewart Information Services Corp., its affiliates and subaldiaries (SISCO) from sources believed to be reliable. However, because of the possibility of human or mechanical error, whether by our sources or by others, Stewart Title does not guarantee the accuracy, adequacy, or completeness of any information herein. Stewart Title does not make any express or implied warrantee with regard to the use or freedom from error of this site and shall not be responsible for any errors or ormissions or for the results obtained from the use of such information. You should not assume that this site is error-free or that it will be suitable for the particular purpose that you have in mind when using it. Information is provided with the understanding that Stewart Title is not engaged in rendering legal, accounting, or other professional advice or services. If legal advice or services or other expert assistance is required, the services of a competent professional person should be sought.

Current Date: 02/10/2012 Last Updated: 02/10/2012

Click here to read the introduction to the Executive Order Click there to view Stewart Legal Service's Bulletin NL0000135 | Terms of Use | Privacy Policy

Results Found Names Searched Abe's Radio Inc Results returned for user search on all key words

Stewart Special Alerts

No Results Found for Specially Designated Nationals No Results Found for Closing/Fraud Alerts

Information on this site has been obtained by Stowart Information Services Corp., its affiliates and subsidiaries (SISCO) from sources believed to be reliable. However, because of the possibility of human or mechanical error, whether by our sources or by others, Stewart Title does not guerantee the accuracy, adequacy, or completeness of any Information herein. Stewart Title does not make any express or implied warranties with regard to the use or freedom from error of this site and shall not be responsible for any errors or amissions or for the results obtained from the use of such information. You should not assume that this site is error-free or that it will be suitable for the perficular purpose that you have in mind when using it. Information is provided with the understanding that Stewart Title is not engaged in rendering legal, accounting, or other professional advice or services. If legal advice or services or other expert assistance is required, the services of a competent professional person should be sought.

Current Date: 02/10/2012 Last Updated: 02/10/2012

Click here to read the Introduction to the Executive Order Click here to view Stewart Legal Service's Bulletin NL0000135 | Terms of Use | Privacy Policy

RAM ABSTRACT LTD.

as Agent for Fidelity National Title Insurance Company

MUNICIPAL DEPARTMENT SEARCHES AND STREET REPORT

Title Number: RF12332

Any searches or returns reported herein are furnished FOR INFORMATION ONLY.
They will not be insured and the company assumes no liability for the accuracy thereof. They WILL NOT BE CONTINUED to the date of closing.

Bankruptcy

SEE ATTACHED

Tax Search

SEE ATTACHED

Housing & Building

SEE ATTACHED

Certificate of Occupancy

SEE ATTACHED

Emergency Repairs

SEE ATTACHED

Fire Report

SEE ATTACHED

Street Report

SEE ATTACHED

STREET VAULTS

In New York City, if there is a STREET VAULT, it is suggested that the applicant investigate possible unpaid license fees owed by the City of New York. For the use of such vault, because the right to maintain it IS NOT INSURED, nor does the Company insure that the vault charges have been paid.

IN A

The unpaid axes, water rates, assessments other matters relating to taxes which are liens at the date of this certificate are set forth below.

TN: 466980

TITLE: RF12332

DATE: 02/08/2012

CNTY: KINGS

COMPANY: RAM ABSTRACT LTD.

SECT: 24

VOL: 4

TAX MAP ATTACHED

BLOCK: 8131

CLASS: E9

WAREHOUSES

MISCELLANEOUS

LOT: 56

TAX

CLASS: 4 RATE: 10.152 2011 /2012

BLDG

TRANSITIONAL LAND.....

TRANSITIONAL TOTAL.....

EXEMPT LAND..... EXEMPT TOTAL..... ACTUAL LAND.....

ACTUAL TOTAL..... ACTUAL EXEMPT LAND.....

ACTUAL EXEMPT TOTAL....

\$35,694.00 \$85,680.00

> NONE NONE

\$35,550.00 \$104,400.00

NONE

NONE

EXEMPTIONS: NO EXEMPTIONS

ASSESSED OWNER: ABES RADIO INC

462 EAST 99 STREET

Taxes 2011	/2012	1ST	QTR	Due	Date	07/01/2011	REAL ESTATE	
Transaction Date						Char	ges/Adjustments	3
06/10/2011	INITIAL	CHARGE					\$2,208.83	
06/10/2011		RECEIVED					\$.00	
	PAYMENT	100001410					\$.00	
06/28/2011	PARTENT							
*		A	mount	Due:			\$0.00	
Taxes 2011	/2012	2ND	QTR	Due	Date	10/01/2011	REAL ESTATE	
Transaction Date	,		-			Chai	rges/Adjustments	13
06/10/2011	INITIAL	CHARGE					\$2,208.83	0
, ,	-						\$.00	
10/11/2011	PAYMENT							
		2	mount	Due:			\$0.00	
Taxes 2011	12012	3RD	QTR	Due	Date	01/01/2012	REAL ESTATE	
10100 1011	,					(That	race/Adductments	

Taxes 2011 Transaction Date		3RD	QT R	Due	Date	01/01/20	012 REAL Charges/Ad	ESTATE justments
06/10/2011	INITIAL C	HARGE					5	2,208.83
11/18/2011	TAX RATE	DECREASE	FOR R.	E. RE	PLACEME	NT BILL		-\$68.54
* 12/20/2011	PAYMENT						y <u> </u>	\$.00
		7	mount. I	me:				\$0.00

Payments/Adjustments \$.00 \$89.76

\$2,119.07

Payments/Adjustment \$2,209.83

Payments/Adjustments \$.00 \$.00

\$2,140.29

RESPONSIBILITY LIMITED TO THOSE ITEMS AND INSTALLMENTS THAT ARE LIENS AS OF DATE OF THIS REPORT AND REPLECT ON THE PUBLIC RECORDS. TAX SEARCH DOES NOT COVER ANY PART OF THE STREETS OF MIXTON THE PREMISES TO THISTERS ABOVE HAVES RESTORED ON THE COVER ANY PART OF THE STREETS OF MIXTON ROLD ABOVE HAVES RESTORED ON THE COVER AND FRANCE OR GROWN DEPORTS OF RECORD OWNER. TAX SEARCH DOES NOW GUARANTEE READING ANY CLAIMS RESULTING TERM LEVIES OF RESTORED TRAZE, ACCURATE MATER METER READING REQUIRED FOR ENGES REPORTED OR MIXTHUM, ACCURATE MATER METERS TO RECORD THE METERS OF RESTORED HAVE NOW DEPORTS OF THE RESULT OF RECORD OF THE RESULT OF RESULT OF THE METERS OF THE ME

⁼ PLEASE REQUEST THE SELLER OR BORROMER TO NAVE RECEIPTED BILLS AT THE CLOSING #

The unpai Laxes, water rates, assessments: __ other matters relating to taxes which are liens at the date of this certificate are set forth below.

TN: 466980

TITLE: RF12332

DATE: 02/08/2012

Charges/Adjustments Payments/Adjustments

ALC: N. SER

\$.00

\$.00

CNTY: KINGS

COMPANY: RAM ABSTRACT LTD.

SECT: 24

VOL: 4

BLOCK: 8131

LOT: 56

Taxes 2011 /2012

4TH QTR

Due Date 04/01/2012

REAL ESTATE

Transaction Date 06/10/2011

TNITTAL CHARGE

\$2,208.83

11/18/2011

TAX RATE DECREASE FOR R.E. REPLACEMENT BILL

-\$68.54

Amount Due:

* ALL PAYMENTS SUBSEQUENT TO 11/10/2011 ARE SUBJECT TO COLLECTION.

\$2,140.29 OPEN

NOTE: SECOND HALF REAL ESTATE SUBJECT TO CHANGE DUE TO TAX RATE ADJUSTMENT

D.E.P. ACCOUNT #4000486366001

METER #3448

11/23/2011 ENTERED

FROM 08/23/2011 TO 11/14/2011 ACTUAL

\$92.44 OPEN

SPECIAL METER READING FEE

ENTERED

01/24/2012

\$25.00 OPEN

NOTE: A SPECIAL METER READING SHOULD BE OBTAINED ON ALL ACCOUNTS/TO AVOID ADDITIONAL CHARGES.

SUBJECT TO CONTINUATION PRIOR TO CLOSING. NOTHING ELSE FOUND 02/08/2012

TEAM RESEARCH SHALL BEAR NO LIABILITY FOR ERRONEOUS OR INACCURATE INFORMATION PROVIDED BY THE DEPARTMENT OF FINANCE INCLUDING BUT NOT LIMITED TO ERRORS DUE TO LOADING, KEY ENTRY, PROCESSING, DATA COMMUNICATION, HARDWARE AND SOFTWARE PROBLEMS OR THE BACKDATING OF ANY INFORMATION.

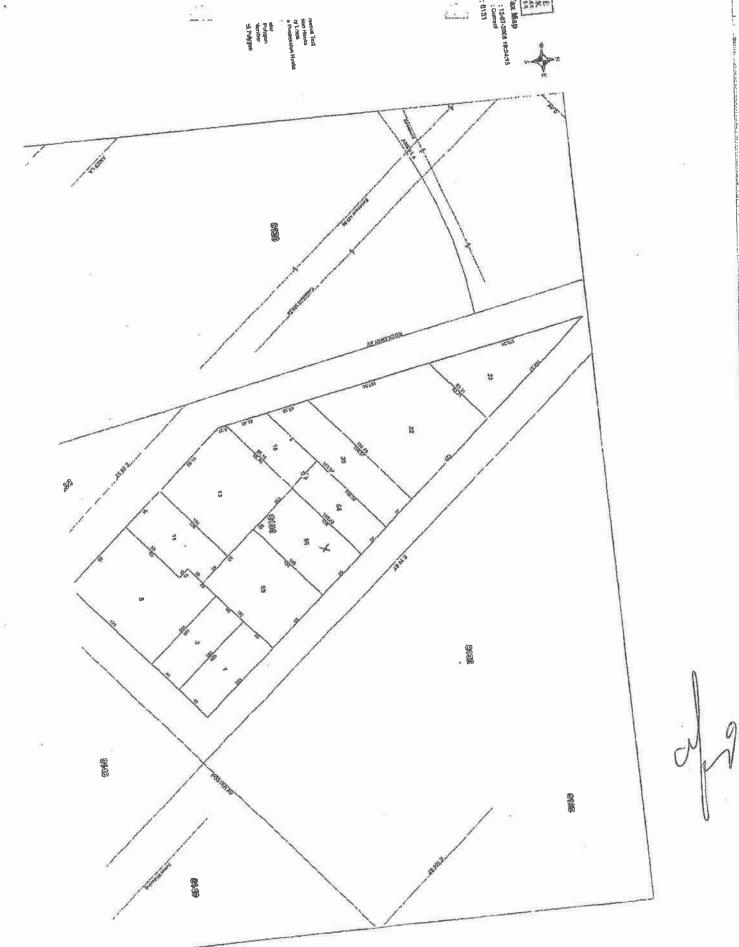
THE DEPARTMENT OF FINANCE RECORDS INDICATE NO RECORD OF VAULT CHARGES AS OF 02/08/2012

THERE MAY BE EXISTING VAULTS AT THE ABOVE MENTIONED BLOCK AND LOT THAT HAVE NOT YET BEEN INSPECTED BY THE DEPARTMENT OF FINANCE. VAULT TAX INFORMATION IS THE SOLE RESPONSIBLITY OF THE USER. TEAM RESEARCH MAKES NO REPRESENTATION AS TO THE ACCURACY OF THIS INFORMATION.

RESPONSIBILITY LIMITED TO THOSE TREMS AND INSTALLMENTS THAT ARE LIENS AS OF DATE OF THIS REPORT AND REFLECT ON THE DELIC RECENDS. TAX SPARCH DOES NOT COVER ANT PART OF THE STREETS ON WALLOW THE PREMISES TO INSTRUCT ABOUT ARTOR RESPONDED ON THE DATE OF CONVEYANCE OR UPON COATH OF RECORD OWNER. TAX SPARCH DOES NOT CURCANTES AGAINST REV CLAIMS RESULTED FROM HOUSE RESPONDED AS KITTHOWN, ACTIAL, SETHINGED AND MAINTED TRANSITIONS TO AVOID ADDITIONAL CHARGES. TAX SEARCH DOES NOT GUARRIESE MAINTENERS OR UNFIXED PROPRIED BY KITTHOWN, ACTIAL, SETHINGED AND MOLITICAL RESULTING TO AVOID ADDITIONAL CHARGES. TAX SEARCH DOES NOT GUARRIESE MAINTENERS OR UNFIXED PROPRIED BY THE RETURNS ARE CURANTESD TO SLOCK AND LOT.

* PLEASE REQUEST THE SELLER OR SORROWER TO HAVE RECEIPTED BILLS AT THE CLOSING .

Page: 2 of 2



1 EAM RESEARC

189 MONTAGUE ST * SUITE 801A * BROOKLYN, NY 11201

PHONE: (718)596-8500 FAX: (718)596-3500

WEB: WWW.TEAM-RESEARCH.COM

E-MAIL: ORDERS@TEAM-RESEARCH.COM

DATE: 02/08/2012 TITLE NUMBER: RF12332

TN: 466980

COMPANY: RAM ABSTRACT LTD.

COUNTY: KINGS

BLOCK: 8131 LOT: 56

PREMISES: 458 / 462 EAST 99 STREET

HOUSING and BUILDING DEPARTMENT SEARCH

A SEARCH OF THE RECORDS OF THE DEPARTMENT OF BUILDINGS, AND THE DEPARTMENT OF RENT AND HOUSING MAINTENANCE OF THE CITY OF NEW YORK WAS MADE AND THE FOLLOWING VIOLATIONS WERE REPORTED PENDING AS OF THE LAST DATE OF POSTING: 25-NOV-2011

BUILDING DEPARTMENT:

THREE VIOLATIONS ATTACHED AND NO COPY AVAILABLE FOR COMPUTER POSTED VACATE ORDER #VAC171-10

RENT AND HOUSING MAINTENANCE DEPARTMENT:

NONE

BUILDING CLASSIFICATION:

COMMERCIAL BUILDING

THIS REPORT IS SUBMITTED FOR INFORMATION PURPOSES ONLY AND FOR THE EXCLUSIVE USE OF RAM ABSTRACT LTD.

TEAM RESEARCH DOES HEREBY CERTIFY THAT THE RECORDS OF THE ABOVE GOVERNMENTAL AGENCIES WERE EXAMINED. THE INFORMATION REPORTED ABOVE IS A TRUE AND ACCURATE ABSTRACT OF THE INFORMATION CONTAINED HEREIN, AND NO LIABILITY IS ASSUMED.

466980





CLICK HERE TO SIGN UP FOR BUILDINGS NEWS

NYC Department of Buildings **ECB Violation Details**

Premises: 458 EAST 99 STREET BROOKLYN

BIN: 3228724 Block: 8131 Lot: 56

ECB Violation Summary

ECB Violation Number: 34840822M

Severity: CLASS - 2

Filed At: 458 EAST 99 STREET, BROOKLYN, NY 11236

Community Board: 318

VIOLATION OPEN

Certification Status: NO COMPLIANCE RECORDED

Hearing Status: STIPULATION/IN-VIO

Penalty Balance Due: \$0.00

Respondent Information

ABES RADIO INC

Mailing Address:

458 EAST 99 STREET, BK, NY 11236

Violation Details

Violation Date: Served Date:

04/26/2010 04/26/2010

Violation Type:

Inspection Unit:

BROOKLYN CONSTRUCTION

Infraction Codes

Section of Law

Standard Description

201

28-105.1

WORK WITHOUT A PERMIT

Specific Violation Condition(s) and Remedy:

WORK W/O A PERMIT. AT TIME OF INSPECTION OBSERVED AT SIDE YARD OF PREMISES, EXP 4 INSTALLATION OF ROOF STRUCTURE CONSTRUCTED FROM WOOD FRAMING MEMBERS AND CORRUGATED METAL SHEET ROOFING ENCLOSING ENTIRE SIDE YD

Issuing Inspector ID:

2374

DOB Violation Number: 042610C18TS03

Issued as Aggravated

Level:

NO

Dept. of Buildings Compliance Information

Certification Status:

NO COMPLIANCE RECORDED

Compliance On:

Stipulated Compliance Due Date:

09/04/2010

A Certificate of Correction must be submitted to the Administrative Enforcement Unit (AEU) for all violations. A violation that is not dismissed by ECB will continue to remain ACTIVE or "open" on DOB records until acceptable proof is submitted to the AEU, even if you have paid the penalty imposed by ECB.

ECB Hearing Information

Scheduled Hearing Date:

06/21/2010

10:30

Hearing Status:

STIPULATION/IN-VIO

ECB Penalty Information

Penalty Imposed:

Hearing Time:

\$800.00

2/8/2012

Adjustments:

\$0.00

Amount Paid:

\$800.00

Penalty Balance Due:

\$0.00

ECB Violation History

Compliance Events

Hearing Events

Stipulation (pre-hearing):

06/21/2010

If you have any questions please review these <u>Frequently Asked Questions</u>, the <u>Glossary</u>, or call the 311 Citizen Service Center by dialing 311 or (212) NEW YORK outside of New York City.





CLICK HERE TO SIGN UP FOR BUILDINGS NEWS

NYC Department of Buildings

ECB Violation Details

Premises: 458 EAST 99 STREET BROOKLYN

BIN: 3228724 Block: 8131 Lot: 56

ECB Violation Summary

ECB Violation Number: 34822943J

Severity: CLASS - 1

Filed At: 458 EAST 99 STREET, BROOKLYN, NY 11236

Community Board: 318

VIOLATION OPEN

Certification Status: NO COMPLIANCE RECORDED

Hearing Status: IN VIOLATION

Penalty Balance Due: \$0.00

Respondent Information

Name:

PORITZKY DANIEL

Mailing Address:

458 EAST 58 STREET, BROOKLYN, NY 11203

Violation Details

Violation Date:

12/14/2009

Violation Type:

CONSTRUCTION

Served Date:

12/14/2009

Inspection Unit:

BROOKLYN CONSTRUCTION

Infraction Codes:

Section of Law

Standard Description

104 102

28-302.1 28-301.1

FAILURE TO MAINTAIN BLDG WALL(S) OR APPURTENANCES

FAILURE TO MAINTAIN BLDG IN CODE-COMPLIANT MANNER

Specific Violation Condition(s) and Remedy:

FAIL TO MAIN BLDG WALLS REAR WALL IS SEVERLY BULGING INWARD AND IN DANGER OF COLLAPSE IF LEFT UNATTENDED APPROX 20"IN LENGTH IS BULGING ANDCRACKED MINOR CRACKS ON FRONT EXPOSURE WALL 1 OVER AND AROUND PRIMARY

Issuing inspector ID:

2251

DOB Violation Number: 121409C18SH01

Issued as Aggravated

Level:

NO

Dept. of Buildings Compliance Information

Certification Status:

NO COMPLIANCE RECORDED

Compliance On:

A Certificate of Correction must be submitted to the Administrative Enforcement Unit (AEU) for all violations. A violation that is not dismissed by ECB will continue to remain ACTIVE or "open" on DOB records until acceptable proof is submitted to the AEU, even if you have paid the penalty imposed by ECB.

ECB Hearing Information

Scheduled Hearing Date:

02/08/2010 10:30

Hearing Status:

IN VIOLATION

ECB Penalty Information

Penalty Imposed:

Hearing Time:

\$1,000.00

Adjustments:

\$0.00

Amount Pald:

\$1,000,00

Penalty Balance Due:

\$0.00

ECB Violation History

Compliance Events

Hearing Events

Hearing Assigned On:

02/01/2010

If you have any questions please review these <u>Frequently Asked Questions</u>, the <u>Glossary</u>, or call the 311 Citizen Service Center by dialing 311 or (212) NEW YORK outside of New York City.





DZ CLICK HERE TO SIGN UP FOR BUILDINGS NEWS

NYC Department of Buildings
ECB Violation Details

Premises: 458 EAST 99 STREET BROOKLYN

BIN: 3228724 Block: 8131 Lot: 56

ECB Violation Summary

ECB Violation Number: 34840823Y

Severity: CLASS - 1

Filed At: 458 EAST 99 STREET, BROOKLYN, NY 11236

Community Board: 318

VIOLATION OPEN

Certification Status: NO COMPLIANCE RECORDED

da.

Hearing Status: IN VIOLATION

Penalty Balance Due: \$0.00

Respondent Information

Name:

ABES RADIO INC

Mailing Address:

458 EAST 99 STREET , BK , NY 11236

Violation Details

Violation Date: Served Date: 04/26/2010

04/26/2010

Violation Type:

CONSTRUCTION

Inspection Unit:

BROOKLYN CONSTRUCTION

Infraction Codes

Section of Law

Standard Description

102

28-301.1

FAILURE TO MAINTAIN BLDG IN CODE-COMPLIANT MANNER

Specific Violation Condition(s) and Remedy:

FAILURE TO MAINTAIN BLDG IN A CODE-COMPLIANT MANNER. AT TIME OF INSPECTION OBSERVED AT EXP 4 SIDE YARD THE PARTIAL COLLAPSE OF ILLEGAL ROOFENCLOSURE, APPROX 10' X 10' W/OTHER SECTONS OF CORRUGATED METAL SHEET

Issuing inspector ID:

2374

DOB Violation Number: 042610C18TS04

issued as Aggravated

Level:

NO

Dept. of Buildings Compliance Information

Certification Status:

NO COMPLIANCE RECORDED

Compliance On:

A Certificate of Correction must be submitted to the Administrative Enforcement Unit (AEU) for all violations. A violation that is not dismissed by ECB will continue to remain ACTIVE or "open" on DOB records until acceptable proof is submitted to the AEU, even if you have paid the penalty imposed by ECB.

ECB Hearing Information

Scheduled Hearing Date:

06/25/2010

Hearing Status:

IN VIOLATION

Hearing Time:

10:30

ECB Penalty Information

Penalty imposed:

\$1,000.00

Adjustments:

\$0.00

Amount Paid:

\$1,000.00

Penalty Balance Due:

\$0.00

ECB Violation History

Compliance Events

Hearing Events

Hearing Assigned On:

06/21/2010

If you have any questions please review these <u>Frequently Asked Questions</u>, the <u>Glossary</u>, or call the 311 Citizen Service Center by dialing 311 or (212) NEW YORK outside of New York City.

TEAM RESEARCA

189 MONTAGUE ST * SUITE 801A * BROOKLYN, NY 11201

PHONE: (718)596-8500 FAX: (718)596-3500

WEB: WWW.TEAM-RESEARCH.COM

E-MAIL: ORDERS@TEAM-RESEARCH.COM

DATE: 02/08/2012

TITLE NUMBER: RF12332

TN: 466980

COMPANY: RAM ABSTRACT LTD.

COUNTY: KINGS

BLOCK: 8131

LOT: 56

8 8

PREMISES: 458 / 462 EAST 99 STREET

CERTIFICATE of OCCUPANCY SEARCH

ATTACHED FIND A COPY OF CERTIFICATE OF OCCUPANCY #196073
ISSUED ON 12/2/1966 ONE STORY NON-FIREPROOF BUILDING; STORAGE WAREHOUSE FOR DRY
CLEANING SUPPLIES AND EQUIPMENT.

ACCORDING TO THE BUILDING DEPARTMENT INDEX/COMPUTER RECORDS, THERE ARE NO ALTERATION PLANS APPROVED SUBSEQUENT TO THE CERTIFICATE OF OCCUPANCY THAT CHANGE THE LEGAL OCCUPANCY OF THESE PREMISES.

(COMPUTER RECORDS ALTERATION TYPE 1)

THIS REPORT IS SUBMITTED FOR INFORMATION PURPOSES ONLY AND FOR THE EXCLUSIVE USE OF RAM ABSTRACT LTD.

TEAM RESEARCH DOES HEREBY CERTIFY THAT THE RECORDS OF THE ABOVE GOVERNMENTAL AGENCIES WERE EXAMINED. THE INFORMATION REPORTED ABOVE IS A TRUE AND ACCURATE ABSTRACT OF THE INFORMATION CONTAINED HEREIN, AND NO LIABILITY IS ASSUMED.

DEPARTMENT OF BUILDINGS

, the city of new york

CERTIFICATE OF OCCUPANCY

This certificate supersedes C. O. No. 133823 THIS CERTIFIES that the rest altered restricted building—premises located at 458 k. 79th Street Blocasi31 Lot 56. That the zoning lot and premises above referred to are sinuated, bounded and described as follows: side of East 99th Street as follows: side of East 99th Street are made and Restricted from the corner formed by the intersection of and Restricted from the corner formed by the intersection of and Restricted from the corner formed by the intersection of the comming thence set 100 feet; thence for these feet; thence for the point or place of beginning, certificants substantially to the approved plans and specifications, and to the requirements of the Building Code, the Zoning Resolution and all other laws and ordinances, and of the rules of the Board Standards and Appeals, applicable to a building of its class and kind at the time the permit was issued; and CERTIFIES FURTHER that, any provisions of Section 646c of the New York Charter bave been completed as certified by a report of the Fire Commissioner to the Rorough Superintendent. Construction classification—See Group among Bellow Height Located in 21 2 Zoning District time of issuance of permit. This certificate is issued ambject to the limitations hereinafter specified and to the following restricted in the certificate is issued ambject to the limitations hereinafter specified and to the following restricted in the certificate is seed ambject to the limitations hereinafter specified and to the following restricted in the certificate is seed ambject to the limitations hereinafter specified and to the following restricted in the certificate is seed ambject to the limitations hereinafter specified and to the following restricted in the certificate is seed and such to the following restricted in the certificate is seed and such the following restricted in the certificate is seed and such the certificate in the	O CHANGES	OF USE OR O	CCUPANCY NO	T CONSISTENT WITH THIS CEL ED BY THE BOROUGH SUPERIN	TIFICATE SHALL
THIS CRRITIES that the series altered sessions building premises located at hold is 9 to Street. That the zoning lot and premises above referred to are sinuated, bounded and described as follows: SEGINNING at a point on the Meant side of Earth Poth Street. Its rester assentes and Restrict from the corner formed by the intersection of and Restrict Poth Street. Its rester assentes and Restrict Poth Street. Its rester assentes and Restrict Poth Street. Its restrict Poth St	This certific	rate supersedes C.	O. Na.133823		
Security 180 Foster Avenue from the corporate from the corporate distribution of season 180 Foster Avenue from the corporate from the corporate distribution of season 180 Foster Avenue from the corporate distribution of season 180 Foster Avenue from the corporate distribution of season 180 Foster Avenue from the corporate distribution of season 180 Foster Avenue from the corporate distribution of season 180 Foster Avenue from the corporate distribution of season 180 Foster Avenue from the corporate distribution of season 180 Foster Avenue from the corporate distribution of season 180 Foster Avenue from the corporate distribution of season 180 Foster Avenue from the corporate distribution of season 180 Foster Avenue from the corporate from the corporate distribution of the Board of the Board of Season 180 Foster Avenue from the corporate from t	THIS CEL	RTIFIES that the	eet	Block 3	
Fortier Avenue and Saist 1930 feet; thence Borth 19 feet there are 1000 feet; thence Borth 19 feet there are 1000 feet; thence feet; thence feet; thence feet; thence feet thence feet; thence feet; thence feet feet feet feet feet feet feet fe	EGINNING at	a point on the	Wast	side of East 99th Street	W m
tence the control of the control of the control of the control of the point or place of beginning, conforms substantially to the upproved plans and specifications, and to the requirents of the Building Code, the Zoning Resolution and all other have and ordinances, and of the rules of the Board candards and Appeals, applicable to a building of he class and kind at the time the permit was issued; and CERTIFIES FIRTHER that, any provisions of Sention 666s of the New York Charter base been compiled the accordance of the Board of Senting Commissioner to the Borough Superintendent. Construction classification—See Accompancy Bellow Height 1 stories. 17 Brook compancy classification—See Accompancy Bellow Height 2 stories. 17 Brook compancy classification—See Accompancy Bellow Height 1 stories. 17 Brook This contribute of summer of permit. This contribute is issued subject to the limitations heredularies specified and to the following resistions of the Board of Standards and Appeals: Off The City Flancing Commissions PERMISSIBLE USE AND OCCUPANCY MISSIRE Loading Bertle STORY LOADS PERSONS IN F. P. N. F. ACCOMMODATED USE Storage Varieties and equipment (Se fire hearted in building or used.) Bigging and acquipment (Se fire hearted) Be inflamedable asterial in building or used.	3	Coster Avenu		and Bast 99th Street	fore t
the point or place of beginning, conforms substantially to the approved plans and specifications, and to the requirents of the Building Code, the Zoning Resolution and all other have and ordinances, and of the rules of the Board-manded and Appeals, applicable to a building of the schass and kind as the time the permit was issued; and CERTIFIES FURTHER that, any provisions of Sexion 646c of the New York Charter have been compiled as acquired by a report of the Fire Commissioner to the Remogh Superintendent. [Sent Al. No.—1692/65 [Construction classification—Sere Sectionary Below Height Superintendent. [Sent Al. No.—1692/65 [Construction classification—212-35] [This contribution of permit This contribution of the English Superintendent of the Sent Appeals of the Board of Senadards and Appeals? [Contraction of th		East 100		Test : theuceSent h 50	fort:
First ground by Storage Warehouse for the elecating supplies and equipment (So fire basards noterials stored). No inflamentle materials are used.	the point or jents of the Built anderde and Aj (ERTIFI) in as certified be the state of the state of the state of the state of the End of the E	ding Code, the Zu oprais, applicable t ES FURTHER t y a report of the i -1692/66 cation See Gos n COMME The least is issued as loard of Standar lanning Commis	conforms substar ning Resolution an o a building of his hat, any provision fire Commissioner cuthanney Belon 11766 abject to the limited and Appeals sions PERMISSIBLE	trially to the approved plans and specificated all other have and ordinances, and of the class and kind at the time the permit was a of Section 646e of the New York Chato the Rorough Superintendent. Construction classification Height 1 stories. Located in 22 - 2 itanious herecounter specified and to	ions, and to the require- te rules of the Board of issued; and rer have been complied. Classe 3 more- Table Zoning District. the following reso- (Calcular meabors to
Pirst ground b Storage Werehouse for dry elecating samplies and equipment (So fire basards materials stored). So inflamentle sate in building, or used.	STORY	LIVE LOADS	TERSONS ACCOMMODATED	USR	······································
	First	E TOTAL PROPERTY.		supplies and equipment (M	o fire basardoss
TOTAL: AS STATED ADSTE					8.0
TOTAL: AS STATED ABSTE			* 5	¥ × 3	
TOTAL: AS STATED ADOVE	(20)		5	57 E	a 8 6
		TOTAL	AS STATED A	BOYE	
* * * * * * * * * * * * * * * * * * * *	9			# 69 #	
	(4)		*	v 5	3-

OFFICE COPY DEPARTMENT OF BUILDINGS

1 LAM RESEARCH

189 MONTAGUE ST * SUITE 801A * BROOKLYN, NY 11201

PHONE: (718) 596-8500 FAX: (718) 596-3500

WEB: WWW.TEAM-RESEARCH.COM

E-MAIL: ORDERS@TEAM-RESEARCH.COM

DATE: 02/09/2012

TITLE NUMBER: RF12332

TN: 466980

COMPANY: RAM ABSTRACT LTD.

COUNTY: KINGS

BLOCK: 8131

LOT: 56

PREMISES: 458 / 462 EAST 99 STREET

HOUSING PRESERVATION AND DEVELOPMENT EMERGENCY REPAIRS

THE SEARCH OF THE LAST PRINTED LIEN BOOK REVEALS THE FOLLOWING EMERGENCY REPAIR MONEY DUE:

DATE: 28-OCT-2011 AMOUNT: \$0.00

THE RESULT OF THE WORK-IN-PROGRESS SEARCH REVEALS THAT:

NO EMERGENCY REPAIRS HAVE BEEN GIVEN OUT AT THE ABOVE CAPTIONED PREMISES SUBSEQUENT TO THE ABOVE LIEN DATE.

THIS REPORT IS SUBMITTED FOR INFORMATION PURPOSES ONLY AND FOR THE EXCLUSIVE USE OF RAM ABSTRACT LTD.

TEAM RESEARCH DOES HEREBY CERTIFY THAT THE RECORDS OF THE ABOVE GOVERNMENTAL AGENCIES WERE EXAMINED. THE INFORMATION REPORTED ABOVE IS A TRUE AND ACCURATE ABSTRACT OF THE INFORMATION CONTAINED HEREIN, AND NO LIABILITY IS ASSUMED.

466980

TITLE: RF12332

FIRE DEPARTMENT OF THE CITY OF NEW YORK PUBLIC RECORDS UNIT / FIRE RECORDS SECTION 9 METRO-TECH BROOKLYN, N.Y 11201-3857

RECORD SEARCH REQUEST

MAIL TO:

TEAM RESEARCH, INC. 189 MONTAGUE ST * SUITE 801A BROOKLYN, NY 11201

THE UNDERSIGNED REQUESTS THE FOLLOWING INFORMATION RE: PREMISES 458 / 462 EAST 99 STREET

1 : 1

COUNTY: KINGS

- (X) 1. RECORD OF EXISTING FIRE DEPARTMENT VIOLATIONS
- () 2. RECORD OF PERMIT FOR
- () 3. OTHER

(THE CITY OF NEW YORK IS NOT BEING SUED. NOR IS THERE ANY INTENTION TO SUE.)

SIGNED: TEAM RESEARCH
DATE: 02/08/2012

GENTLEMEN: IN REPLY TO YOUR REQUEST CONCERNING THE PREMISES MENTIONED ABOVE,

PLEASE BE ADVISED THAT AS OF 9 A.M., JAN 18 2012 THE RECORDS

SHOW THE FOLLOWING;

NO VIOLATIONS

VIOLATIONS RECORDED ABOVE ARE ONLY THOSE WHICH ARE A MATTER OF RECORD IN THE HEADQUARTERS OF THE BUREAU OF FIRE PREVENTION, AND MAY NOT INCLUDE VIOLATIONS ISSUED BY LOCAL UNITS.

189 MONTAGUE ST * SUITE 801A * BROOKLYN, NY 11201

PHONE: (718) 596-8500 FAX: (718) 596-3500

WEB: WWW.TEAM-RESEARCH.COM

E-MAIL: ORDERS@TEAM-RESEARCH.COM

DATE: 02/08/2012

TITLE NUMBER: RF12332

TN: 466980

COMPANY: RAM ABSTRACT LTD.

COUNTY: KINGS

BLOCK: 8131 LOT: 56

PREMISES: 458 / 462 EAST 99 STREET

STREET REPORT

A SEARCH OF THE TOPOGRAPHICAL BUREAU REVEALS THE FOLLOWING RESULTS:

STREET WIDTH

EAST 99 STREET 60' LEGALLY OPEN 3/30/1943 CROSS STREETS

FOSTER AVENUE 80' LEGALLY OPEN 5/17/1924

ROCKAWAY AVENUE 70' LEGALLY OPEN 4/26/1869

THIS REPORT IS SUBMITTED FOR INFORMATION PURPOSES ONLY AND FOR THE EXCLUSIVE USE OF RAM ABSTRACT LTD.

TEAM RESEARCH DOES HEREBY CERTIFY THAT THE RECORDS OF THE ABOVE GOVERNMENTAL AGENCIES WERE EXAMINED. THE INFORMATION REPORTED ABOVE IS A TRUE AND ACCURATE ABSTRACT OF THE INFORMATION CONTAINED HEREIN, AND NO LIABILITY IS ASSUMED.

466980



RAM ABSTRACT, LTD



OF NEW YORK & NEW JERSEY "TITLE INSURANCE HEADQUARTERS"

100 Merrick Road, Suite 350W • Rockville Centre, NY 11570 718-846-7800 • 516-327-9090 • 914-684-1116 • Fax: 718-846-7801 New Jersey Hotline: 973-672-8803 • Fax: 973-672-8804

DATE:

FEBRUARY 16, 2012

SEARCH NO.:

222112

TO:

TITLE NO.:

RF-12332

With reference to the above captioned matter and in compliance with your request, enclosed please find Franchise Tax Report(s) from the New York State Department of Taxation and Finance regarding:

ABE'S RADIO, INC.

1. Franchise Tax - SEE ATTACHED

It was a pleasure to be of service in this matter and we look forward to being of further assistance in the future.

Very truly yours,

Ram Abstract, Ltd.

Enc.



New York State Department of Taxation and Finance

Office of Processing and Taxpayer Services W A Harriman Campus Albany NY 12227

Thursday, February 16, 2012 SN: 277011

RN: 45-B

Corporate Tax Search

SHARP RESEARCH CORP.

3119 37TH AVE LONG ISLAND CITY NY 11101 Attention:

Articles 9, 9-A, 13, 13-A, 32, and 33.

Reference ID

Corporation name: ABE'S RADIO, INC.

Incom Date

Filing neriod

Termination date

Termination type

11/20/1945

December

According to our records, tax liens exist for the periods below.

Franchise tax returns are missing for the period(s) ended:

None

Franchise tax payments are past due for period(s) ended:

None

Other fees due

License fee (Article 9, section 181):

Maintenance fee for period (s) ended:

Lien Provision

The tax shall become a lien on the date the return is required to be filed (without regard to any extension of time for filing the return), except that such tax shall become a lien not later than the date the taxpayer ceases to be subject to the tax or to exercise its franchise or to do business in New York State in a corporate or organized capacity. A dissolved corporation that continues to conduct business shall also be subject to the tax imposed by this article.

Need help?



Visit our Web site at www.tax.ny.gov

- get information and manage your taxes online
- check for new online services and features



Telephone assistance

Corporation Tax Information Center: (518) 485-6027

To order forms and publications:

(518) 457-5431



Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (618) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



Parsons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

RAM ABSTRACT LTD.

100 Merrick Road, Suite 350W Rockville Centre, NY 11570 (718) 846-7800 • (718) 434-9000 Fax (718) 846-7801 • (718) 434-2325

Purchaser's/Mortgagor's Exemption Affidavit Home Equity Theft Protection Act

STATE OF	NEW YORK)		Title 1	Vo
County of _)	TO WIT	Premi	ses:
			×	(1)
e me a sua d'assala	and does homely syrony do	naga and state	as follows:	
The indeesi	gned, does hereby swear, de	pose and state	as ionows.	
Prevention A	not an "Equity Purchaser" a Act (Chapter 308 of the Law k as many as are applicable	rs of 2006) for		
	I will use the Premises se	t forth above	as my primary resi	dence.
Section 1	I am the spouse, grandchild or siblir			
	I am the referee in a fore Real Property Actions ar		_	to Article 13 of th
	The purchaser is not-for-agency.	-profit housing	g organization or a	public housing
	The purchaser is by orde	r or judgment	of a Court.	
	The purchaser is authori	zed by statue.		
	The property is not own	er-occupied.		

I make this Affidavit re	ealizing that _	(name of
Title Agent) and		(underwriter) (hereinafter
together referred to the	"Title Compa	anies") are relying upon, and are fully
entitled to rely upon, th	e truth of the	statements herein contained as a basis
for the issuance of the	title policy un	der the Title Number referenced above.
I hereby agree to prote	ct defend, ind	lemnify and hold the Title Companies
forever harmless from	any loss, liens	s, claims and costs (including, but not
limited to courts costs.	legal fees and	l expenses) which the Title Companies
may incur as a result of	f the Title Cor	mpanies' reliance upon this Affidavit.
interface and the second of		*
Given under my hand an seal this	day of	, 20
	Ву:	
(40)		
		(Print Name)
Sworn to before me on		
Notary Public		

landven.

1

Ł

RAM ABSTRACT LTD. 100 Merrick Road, Suite 214W Rockville Centre, New York 11570 718-846-7800 718-846-7801 FAX

rt i.

Equity Seller and Equity Purchaser Closing Affidavit Home Equity Theft Prevention Act

STATE OF	NEW YORK)	Title No.
County of)	Premises:
as s of t the	such terms are defined in the I	Home Equity The Inited General Tit	er" and the "Equity Purchaser" It Prevention Act (Chapter 308 Ile Insurance Company to insure om the Equity Seller to the
The	e Equity Seller	ame and Address	
The			of themselves, their respective
	The Equity Seller states that is legally competent and is no adversely impacts Equity Seller Purchaser. The Equity Seller had full opportunity to consuagencies or other experts in a	the Equity Seller of under any phys ller's ability to co affirms that Equilit with outside coreal property to even	was born on, sical or mental incapacity which invey the Premises to the Equity ity Seller was not denied, and
2.	Seller with an appraisal (a co	py of which is at	chaser has provided the Equity tached hereto) of the value of Equity Seller has reviewed the

appraisal and affirms that the sales price has been reached as a part of an arms length transaction, is fair, reasonable and has been agreed upon by the Equity

Seller and Equity Seller Purchaser free of any fraud, deception, intimidation and/or unfair dealing.

- 3. The Equity Seller hereby specifically consents to the conveyance of the Premises to the Equity Purchaser, affirms that the conveyance is in the best interest of the Equity Seller and specifically, affirms that the sales price of the Premises and the equity received by the Equity Seller is fair and reasonable.
- 4. The Equity Purchaser affirms that the appraisal represents a fair, accurate and reasonable valuation of the Premises and has not been altered, inflated or changed to the detriment of the Equity Seller.
- 5. The Equity Purchaser affirms that Equity Purchaser and Equity Seller agreed upon a sales price through arms length negotiations and that Equity Purchaser did not induce the Equity Seller to convey the Premises through any act of fraud, deception, intimidation, undue influence or unfair dealing.

	Equity Seller and Equity Purchaser mak (Name of Title Age	ency) ar	nd		
	(hereinafter together referred to the "Titare fully entitled to rely upon, the truth basis for the issuance of the title policy above, Equity Seller and Equity Purchas protect, defend, indemnify and hold the from any loss, liens, claims and costs (it legal fees and expenses) which the Title the Title Companies may incur as a result upon this Affidavit.	tle Com of the s under t ser inde Title C ncludin	panies") are tatements he he Title Nur pendently h companies for g, but not lin anies may in	relying upon rein contained mber reference ereby agree to prever harmled mited to court acur as a resul	d as a ed o ss costs t of
Given und	er our respective hands and seals this	d	ay of	, 20	
		By:	Equity Se	ller	
		9=	(Print Na	me)	
		By:	Equity Pu	ırchaser	
Sworn bef	fore me on		(Print Na	me)	

Notary Public

Ram Abstract Ltd.

4 -

REPORT OF CLOSING

Title Number: RF12332

Pittle closed at office of:	Date:	W	
By: NOTE: Closer must make certain all closing	g documents are legible	and in recorda	ble format!
DEED (Designate Kind)	GI-FHA	-CONVENTI	ONAL MORTGAGE
DEED (Designate Kind)		(Designate Kin	nd)
Ву:	Ву:		LP
Го:	То:	81	
Dated: Rec'd L. P.	Dated:	Rec'd	P
Cons. \$ Transfer Tax	Amount \$	12222216	are:
To: Rec'd L. P. Dated: Rec'd L. P. Cons. \$ Transfer Tax Insured for \$		M	tg. Tax:
DEED (Designate Kind)	M	ORTGAGE (Designate Kind)
By:	Ву:		
To:	To:		L. P.
To:	Dated:	Rec'd	
Cons. \$ Transfer Tax	Amount \$		Mtg. Tax:
Insured for \$	_		
ASSIGNME	NT OF MORTGAGE		
Ву:	Ву		
To	To:		7 7/
To: Assigns Mortgage Recorded in L. Mp. Dated: Rec'd L. P.	Assigns Mortgo	age Recorded in	LMp
Dated: Rec'd L. P.	Dated:	Rec'd	LP
SATISFACT	ION OF MORTGAGI	£	
98	.		
By:	By	Pecid	LP
By: Dated: Rec'd L. P. Satisfies Mortgage Recorded in L. Mp.	Catisfies Morts	rage Recorded i	n LMp
		_	
OTHER CLO	SING INSTRUMENT	rs	
		755	
	RESENT AT CLOSIN		
SELLER(S):			
PURCHASER(S): ATTORNEY FOR SELLER:			
		Pl	none number:
Address:ATTORNEY FOR PURCHASER:			
ATTORNEY FOR FOR FOR FASER. Address:			none number:
Address: ATTORNEY FOR LENDER:			
Attorney For Lender.			hone number:
Address.			and the second
			e Policy was delivered at closi
Fee Policy to be sent to (include address):			e I offed was defined at erest
Address:		T Fe	e Policy was delivered at closi
Mortgage Policy to be sent to (include address):			was waren transfer and a second
Address:			

This Page Intentionally Blank

Appendix E

Title Report - 2016

Fidelity National Title INSURANCE SERVICES, LLC

ACRIS FORMS & WESTCHESTER PREP REQUESTS

- 1. Please submit your request at least 3 days prior to the date of closing (if possible).
- 2. If ACRIS/PREP Forms are to be used in conjunction with a transaction insured by Fidelity Title Insurance, a preparation fee of \$150 will be added to your title bill.
- 3. Attach copy of 1st page of DEED (to insure correct names and spelling of parties).
- 4. When consideration is over \$400,000 please attach copy of the Contract of Sale.

Requested by: Frank R. Saddio	Title # (if app): 16 - 7405 74832-15
Fax: 341-750-8344	
E-Mail: IANASSIST36 @GMAIL!	TON
Property Address:	
458 East 99 Street	Section: Block: (13) Lot: 50
Property Type: Com mercia	Unit # (if app):
Total Consideration: 4 550,000	Condition of Transfer: Ame Length
Contract of Sale Date: 04 14 16	Deed Date/Transfer Date: 08 16 U

Please indicate Seller type as (I) individual, (C) corporation, (P) partnership, (E) Estate/Trust or (O) Other

Seller's Name (s):	Address:	Social Security
-27		Number (s):
458 East 99+5 Street	+ 10013 foster Avenue	45-492-809+
LLC	1300 klyn N+ 1/236	

Please indicate Buyer type as (I) individual, (C) corporation, (P) partnership, (E) Estate/Trust or (O) Other

Address:	Social Security Number
458 East 99th Street Brooklyn NT 11236	(s): TBP
, and the second	
	458 East 99th Smeet

E-MAIL TO POST-CLOSING DEPARTMENT: fntgcwestprep@fnf.com or fax: (516) 203-3439 If space is needed for additional parties in the transaction, add a page including all the required information

Please Prepare Red + ACRIS

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.



2012041101259001001EF0EA

RECORDING AND ENDORSEMENT COVER PAGE PAGE 1 OF 4 Preparation Date: 04-11-2012 Document Date: 04-04-2012 Document ID: 2012041101259001 Document Type: DEED Document Page Count: 3 RETURN TO: PRESENTER: FRANK R. SEDDIO, ESQ RAM ABSTRACT LTD ABRAMS FENSTERMAN 100 MERRICK ROAD, SUITE 350W 9306 FLATLANDS AVENUE AS AGENT FOR FIDELITY (RF12332K) BROOKLYN, NY 11236 ROCKVILLE CENTRE, NY 11570 718-846-7800 ED IMBERMAN PICK UP PROPERTY DATA Address Block Lot Unit Borough **458 EAST 99TH STREET** Entire Lot BROOKLYN 8131 56 Property Type: COMMERCIAL REAL ESTATE

CRFN or Document ID	CROSS REFERENCE DATA or Year Reel Page or File Number
	PARTIES
GRANTOR/SELLER:	GRANTEE/BUYER: 458 EAST 99TH STREET, LLC

GRANTOR/SELLER: ABE'S RADIO INC. 458 EAST 99TH STREET BROOKLYN, NY 11236 458 EAST 99TH STREET, LLC 10013 FOSTER AVENUE BROOKLYN, NY 11236

City Register Official Signature

		FEES A	ND TAXES
Mortgage	ľ≈	0.00	Filing Fee: \$ 250.00
Mortgage Amount:	\$	0.00	
Taxable Mortgage Amount:	\$	0.00	NYC Real Property Transfer Tax:
Exemption:		2.00	\$ 17,718.75
TAXES: County (Basic):	\$	0.00	NYS Real Estate Transfer Tax:
City (Additional):	S	0.00	\$ 2,700.00
Spec (Additional):	\$	0.00	RECORDED OR FILED IN THE OFFICE
TASF:	\$	0.00	OF THE CITY REGISTER OF THE
MTA:	\$	0.00	CITY OF NEW YORK
NYCTA:	\$	0.00	Recorded/Filed 04-23-2012 14:30
Additional MRT:	\$	0.00	City Register File No.(CRFN):
TOTAL:	\$	0.00	2012000161304
Recording Fee:	\$	52.00	1 July March 19 11 11
Affidavit Fee:	\$	0.00	GRANTE MSfill

THIS INDENTURE, made as of the 4th day of April, 2012

BETWEEN ABE'S RADIO, INC., located at 458 East 99th Street, Brooklyn, NY 11236

party of the first part, and

458 EAST 99th STREET LLC, located at 10013 Foster Avenue, Brooklyn, NY 11236,

party of the second part,

WITNESSETH, that the party of the first part, in consideration of Ten and 00/100 (\$10.00) dollars paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the

See Schedule "A" annexed hereto and made a part hereof

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises;

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except for the existing mortgage on which they are the mortgagor.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to received such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the Parties of the First Part have duly executed this deed the day and year first above written.

IN PRESENCE OF:		ABE'S RADIO, INC.
San Brill	L.S.	By: SYDELL PORITZKY, President
	* 0	L.S.

L.S.

SCHEDULE A

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, known and designated as and by Lot Numbers 34, 35 and 36 in Block 8131 as shown on a certain map entitled, "Map of property of Brooklyn and Philadelphia Realty Company" located in the Thirty-Second Ward of the Borough of Brooklyn, City of New York, surveyed May 15, 1906 by Alex D. Murphy, Civil Engineer and Surveyor and filed in the Office of the Register of Kings County on February 7, 1911, as Map Number 1555, which said lots according to said map are bounded and described as follows:

BEGINNING at a point on the westerly side of East 99th Street, distant 180 feet northerly from the corner formed by the intersection of the westerly side of East 99th Street with the northerly side of Foster Avenue;

RUNNING THENCE westerly through a party wall and parallel with the northerly side of Foster Avenue, 100 feet to a point;

RUNNING THENCE northerly parallel with the westerly side of East 99th Street, 60 feet to a point;

RUNNING THENCE easterly parallel with the northerly side of Foster Avenue 100 feet to the westerly side of East 99th Street; and

RUNNING THENCE southerly along the westerly side of East 99th Street 60 feet to the point or place of BEGINNING.

Being the same Premises as that conveyed to grantors herein by Deed dated November 14, 1975 and recorded November 21, 1975 in the Office of the City Register, Kings County in Reel 815 Page 1608.

"Said premises is or will be improved by a one or two family dwelling only." STATE OF NEW YORK) COUNTY OF NEW YORK) ss.:

On this \darkspace{1}\darkspace{1}\darkspace{1}\darkspace{1}\darkspace{2}\darkspace{1}\darkspace{2}\darkspace{1}\darkspace{2}\darkspace

Notary Public

My commission expires on

LINDA CARR
Notary Public, State of New York
No. 01CA6071690
Qualified in Kings County
Commission Expires March 18th 2006

SEAL

STATE OF NEW YORK) COUNTY OF NEW YORK) ss.:

On this day of , 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared, , 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 on behalf of which the individual acted, executed the instrument.

Notary Public My commission expires on

BARGAIN AND SALE DEED
WITH COVENANT AGAINST GRANTOR'S ACTS

Title No.

ABE'S RADIO, INC.

-to-

458 EAST 99th STREET LLC

SECTION

BLOCK 8131

LOT 56

COUNTY OR TOWN Kings

STREET ADDRESS

Return By Mail To

Frank R. Seddio, Esq. Abrams Fensterman 9306 Flatlands Avenue Brooklyn NY 11236

Reserve This Space for Use of Recording Office

NYC DEPARTMENT OF FINANCE OFFICE OF THE CITY REGISTER



2012041101259001001S3E6B

SUPPORTING DOCUMENT COVER PAGE

PAGE 1 OF 1

Document ID: 2012041101259001

Document Date: 04-04-2012

Preparation Date: 04-11-2012

Document Type: DEED

ASSOCIATED TAX FORM ID: 2012040400008

SUPPORTING DOCUMENTS SUBMITTED:

DEP CUSTOMER REGISTRATION FORM FOR WATER AND SEWER BILLING RP - 5217 REAL PROPERTY TRANSFER REPORT

Page Count

! 1

CITY REGISTER

FOR CITY USE ON C1. County Cod C3. Book OR C5. CRFN	C2. D.	ate Deed MontAFR	d 6 8012		STATE OF STATE OF REA	FRANSFER REPORT NEW YORK 1 PROPERTY SERVICES 217NYC
PROPERTYINFOR	MOTAM	A	Approximation of the second se	numerated:		
1. Property Location	458 EA	AST 99TH STREET			BROOKLYN BORDUGH	111212 2/P CODE
Z Buyer	EAST 99TH STRE	et, llc		FIRST NAME		
1				1		
LA	ST NAME I COMPANY			FIRST NAME		
	e where future Tax Bills then buyer address (a)	bottom of form)	NAME I COMPANY	, , , , , , , , , , , , , , , , , , , ,) FIRST HAME	
L	REET NUMBER AND STREET	HAME	CHYOR TO	WN		STATE ZIP COOR
4. Indicate the nu	mber of Assessment materied on the deed	1 # of Po	arcels OR P	ant of a Parcel	4A. Planning Board Approval - N 4B. Agricultural District Notice -	
5. Deed Property Size	PRONT PEET X	DEPTH OR	ACRES	•——	Check the boxes below as they 6. Ownership Type is Condomire 7. New Construction on Vacant I	ium 🔲 🗵
8. Seller	S RADIO INC.			FIRST NAME		
L	ST NAME I COMPANY		,	PRET NAME		
8, Check the box	below which most a	ccurately describes the u	se of the property at	the time of sale:		
* *	ily Residential (mily Residential I	The second second		Commercial G Apartment T	Community Service	J Public Service
SALEINFORMAT	ION	3			ot wase of greek conditions a	
10. Sale Contrac	t Date	Marity Di	3 / 2011] sy Yeer	B Sate I	Between Relatives or Former Rela Between Related Companies or P	
11. Date of Bale	í Transfer	Month O	4 / 2012 Ny Yenr	D Buyer E Deed	of the Buyers is also a Seller ror Seller is Government Agency o Type not Warranty or Bergain en of Fractional or Less than Fee Inte	d Sale (Specify Below)
12. Pull Sale Pri	ice S	6.7.5	,0,0,0	Secretary .	icant Change in Properly Between	
This navment	may be in the form of ca	id for the property including ish, other property or goods ase round to the nearest wi	, or the assumption of	H Sale	of Business is Included in Sale Pri Unusual Fectors Affecting Sale F	ice
property include	A CONTRACTOR OF THE PROPERTY O	L . ,				A STATE OF THE STA
ASSESSMENT	NFORMATION - D	ata should reflect the lat	est Final Assessmer	nt Roff and Tax Bi	AI I	
15. Building Cl	E 9	16, Total Assesse	d Value (of all parce	ils in transfer)	· · · · · · · · · · · · · · · · · · ·	1 0 4 4 0 0
17. Borough, Black and Let / Roll Identifier(s) (If more than three, strach sheet with additional identifier(s))						
BRO	OOKLYN 8131	56				

CERTIFICATION	l certify that all of the it understand that the me the making and filing o	iding of any willi	w false statement	form are true and co of material fact hereir	rrect (to the best of a n will subject me to t	ny knowledge and belief) and he provisions of the penal law reletive to
Warre	BUYER	, 4.	412	FRANK SED	BUYER'S DIO, ESQ.	ATTORNEY
10013 FOSTER AVEN			AYd.	718	272-6040	FIRST AAME
BROOK	STREET NAME (AFTER)	NY	11236	J Syl	el out	F 1 4/4/12
CHTY OR TOWN		STATE	ZIP COUR	BELLER SIGNAYU	L) BAYE 1///



The City of New York
Department of Environmental Protection
Bureau of Customer Services
59-17 Junction Boulevard
Flushing, NY 11373-5108

Customer Registration Form for Water and Sewer Billing

Property and Owner Information:							
(1)	Property receiving service: BOROUGH; BROOKLYN	BLOCK: 8131	LOT: 56				

- (2) Property Address: 458 EAST 99TH STREET, BROOKLYN, NY 11212
- (3) Owner's Name: 458 EAST 99TH STREET, LLC

Additional Name:

Affirmation:



Your water & sewer bills will be sent to the property address shown above.

Customer Billing Information:

Please Note:

- A. Water and sewer charges are the legal responsibility of the owner of a property receiving water and/or sewer service. The owner's responsibility to pay such charges is not affected by any lease, license or other arrangement, or any assignment of responsibility for payment of such charges. Water and sewer charges constitute a lien on the property until paid. In addition to legal action against the owner, a failure to pay such charges when due may result in foreclosure of the lien by the City of New York, the property being placed in a lien sale by the City or Service Termination.
- B. Original bills for water and/or sewer service will be mailed to the owner, at the property address or to an atternate mailing address. DEP will provide a duplicate copy of bills to one other party (such as a managing agent), however, any failure or delay by DEP in providing duplicate copies of bills shall in no way relieve the owner from his/her liability to pay all outstanding water and sewer charges. Contact DEP at (718) 595-7000 during business hours or visit www.nyc.gov/dep to provide us with the other party's information.

Owner's Approval:

The undersigned certifies that he/she/it is the owner of the property receiving service referenced above; that he/she/it has read and understands Paragraphs A & B under the section captioned "Customer Billing Information"; and that the information supplied by the undersigned on this form is true and complete to the best of his/her/its knowledge.

Print Name of Owner:

Signature: Le Carre 13ell Date (mm/dd/yyyy)

Name and Title of Person Signing for Owner, if applicable:

BCS-7CRF-ACRIS REV. 8/08

Assignment of Contract for Purchase of Real Estate

For value received, EURO WOODWORKING, INC, as Assignor, hereby transfers and assigns to 458 EAST OWNERS, LLC, as Assignoe, all rights, interest and obligations in that Contract of Sale between 458 EAST 99th STREET, LLC, as Seller, and the Assignor, as Purchaser, dated April 14, 2016, and as thereafter amended, for the sale of the premises known as 458 East 99th Street, Brooklyn, NY, as more particularly described in said Contract, subject to the terms, covenants and conditions contained in said Contract.

This Agreement may be executed by facsimile signature or PDF signature and in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

Dated: 8.7.16

EURO WOODWORKING, INC., Assignor

By: Wolfgang Michelitsch, President

458 EAST OWNERS, LLC, Assignoe

By: Wolfgang Michelitsch, Member

Consent by Seller

The Seller gamed in the Contract herein assigned consents to this Assignment to the Assignee.

Dated: 08 10 16

458 EAST 99th STREET, LLC

FILING RECEIPT

ENTITY (NAME: 458 EAST 99TH STREET LLC

DOCUMENT TYPE: AMENDMENT (DOM LLC)

NAME

COUNTY: KING

FILED: 02/09/2012 DURATION: ******* CASH#: 120209000933 FILM #: 120209000873

FILER:

BLUMBERGEXCELSIOR CORP SERVICES INC

236 BROADWAY

MENANDS, NY 12204

ADDRESS FOR PROCESS:

REGISTERED AGENT:



SERVICE COMPANY: BLUMBERG/EXCELSIOR CORPORATE SERVICES SERVICE CODE: 39

FEES	85.00	40 00	PAYMENTS	85.00	
FILING	60.00		CASH	0.00	
TAX	0.00		CHECK	0.00	
CERT	0.00		CHARGE	0.00	
COPIES	0.00	×	DRAWDOWN	85.00	
HANDLING	25.00		OPAL	0.00	
			REFUND	0.00	

Certificate of Amendment

of the

Articles of Organization

of

790 EAST 91ST STREET LLC

Under the Section 211 of the Limited Liability Company Law

IT IS HEREBY CERTIFIED:

FIRST: The name of the Limited Liability Company is: 790 EAST 91ST STREET LLC.

SECOND: The Articles of Organization were filed with the Secretary of State of New York on September 28, 2011.

THIRD: The change effected by this Certificate of Amendment is as follows:

To amend Paragraph FIRST, that sets forth the name of the Limited Liability Company. Paragraph FIRST shall read as follows:

FIRST: The name of the Limited Liability Company is: 458 EAST 99TH STREET LLC

IN WITNESS WHEREOF, the undersigned Authorized Member has executed this Certificate of Amendment on this ______ day of ______, 2012.

Warren Bell, Authorized Member



EIN Assistant

Your Progress:

1. Identity of

2. Authenticate «

3. Addresses 🦠

4. Details 🦿

5. EIN Confirmation

Congratulations! Your EIN has been successfully assigned.

EIN Assigned: 45-4928097

Legal Name: 458 EAST 99TH STREET LLC

EMPORTANT:

Save and/or print this page and the confirmation letter below for your permanent records.

The confirmation letter below is your official IRS notice and contains important information regarding your EIN.

CLICK HERE for Your EIN Confirmation Letter Help with saving and printing your letter

Once you have saved or printed your tetter, click "Continue" to get additional information about using your new EIN.



Help Topics

What if I do not have access to a printer at this time?

Can I access this letter at a later date?

https://eg1 xxmxxx/ inc gove/madiding the state to

Date of this notice: 03-30-2012

Employer Identification Number:

45-4928097

Form: SS-4

Number of this notice: CP 575 G

458 EAST 99TH STREET LLC WARREN BELL SOLE MBR 10013 FOSTER AVE BROOKLYN, NY 11236

For assistance you may call us at: 1-800-829-4933

IF YOU WRITE, ATTACH THE STUB AT THE END OF THIS NOTICE.

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 45-4928097. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

When filing tax documents, payments, and related correspondence, it is very important that you use your EIN and complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information is not correct as shown above, please make the correction using the attached tear off stub and return it to us.

A limited liability company (LLC) may file Form 8832, Entity Classification Election, and elect to be classified as an association taxable as a corporation. If the LLC is eligible to be treated as a corporation that meets certain tests and it will be electing S corporation status, it must timely file Form 2553, Election by a Small Business Corporation. The LLC will be treated as a corporation as of the effective date of the S corporation election and does not need to file Form 8832.

To obtain tax forms and publications, including those referenced in this notice, visit our Web site at www.irs.gov. If you do not have access to the Internet, call 1-800-829-3676 (TTY/TDD 1-800-829-4059) or visit your local IRS office.

IMPORTANT REMINDERS:

- * Keep a copy of this notice in your permanent records. This notice is issued only one time and the IRS will not be able to generate a duplicate copy for you.
- * Use this EIN and your name exactly as they appear at the top of this notice on all your federal tax forms.
- * Refer to this EIN on your tax-related correspondence and documents.

If you have questions about your EIN, you can call us at the phone number or write to us at the address shown at the top of this notice. If you write, please tear off the stub at the bottom of this notice and send it along with your letter. If you do not need to write us, do not complete and return the stub. Thank you for your cooperation.

Name History

Filing Date Name Type

Entity Name

FEB 09, 2012 Actual

458 EAST 99TH STREET LLC

SEP 28, 2011 Actual

790 EAST 91ST STREET LLC

A Fictitious name must be used when the Actual name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

Search Results

New Search

<u>Services/Programs</u> | <u>Privacy Policy</u> | <u>Accessibility Policy</u> | <u>Disclaimer</u> | <u>Return to DOS</u> <u>Homepage</u> | <u>Contact Us</u>

OPERATING AGREEMENT

OF

458 EAST 99TH STREET LLC

A LIMITED LIABILITY COMPANY ORGANIZED UNDER THE LAWS OF THE STATE OF NEW YORK

TABLE OF CONTENTS

<u>Page</u>

ARTICLE I DEFINITIONS

1.1	- and order of the transfer of	
1.2	Acquisition Agreement	1
1.3	Acquisition Loan Additional Capital Contribution	i
1.4	Additional Capital Contribution.	į
1.5	. Article	ı
1.6	Articles of Organization	1
1.7	Asset	
1.8	Assignee or "transferee"	8
1.9	Assignee or "transferee"	
1.10	Bankrupt Person	ā
1.1	D Business Day	3
. 1.12	Capital Account 2 Capital Contribution 2	ė
1.13	Capital Contribution2 Commitment2	9
1.14	Company	
1.15	Company 2 Company Agreement 2 Default Interest Rate 2	
1.16	Default Interest Pote	
1.17	Default Interest Rate 2 Delinquent Member 2	
1.18	Delinquent Member	
1.19	Disposition (Dispose)	
1.20	Dissociation 2 Dissolution Event 2	
1.21	Dissolution Event	
1.22	Distribution	
1.23	Economic Interest 2 Effective Date	
1.24	Effective Date	
1.25	Exhibit A	
1.26	Fair Market Value	
1.27	Fiscal Year3 Gross Asset Value3	
1.28	Gross Asset Value3 Initial Capital Contribution3	
1.29	Initial Capital Contribution	
1.30	Initial Membership Interest 4 Initial Sharing Ratio 4	
1.31	Initial Sharing Ratio	
1.32	Management Right4 Managing Member4	
1.33	Managing Member	
1.34	Membership Interest	
1.35	Membership Interest	
1.36	Net Cash Flow	
1.37	NY LLC Law	
1.38	Organization 4 Permitted Transferee 4	
1.39	Permitted Transferee	
1.40	Person	
2000 SATE	Principal Office4	

1.4	Proceeding	
1.4	Proceeding	4
1.4	Profits and Losses	4
1.4	Property Regulatory Allocations	4
1:4	4 Regulatory Allocations	4
1.4	Section	. C
1.4	Securities Act	. U
1.4	7 Sharing Ratio 8 Substitute Member	. 0
1.49	Substitute Member Tax Characterization and Additional Tax Terms	0
1.50	Tax Characterization and Additional Tax Terms Winding Up Sale	0
1.3	Winding Up Sale	0
		7
	ARTICLE (I	
	FORMATION	
2.1	Organization	
2,2	Organization	7
2.3	Company Agreement	7
2.4	NameTerm	ç Q
2.5	Term	Q
2.6	Registered Agent and Office	0
2.7	Principal Office) (1
4.1	Publication	5
		5
	ARTICLE III PURPOSE;	
	NATURE OF BUSINESS	
	and the state of t	
	ARTICLE IV	
	ACCOUNTING AND RECORDS	
4.1		
4.2	Records to be Maintained9	
4.3	Reports to Members	
7,5	Tax Returns and Reports9	
*5	ARTICLE V	
	NAMES AND ADDRESSES OF MEMBERS	
•	ARTICLE VI	
	RIGHTS AND DUTIES OF MEMBERS	
6.1	No Management P: 1	
6.2	No Management Rights as Members 10	
6.3	Liability of Members	
	Indemnification	
6.5	Representations, Warranties and Covenants	
0.5	Conflicts of Interest	

ARTICLE VII MANAGING MEMBER

7.1	Managing Mand
7.2	Managing Member
7.2	Term of Office as Managing Member
7.3	Authority of Managing Member to Bind the Company
	Authority of Managing Member to Bind the Company
7.5	Indemnification 13
7.6	Managing Member's Standard of Con-
7.7	Resignation: Removel of Managing Managi
7.8	Other Activities 13
7.9	Other Activities
7.10	Expenses
7.11	Affiliates: Fees
	Affiliates; Fees
	ARTICLE VIII
	CONTRIBUTIONS AND CAPITAL ACCOUNTS
	TIMES AND CAPITAL ACCOUNTS
8.1	Initial Capital Contributions
8.2	Additional Capital Contributions
8.3	Enforcement of Commitments
8.4	Enforcement of Commitments
8.5	Capital Account
8.6	No Obligation to Restore Deficit Balance
8.7	Withdrawal; Successors
8.8	Interest
8.9	Investment of Capital Contributions and Company Cash
	Repayment of Capital Contribution
	ARTICLE IX
	ALLOCATIONS AND DISTRIBUTIONS
9.1	Profits and Losses
9.2	Profits and Losses
9.3	Profits
9.4	Losses
9.5	Special Allocations 17 Curative Allocations 18
9.6	Curative Allocations
9.7	Section 754 Election 20 Other Allocation Rules 21
9.8	Other Allocation Rules
	Distribution of Net Cash Flow
7.7	Allocation of Gain or Loss upon Winding Up
	Tree
(+)	ARTICLE X
	TAXES
10.1	Tax Matters Partner
_	Tax Matters Partner23
	43

ARTICLE XI TRANSFER OF MEMBERSHIP INTEREST

11.1 11.2	Compliance with Securities Laws Transfer of Economic Interest	23
11.3	Status of Transferee of Economic Interest	24
11.4	Transfer of Management Rights; Admission of Substitute Member	24
11.5	Transfer to Surviving Spouse or Lineal Descendent	25
11.6	Death, Dissolution, Bankruptcy or Incompetency of a Member	25
11.7	Dispositions not in Compliance with this Article Void	25
	ARTICLE XII	
	DISSOCIATION OF A MEMBER	
10.1	Dissociation	25
12.1		26
12.2	Rights of Dissociating Memoer	
	ARTICLE XIII	
	DISSOLUTION AND WINDING UP	
13.1	Dissolution	26
13.2	Effect of Dissolution	27
13.3	Distribution of Assets on Dissolution	27
13.4	Winding Up and Articles of Dissolution	27
	ARTICLE XIV	
	MISCELLANEOUS	
	"	
14.1	Notices	28
14.2	Meetings	28
14.3	Headings	48
14.4	Entire Agreement	
14.5	Rinding Agreement	
14.6	Saving Clause	
14.7	Counternaris	
14.8	Governing I aw	
14.9	No Partnership Intended for Nontax Purposes	
14.1	O No Rights of Creditors and Third Parties under Company Agreement	
1.4.1	1 Diamete Databation	4:
14.1	2 General Interpretive Principles	29

LIMITED LIABILITY COMPANY OPERATING AGREEMENT

458 East 99 Street LLC

This Limited Liability Company Operating Agreement of 458 East 99th Sweetle a New York limited liability company organized pursuant to the New York Limited Liability Company Law, is entered into and shall be effective as of the Effective Date, by and among the Company and the persons executing this Company Agreement as Members.

ARTICLE I DEFINITIONS

For purposes of this Company Agreement, unless the context clearly indicates otherwise, the following terms shall have the following meanings:

1.1	Lixconsition	Agreement. The Agreen	nent of Purchase and Sa	le dated as of
regarding t	he sale of the As	set to the Company.]		
1.2	[Acquisition	Loan A loan not in	extess of S_	from Asset, whi ch
lóan will be	secured by a m	ortgage or other lien on t	re Asset]	# # # # # # # # # # # # # # # # # # #

- 1.3 Additional Capital Contribution. An additional Capital Contribution payable by the Members to the Company pursuant to Article VIII.
- 1.4 Affiliate. With respect to any Person, any entity controlling, controlled by or under common control with such Person. "Control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of over 50% of the voting securities of such Person, by contract or otherwise.
 - 1.5 Article. An Article of this Company Agreement.
- 1.6 Articles of Organization. The Articles of Organization of the Company, as amended from time to time, and filed with the Department of State of New York.
- 1.7 [Asset. The real property located at ______ and all improvements thereon.]
- 1.8 Assignee or "transferee." A transferee of an Economic Interest who has not been admitted as a Substitute Member. Unless otherwise clear from the context of its use, the term "transferee" is synonymous with the term "Assignee."
- 1.9 Bankrupt Person. A Person who: (a) has become the subject of an Order for Relief under the United States Bankruptcy Code by voluntary or involuntary petition, or (b) has initiated, either in an original Proceeding or by way of answer in any state insolvency or

receivership Proceeding, an action for liquidation arrangement, composition, readjustment, dissolution or similar relief.

- 1.10 Business Day. Any day other than Saturday, Sunday or any legal holiday observed in the State of New York.
- 1.11 Capital Account. The account maintained for a Member or an Assignee determined in accordance with Article VIII.
- 1.12 Capital Contribution. A Member's Initial Capital Contribution plus any Additional Capital Contribution made by the Member in accordance with this Company Agreement. A Capital Contribution includes (a) the amount of any money contributed by the Member to the Company (including liabilities of the Company assumed by the Member as provided in section 1.704-1(b)(2)(iv)(c) of the Regulations), and (b) the Gross Asset Value of any Property contributed to the Company by such Member (net of liabilities secured by such contributed Property that the Company is considered to assume or take subject to under section 752 of the Code).
- 1.13 Commitment. The Initial Capital Contribution and Additional Capital Contributions that a Member is obligated to make.
- 1.14 Company. 458 6957 9971 Street LL., a limited liability company formed under the laws of New York, and any successor limited liability company.
- 1.15 Company Agreement. This Limited Liability Company Operating Agreement including all amendments adopted in accordance with the Company Agreement and the NY LLC Law.
- 1.16 Default Interest Rate. The prime rate published by the Wall Street Journal for the last Business Day on which a Commitment is payable.
- 1.17 Delinquent Member. Delinquent Member shall have the meaning set forth in Section 8.3.
- 1.18 **Disposition (Dispose).** Any sale, assignment, exchange, mortgage, pledge, grant, hypothecation or other transfer, absolute or as security or encumbrance (including dispositions by operation of law).
- 1.19 Dissociation. Any action which causes a Person to cease to be a Member as described in Article XII hereof.
- 1.20 Dissolution Event. An event, the occurrence of which will result in the dissolution of the Company under Article XIII unless the Members unanimously agree to the contrary.
- 1.21 Distribution. A transfer of Property to a Member on account of a Membership Interest.

- 1.22 Economic Interest. The right to receive allocations of Profits and Losses, Distributions, returns of capital and distribution of assets upon a dissolution of the Company.
 - 1.23 Effective Date. 18.5. 9 , 2012.
- 1.24 Exhibit A. Exhibit A to this Company Agreement setting forth the name, address, Initial Capital Contribution, Initial Membership Interest and Initial Sharing Ratio of each Member.
- 1.25 Fair Market Value. As of any date, the fair market value of an asset on such date as determined in good faith by the Managing Member. For this purpose, the Managing Member may in its reasonable and prudent discretion value assets that are restricted by law, contract, market conditions (including trading volume relative to the Company's holding) or otherwise as to salability or transferability at an appropriate discount, based on the nature and term of such restrictions.
 - 1.26 Fiscal Year. The twelve month period ending on December 31 of each year.
- 1.27 Gross Asset Value. Gross Asset Value, with respect to any Company asset means the adjusted basis of such asset for federal income tax purposes, except as follows:
 - (a) The initial Gross Asset Value of any Company asset contributed by a Member to the Company shall be the Fair Market Value of such Company asset as of the date of such contribution;
 - (b) The Gross Asset Value of each Company asset shall be adjusted to equal its Fair Market Value, as of the following times: (i) the acquisition of an additional Membership Interest by any new or existing Member in exchange for more than a de minimis Capital Contribution unless the Managing Member determines that such adjustment is not necessary to reflect the relative Economic Interests of the Members of the Company; (ii) the Distribution by the Company to a Member of more than a de minimis amount of Company assets (other than cash) as consideration for all or part of its Membership Interest unless the Managing Member determines that such adjustment is not necessary to reflect the relative Economic Interests of the Members in the Company; and (iii) the liquidation of the Company within the meaning of section 1.704-1(b)(2)(ii)(g) of the Regulations;
 - (c) The Gross Asset Value of a Company asset distributed to any Member shall be the Fair Market Value of such Company asset as of the date of Distribution thereof;
 - (d) The Gross Asset Value of each Company asset shall be increased or decreased, as the case may be, to reflect any adjustments to the adjusted basis of such Company asset pursuant to section 734(b) or 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to section 1.704-1(b)(2)(iv)(m) of the Regulations; provided, however, that Gross Asset Values shall not be adjusted pursuant to this paragraph (d) to the extent that the Managing Member determines that an adjustment pursuant to paragraph (b) above is

necessary or appropriate in conjunction with a transaction that would otherwise result in an adjustment pursuant to this paragraph; and

- (e) If the Gross Asset Value of a Company asset has been determined or adjusted pursuant to paragraph (a), (b) or (d) above, such Gross Asset Value shall thereafter be adjusted to reflect the depreciation or amortization taken into account with respect to such Company asset for purposes of computing Profits and Losses.
- 1.28 Initial Capital Contribution. The Initial Capital Contribution set forth in Exhibit A.
- 1.29 Initial Membership Interest. The Initial Membership Interest set forth in Exhibit A.
 - 1.30 Initial Sharing Ratio. The Initial Sharing Ratio set forth in Exhibit A.
- 1.31 Management Right. The right of a Member to participate in the management of the Company, to vote on any matter and to grant or withhold consent or approval of actions of the Company.
 - 1.32 Managing Member. Waccen BUI
 - 1.33 Member. A party executing the Company Agreement and a Substitute Member.
 - 1.34 Membership Interest. A Member's Economic Interest and Management Right.
- 1.35 Net Cash Flow. Net Cash Flow shall mean with any respect to any fiscal period of the Company, all cash revenues of the Company during that period, decreased by, without duplication, (a) cash expenditures for operating expenses, (b) capital expenditures to the extent not made from reserves, (c) repayment of principal on any financing and (d) taxes.
- 1.36 NY LLC Law. The New York Limited Liability Company Law and all amendments thereto.
- 1.37 Organization. A Person other than a natural person. Organization includes, without limitation, corporations (both non-profit and other corporations), partnerships (both limited and general), joint ventures, limited liability companies and unincorporated associations, but the term does not include joint tenancies and tenancies by the entirety.
- 1.38 Permitted Transferee. Permitted Transferee shall have the meaning set forth in Section 11.5.
- 1.39 Person. An individual, trust, estate or any Organization permitted to be a member of a limited liability company under the laws of the State of New York.
 - 1.40 Principal Office. The Principal Office of the Company set forth in Section 2.6.

- 1.41 Proceeding. Any administrative, judicial or other adversary proceeding, including, without limitation, litigation, arbitration, administrative adjudication, mediation and appeal or review of any of the foregoing.
- 1.42 Profits and Losses. For each Fiscal Year or other period, an amount equal to the Company's taxable income or loss for such Fiscal Year or period, determined in accordance with section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:
 - (a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this Section shall be added to such taxable income or loss;
 - (b) Any expenditures of the Company described in section 705(a)(2)(B) of the Code or treated as section 705(a)(2)(B) of the Code expenditures pursuant to section 1.704-1(b)(2)(iv)(i) of the Regulations (other than expenses in respect of which an election is properly made under section 709 of the Code), and not otherwise taken into account in computing Profits or Losses pursuant to this Section, shall be subtracted from such taxable income or loss;
 - (c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to paragraph (b) or (c) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such Company asset for purposes of computing Profits or Losses;
 - (d) Gain or loss resulting from any disposition of any Company asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the Company asset disposed of, notwithstanding that the adjusted tax basis of such Company asset may differ from its Gross Asset Value;
 - (e) In accordance with section 1.704-1(b)(2)(iv)(g)(3) of the Regulations, depreciation with respect to any Company asset shall be computed by reference to the adjusted Gross Asset Value of such asset, notwithstanding that the adjusted tax basis of such Company asset differs from its Gross Asset Value; and
 - (f) Notwithstanding any other provisions of this definition, any item which is specially allocated pursuant to Section 9.4 or 9.5 shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Section 9.4 or 9.5 shall be determined by applying rules analogous to those set forth in paragraphs (a) through (e) above.

1.43 **Property.** Any property, real or personal, tangible or intangible, including money, and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

- 1.44 Regulatory Allocations. Regulatory Allocations shall have the meaning set forth in Section 9.5.
 - 1.45. Section. A section of this Company Agreement.
 - 1.46 Securities Act. The Securities Act of 1933, as amended.
- 1.47 Sharing Ratio. With respect to any Member, as of any date, the ratio (expressed as a percentage) of (a) such Member's Capital Contribution to (b) the aggregate Capital Contributions of all Members, or such other ratio as shall be agreed by all Members from time to time. The Initial Membership Interest and Initial Sharing Ratio of each Member is set forth in Exhibit A hereof, and Exhibit A shall be amended as necessary to conform to any changes thereof agreed to by the Members. In the event all or any portion of a Membership Interest is transferred in accordance with the terms of this Company Agreement, the transferee shall succeed to the Membership Interest and Sharing Ratio of the transferrer to the extent it relates to the transferred Membership Interest.
- 1.48 Substitute Member. An Assignee who has been admitted to all of the rights of membership pursuant to Section 11.4.
- 1.49 Tax Characterization and Additional Tax Terms. It is intended that the Company be characterized and treated as a partnership for, and solely for, federal, state and local income tax purposes. For such purpose, the Company shall be subject to all of the provisions of subchapter K of chapter 1 of subtitle A of the Code, all references to a "Partner," to "Partners" and to the "Partnership" in this Company Agreement (including the provisions of Articles VIII and IX) and in the provisions of the Code and Regulations cited in this Company Agreement shall be deemed to refer to a Member, the Members and the Company, respectively. In addition, the following terms shall have the following meanings:
 - (a) Adjusted Capital Account Deficit shall mean, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:
 - (i) Credit to such Capital Account the minimum gain chargeback that such Member is deemed to be obligated to restore pursuant to the penultimate sentences of sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations and the amount of such Member's share of Partner Nonrecourse Debt Minimum Gain; and
 - (ii) Debit to such Capital Account the items described in sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

- (b) <u>Code</u> shall mean the Internal Revenue Code of 1986, as amended and in effect from time to time.
- (c) Nonrecourse Deductions has the meaning set forth in section 1.704-2(b)(1) of the Regulations.
- (d) Nonrecourse Liability has the meaning set forth in section 1.704-2(b)(3) of the Regulations.
- (e) <u>Partner Nonrecourse Debt</u> has the meaning set forth in section 1.704-2(b)(4) of the Regulations.
- (f) Partner Nonrecourse Debt Minimum Gain means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with section 1.704-2(i)(3) of the Regulations.
- (g) <u>Partner Nonrecourse Deductions</u> has the meaning set forth in sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Regulations.
- (h) <u>Partnership Minimum Gain</u> has the meaning set forth in sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations.
- (i) Regulations shall mean the final and temporary federal income tax regulations promulgated by the United States Treasury Department under the Code as such Regulations may be amended from time to time, or if no final or temporary regulations with respect to a tax issue are then in effect, proposed regulations then in effect if approved by the Managing Member. All references herein to a specific section of the Regulations shall be deemed also to refer to any corresponding provision of succeeding Regulations.
- 1.50 Winding Up Sale. Winding Up Sale shall have the meaning set forth in Section 9.9(a).

ARTICLE II FORMATION

- 2.1 Organization. The Members hereby organize the Company as a New York limited liability company pursuant to the provisions of the NY LLC Law.
- 2.2 Company Agreement. For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members executing the Company Agreement hereby agree to the terms and conditions of the Company Agreement, as it may from time to time be amended. It is the express intention of the Members that the Company Agreement shall be the sole source of agreement of the parties, and, except to the extent a provision of the Company Agreement expressly incorporates federal income tax rules by reference to sections of the Code or Regulations or is expressly prohibited or ineffective under the NY LLC Law, the Company

Agreement shall govern, even when inconsistent with, or different than, the provisions of the NY LLC Law or any other law or rule. To the extent any provision of the Company Agreement is prohibited or ineffective under the NY LLC Law, the Company Agreement shall be considered amended to the smallest degree possible in order to make the Company Agreement effective under the NY LLC Law. In the event the NY LLC Law is subsequently amended or interpreted in such a way to make any provision of the Company Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment.

2.3 Name. The name of the Company is:

and all business of the Company shall be conducted under that name or under any other name but, in any case, only to the extent permitted by applicable law.

- 2.4 Term. The term of the Company shall be perpetual unless the Company shall be sooner dissolved and its affairs wound up in accordance with the NY LLC Law or the Company Agreement.
- 2.5 Registered Agent and Office. The registered agent for the service of process and the registered office shall be that Person and location reflected in the Articles of Organization as filed in the office of the Department of State of New York. The Managing Member, may, from time to time, change the registered agent or office through appropriate filings with the Department of State of New York. In the event the registered agent ceases to act as such for any reason or the registered office shall change, the Managing Member shall promptly designate a replacement registered agent or file a notice of change of address as the case may be. If the Managing Member shall fail to designate a replacement registered agent or change of address of the registered office, any Member may designate a replacement registered agent or file a notice of change of address.
 - 2.6 Principal Office. The Principal Office of the Company shall be located at
- 2.7 Publication. Within 120 days after the effectiveness of the initial Articles of Organization, the Managing Member shall cause a notice containing the substance of the Articles of Organization, in the form required by the NY LLC Law, to be published once in each week for six successive weeks in two newspapers of the county in which the Principal Office is located.

ARTICLE III PURPOSE; NATURE OF BUSINESS

The purpose of the Company is [to acquire, improve, own, develop, manage, finance, lease and otherwise operate the Asset and to otherwise deal with any Property that the Company may acquire or have a right to acquire, and, in that connection, to finance and refinance the Asset and any Property, and ultimately to dispose of the Asset, and to do the same with respect to any Property that the Company may acquire, have a right to acquire

as a result of its ownership of the Asset and to engage in any and all business in connection therewith.] The Company shall have the authority to do all things necessary or convenient to accomplish its purpose and operate its business as described in this Article III. The Company exists only for the purpose specified in this Article III and may not conduct any other business without the unanimous consent of the Members. The authority granted to the Managing Member hereunder to bind the Company shall be limited to actions necessary or convenient to this business.

ARTICLE IV ACCOUNTING AND RECORDS

- 4.1 Records to be Maintained. The Company shall maintain the following records at the Principal Office:
 - (a) A current list of the full name and last known business address of each Member;
 - (b) A copy of the Articles of Organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which the Articles of Organization or any such amendment has been executed;
 - (c) A copy of the Company's federal, state and local income tax returns and reports;
 - (d) A copy of the Company Agreement including all amendments thereto; and
 - (e) The Company's books and records, including financial statements of the Company, which shall be open to inspections by the Members or their agents at reasonable times.
- 4.2 Reports to Members. The Managing Member shall provide reports, including a balance sheet, statement of profit and loss and changes in Members' accounts and a statement of cash flows, at least annually to the Members at such time and in such manner as the Managing Member may determine reasonable.
- 4.3 Tax Returns and Reports. The Managing Member, at Company expense, shall prepare and timely file income tax returns of the Company in all jurisdictions where such filings are required, and shall prepare and deliver to each Member, within the time prescribed by the Code, and any extensions applicable thereto, as provided by the Code or applicable regulations, and at Company expense, all information returns required by the Code and Company information necessary for the preparation of the Members' federal income tax returns.

ARTICLE V NAMES AND ADDRESSES OF MEMBERS

The names and addresses of the Members are as stated on Exhibit A.

ARTICLE VI RIGHTS AND DUTIES OF MEMBERS

- 6.1 No Management Rights as Members. No Member other than the Managing Member shall have authority as a Member to bind the Company or any Management Right, except that the transfer of Management Rights and the admission of a Substitute Member shall require the approvals set forth in Section 11.4, and the following actions shall require the consent of the Members holding a majority of the Membership Interests:
 - (a) Any amendment to the Company Agreement;
 - (b) The merger or consolidation of the Company with any other Person;
 - (c) The continuation of the Company after a Dissolution Event;
 - (d) The borrowing of funds or the pledging, mortgaging or otherwise encumbering any Company Property, except for (i) any loan to meet operating expenses if operating income and reserves are insufficient or for emergency or other extraordinary circumstances [and (ii) any loan for the purpose of refinancing the Asset];
 - (e) The payment of compensation to the Managing Member;
 - (f) The imposition of any Additional Contribution, except as provided in
 - (g) The admission of a Person as an additional Member; and
 - (h) Any act that would make it impossible to carry on the ordinary business of the Company.

All Company cash shall be deposited in a bank account selected by the Managing Member and all disbursements of Company cash shall be approved in advance by those Persons designated by the [board of directors of the] Managing Member.

[The Members hereby approve and consent to the Company's borrowing pursuant to the Acquisition Loan and to the Company's acquisition of the Asset pursuant to the Acquisition Agreement.]

- 6.2 Liability of Members. No Member shall be liable as such for the liabilities of the Company.
- 6.3 Indemnification. A Member shall indemnify the Company for any costs or damages incurred by the Company as a result of any unauthorized action by such Member.
- 6.4 Representations, Warranties and Covenants. Each Member, and in the case of a trust or other Organization, the person(s) executing the Company Agreement on behalf of the entity, hereby represents and warrants to the Company and each other Member that: (a) if that Tember is a trust or other Organization, it has power to enter into the Company Agreement and

to perform its obligations hereunder and that the person(s) executing the Company Agreement on behalf of the entity has the power to do so; and (b) the Member is acquiring its interest in the Company for the Member's own account as an investment and without an intent to distribute the interest. The Members acknowledge that their interests in the Company have not been registered under the Securities Act or any state securities laws and may not be resold or transferred without appropriate registration or the availability of an exemption from such requirements.

6.5 Conflicts of Interest.

- (a) A Member, including the Managing Member, shall be entitled to enter into transactions that may be considered to be competitive with, or a business opportunity that may be beneficial to, the Company or its Affiliates, it being expressly understood that Members may enter into transactions that are similar to the transactions into which the Company or its Affiliates may enter. Notwithstanding the foregoing, Members shall account to the Company and hold as trustee for it any Property, Profit or benefit derived by the Member, without the consent of all of the other Members, in the conduct and winding up of the Company business or from a use or appropriation by the Member of Company Property including information developed exclusively for the Company and opportunities expressly offered to the Company.
- (b) A Member, including the Managing Member, does not violate a duty or obligation to the Company merely because the Member's conduct furthers the Member's own interest. A Member may lend money to and transact other business with the Company. The rights and obligations of a Member who lends money to or transacts business with the Company are the same as those of a Person who is not a Member, subject to other applicable law. No transaction with the Company shall be voidable solely because a Member has a direct or indirect interest in the transaction if the transaction is fair to the Company.

ARTICLE VII MANAGING MEMBER

- 7.1 Managing Member. Except as otherwise provided in the Company Agreement, the management of the Company and all decisions concerning the business affairs of the Company shall be made by the Managing Member. The Managing Member shall be
- 7.2 Term of Office as Managing Member. The Managing Member shall serve until the Dissociation of such Managing Member or any removal of such Managing Member pursuant to Section 7.7.
- 7.3 Authority of Managing Member to Bind the Company. Only the Managing Member and authorized agents of the Company shall have the authority to bind the Company. Subject to Section 6.1, the Managing Member has the power, on behalf of the Company, to do all things necessary or convenient to carry out the business and affairs of the Company (as described in Article III), including, without limitation:

- (a) To acquire, hold, sell, transfer, assign, lease or otherwise deal with [the Asset or other] Property that may be acquired by the Company, and to transfer [the Asset or other] Property to any other Organization that is (i) wholly-owned by the Company or is owned by the Members in the same proportions as their Sharing Ratios, (ii) a subsidiary limited liability company (or partnership) in which the Company is the sole non-managing member (or sole limited partner) and the Managing Member is the sole managing member (or sole general partner) or (iii) a nominee or agent of the Company, in such manner as the Managing Member may deem appropriate to protect the Company and the Members from liability (including environmental liability) and to minimize the tax burden of the Members;
- (b) To institute, prosecute and defend any Proceeding in the Company's name;
- (c) To conduct the Company's business, establish Company offices and exercise the powers of the Company;
- (d) Subject to Section 7.11, to employ, contract and deal with, from time to time, Persons, including any Member or Affiliate of any Member, in connection with the management and operation of the Company's business, including without limitation, suppliers, customers, tradespeople, brokers, accountants and attorneys, on such terms as the Managing Member shall determine;
- (e) To purchase liability and other insurance to protect the Company's business and Property;
 - (f) To establish reserve funds of the Company to provide for future requirements for operations, contingencies or any other purpose that the Managing Member deems necessary or appropriate;
 - (g) To make such elections under the Code and other relevant tax laws as to the treatment of items of Company income, gain, loss, deduction and credit, and as to all other relevant matters as the Managing Member deems necessary or appropriate, including without limitation, elections referred to in section 754 of the Code (subject to Section 9.6), the determination of which items of cash outlay shall be capitalized or treated as current expenses, and the selection of the method of accounting and bookkeeping procedures to be used by the Company;
 - (h) To pay as a Company-expense any and all costs or expenses associated with the formation, development, organization and operation of the Company;
 - (i) To deposit, withdraw, invest, pay, retain and distribute the Company's funds in a manner consistent with the provisions of this Company Agreement; and
 - (j) To execute, acknowledge and deliver any and all instruments to effectuate the foregoing.

- 7.4 Actions of the Managing Member. The Managing Member has the power to bind the Company as provided in this Article VII. No Person dealing with the Company shall have any obligation to inquire into the power or authority of the Managing Member acting on behalf of the Company.
- 7.5 Indemnification. The Company shall indemnify the Managing Member and its agents for all costs, losses, liabilities and damages paid or incurred in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the State of New York.
- Managing Member's Standard of Care. The Managing Member's standard of 7.6 care in the discharge of the Managing Member's duties to the Company and the other Members is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, fraud or a knowing violation of law. In discharging its duties, the Managing Member shall be fully protected in relying in good faith upon the records required to be maintained under Article IV and upon such information, opinions, reports or statements by any Person as to matters the Managing Member reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, Profits or Losses of the Company or any other facts pertinent to the existence and amount of assets from which Distributions to Members might properly be paid. The Company shall indemnify and save harmless the Managing Member against any loss, damage or expense (including attorneys' fees) incurred by the Managing Member as a result of any act performed or omitted on behalf of the Company or in furtherance of the Company's interests without, however, relieving the Managing Member of liability for gross negligence, reckless conduct, intentional misconduct, fraud or a knowing violation of law. The satisfaction of any indemnification and any saving harmless shall be from and limited to Company Property and the other Members shall not have any personal liability on account thereof.
- 7.7 Resignation; Removal of Managing Member. The Managing Member shall not have a right to resign and may not be removed by the Members for any reason other than a breach of the Managing Member's standard of care, as set forth in Section 7.6.
- 7.8 Other Activities. The Managing Member shall not be required to devote its full time to the management of the Company business, but only so much of its time as the Managing Member deems necessary or appropriate for the proper management of such business. The Managing Member, and any of its Affiliates, may engage or possess an interest, independently or with others, in other businesses or ventures of every nature and description including without limitation the acquisition, ownership, management and operation of other real estate, and the operation and management of other Organizations for the acquisition, ownership, management and operation of other properties[, including those located near the Asset,] in competition with the Company or otherwise, and neither the Company nor any Member shall have any rights in or to such ventures or the income or profits derived therefrom.
- 7.9 Distributions. Each Member shall look solely to the assets of the Company for all Distributions and a share of Profits or Losses and shall have no recourse therefor (upon dissolution or otherwise) against the Managing Member or the other Members. No Member

shall have any right to demand or receive Property other than money upon dissolution and termination of the Company.

- 7.10 Expenses. The Company shall pay directly or reimburse the Managing Member for certain expenses of the Company incurred by the Managing Member in the management of the Company's business. Such expenses may include but are not limited to: (a) costs of borrowed money and taxes applicable to the Company; (b) fees and expenses paid to suppliers, tradespeople, brokers, consultants and other agents; (c) costs of insurance as required in connection with the conduct of the business of the Company; and (d) expenses incurred by the Company for tax return preparation.
- 7.11 Affiliates; Fees. The Managing Member is specifically authorized to employ, contract and deal with, from time to time, any member or Affiliate of any Member, and in connection therewith to pay such Person's fees, prices or other compensation; provided that such employment, contracts and dealings are necessary or appropriate for the Company's purposes, and the fees, prices or other compensation paid by the Company therefor is, in the judgment of the Managing Member, reasonable and typical or competitive with the fees, prices or other compensation customarily paid for similar Property or services.

Nothing herein contained shall be construed as a guaranty by the Managing Member of the performance by any Affiliate, designee or nominee of its obligations under any contract between any such Affiliate, designee or nominee and the Company.

ARTICLE VIII CONTRIBUTIONS AND CAPITAL ACCOUNTS

- 8.1 Initial Capital Contributions. Each Member shall make the Initial Capital Contribution described for that Member on Exhibit A and shall perform that Member's Commitment. No Member shall have the right to withdraw or be repaid any Capital Contribution except as provided in the Company Agreement.
- 8.2 Additional Capital Contributions. In the event the Managing Member determines that the Company does not have sufficient operating revenues or other available funds to pay any amount which the Managing Member determines to be required for any Company purpose, the Managing Member shall, if reasonable under the circumstances, attempt to obtain financing in the amount required; provided, however, that the Managing Member shall not obtain such financing if it would cause a default under any Company obligation. In the event that such financing cannot be obtained within a reasonable time and upon terms and conditions approved by the Managing Member, the Managing Member may, upon 15 days notice to the Members, call for an Additional Capital Contribution from the Members in the required amount. Such Additional Capital Contributions shall thereupon be made by the Members in proportion to their respective Sharing Ratios.
- 8.3 Enforcement of Commitments. In the event any Member (a "Delinquent Member") fails to perform the Delinquent Member's Commitment, the Managing Member shall give the Delinquent Member a notice of such failure. If the Delinquent Member fails to perform the Commitment (including the payment of any costs associated with the failure and interest at

the Default Interest Rate) within ten Business Days of the giving of such notice, the Managing Member may take such action as it deems appropriate, including but not limited to:

- (a) Enforcing the Commitment in the court of appropriate jurisdiction in the state in which the Principal Office is located or the state of the Delinquent Member's address as reflected in the Company Agreement; provided, however, that a Member shall have no personal liability for any such Additional Capital Contribution and, in any proceeding to enforce the obligation of a Member to make all or part of any such Additional Capital Contribution, the Managing Member shall have recourse solely to the Delinquent Member's interest in the Company. Each Member expressly agrees to the jurisdiction of such courts but only for purposes of such enforcement.
- (b) Selling the Delinquent Member's Membership Interest, including a sale to another Member or to another Person.
- (c) Allowing Members, except the Delinquent Member, to make Additional Contributions and adjusting the Sharing Ratios and Membership Interests of the Members in proportion to the new Capital Contribution levels.
- (d) Reducing the Delinquent Member's Membership Interest and Sharing Ratio.
- (e) Issuing new Membership Interests to Members who make Additional Contributions in place of the Delinquent Member; provided that such Membership Interests may be entitled to a priority return and such other rights as shall be determined by the Managing Member.
- 8.4 Capital Account. A separate capital account shall be maintained for each Member throughout the term of the Company in accordance with the rules of section 1.704-1(b)(2)(iv) of the Regulations as in effect from time to time, and, to the extent not inconsistent therewith, to which the following provisions apply:
 - (a) Each Member's Capital Account shall be credited with (i) such Member's Capital Contribution; and (ii) such Member's share of Profits and items of income and gain that are specially allocated to such Member pursuant to Article IX (other than any income or gain allocated to such Member pursuant to Section 9.4(h) in accordance with section 704(c) of the Code.
 - (b) Each Member's Capital Account shall be debited with: (i) the amount of money distributed to such Member by the Company (including liabilities of such Member assumed by the Company as provided in section 1.704-1(b)(2)(iv)(c) of the Regulations) other than amounts which are in repayment of debt obligations of the Company to such Member; (ii) the Gross Asset Value of Property distributed to such Member (net of liabilities secured by such distributed Property that such Member is considered to assume or take subject to under section 752 of the Code); and (iii) such Member's share of Losses and items of loss and deduction that are specially allocated to such Member pursuant to Article IX (other than any deduction or loss allocated to such Member pursuant to Section 9.4(h) in accordance with section 704(c) of the Code).

- (c) All such contributions, allocations and Distributions shall be credited or charged, as the case may be, to the appropriate Capital Accounts of the respective Members to whom they apply, as of the time the contributions, allocations or Distributions are made.
- (d) The Capital Account of a transferee Member shall include the appropriate portion of the Capital Account of the Member from whom the transferee Member's interest was obtained.
- (e) In determining the amount of any liability, there shall be taken into account section 752(c) of the Code and any other applicable provisions of the Code and Regulations.

The foregoing provisions and the other provisions of this Company Agreement relating to the maintenance of Capital Accounts are intended to comply with section 1.704-1(b) of the Regulations, and shall be interpreted and applied in a manner consistent with such Regulations. Consistent with such intention, the value of any Property (other than cash) (i) contributed to the Company by a Member, (ii) distributed to a Member from the Company or (iii) owned by the Company and subject to a revaluation upon the occurrence of certain events shall be the Fair Market Value of such Property (net of liabilities secured by such Property that the Company or such Member, as the case may be, is considered to assume or take subject to under section 752 of the Code) on the date of contribution, Distribution or revaluation, as applicable.

- 8.5 No Obligation to Restore Deficit Balance. No Member shall be required to restore any deficit balance in its Capital Account.
- 8.6 Withdrawal; Successors. A Member shall not be entitled to withdraw any part of its Capital Account or to receive any Distribution from the Company, except as specifically provided in the Company Agreement, and no Member shall be entitled to make any capital contribution to the Company other than such Member's Commitment.
- 8.7 Interest. Except as otherwise provided in this Company Agreement, no Member shall be entitled to interest or other return on such Member's Capital Contribution or on any Profits retained by the Company.
- 8.8 Investment of Capital Contributions and Company Cash. The Capital Contributions of the Members and any cash held by the Company from time to time shall be invested, until such time as such funds shall be used for other Company purposes, by the Managing Member in demand, money market or time deposits, obligations, securities, investments or other instruments constituting cash equivalents. Such investments shall be made by the Managing Member for the benefit of the Company.

8.9 Repayment of Capital Contribution.

(a) The Managing Member shall have no personal liability for the repayment of any Capital Contributions of any Member, and no Member shall have liability for the repayment of any Capital Contributions of any other Member. The repayment of any

Capital Contribution shall be made only to the extent of available Company assets in accordance with the terms of this Company Agreement.

- (b) Except as otherwise provided in this Company Agreement, no Member shall have priority over any other Member as to the return of its Capital Contribution or as to Distributions of cash made by the Company.
- (c) Except as otherwise provided in this Company Agreement, a Member shall not be entitled to (i) demand or receive Property other than cash in return for its Capital Contribution or (ii) receive any funds or Property of the Company.

ARTICLE IX ALLOCATIONS AND DISTRIBUTIONS

- 9.1 Profits and Losses. Profits and Losses, and each item of Company income, gain, loss, deduction, credit and tax preference with respect thereto, for each Fiscal Year (or shorter period in respect of which such items are to be allocated) shall be allocated among the Members as provided in this Article IX.
- 9.2 **Profits.** After giving effect to the special allocations set forth in Sections 9.4 and 9.5, Profits for any Fiscal Year shall be allocated in the following order of priority:
 - (a) First, to the Members, if any, who received any allocation of Losses under Section 9.3(c), in proportion to (and to the extent of) the excess, if any, of (i) the cumulative Losses allocated to such Members pursuant to Section 9.3(c) for all prior Fiscal Years, over (ii) the cumulative Profits allocated to such Members pursuant to this Section 9.2(a) for all prior Fiscal Years;
 - (b) Second, to the Members, in proportion to (and to the extent of) the excess, if any, of (i) the cumulative Losses allocated to each Member pursuant to Section 9.3(a) hereof for all prior Fiscal Years, over (ii) the cumulative Profits allocated to each Member pursuant to this Section 9.2(b) for all prior Fiscal Years; and
 - (c) Third, the balance of the Profits remaining to the Members in accordance with their Sharing Ratios.
- 9.3 Losses. After giving effect to the special allocations set forth in Sections 9.4 and 9.5, Losses shall be allocated as set forth in Section 9.3(a), subject to the limitation in Section 9.3(b) below and, if applicable, as provided in Section 9.3(c).
 - (a) Losses for any Fiscal Year shall be allocated in the following order of priority:
 - (i) First, to the Members in proportion to and to the extent of the excess, if any, of (A) the cumulative Profits allocated to each such Member pursuant to Section 9.2(c) hereof for all prior Fiscal Years, over (B) the cumulative Losses allocated to such Member pursuant to this Section 9.3(a)(i) for all prior Fiscal Years; and

- (ii) The balance, if any, among the Members in proportion to their respective Sharing Ratios.
- (b) (i) The Losses allocated according to Section 9.3(a) shall not exceed the maximum amount of Losses that may be allocated to such Member without causing such Member to have an Adjusted Capital Account Deficit.
 - (ii) If some, but not all of the Members would have Adjusted Capital Account Deficits as a consequence of the allocations of Losses pursuant to Section 9.3(a), the limitation set forth in this Section 9.3(b) shall be applied by allocating Losses pursuant to this Section 9.3(b)(ii) only to those Members (allocated pro rata if more than one), who would not have an Adjusted Capital Account Deficit as a consequence of receiving such an allocation of Losses.
 - (iii) If no other Member may receive an additional allocation of Losses pursuant to Section 9.3(b)(ii), such additional Losses not allocated shall be allocated solely to those Members who bear the economic risk of such Losses within the meaning of section 704(b) of the Code.
- (c) In the event that there are any remaining Losses in excess of the limitations set forth in Section 9.3(b), such remaining losses shall be allocated among the Members in proportion to their respective Sharing Ratios.

9.4 Special Allocations. The following special allocations shall be made:

- (a) Minimum Gain Chargeback. Except as otherwise provided in section 1.704-2(f) of the Regulations, notwithstanding any other provision of this Article IX, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Partnership Minimum Gain, determined in accordance with section 1.704-2(g) of the Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. This Section 9.4(a) is intended to comply with the minimum gain chargeback requirement in section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.
- (b) Partner Minimum Gain Chargeback. Except as otherwise provided in section 1.704-2(i)(4) of the Regulations, notwithstanding any other provision of this Article IX, if there is a net decrease in Partner Nonrecourse Debt Minimum Gain attributable to a Partner Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Partner Nonrecourse Debt Minimum Gain as of the beginning of the Fiscal Year attributable to such Partner Nonrecourse Debt, determined in accordance with section 1.704-2(i)(5) of the Regulations, shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Partner Nonrecourse Debt

Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with section 1.704-2(i)(4) of the Regulations. Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with sections 1.704-2(i)(4) and 1.704-2(j)(2) of the Regulations. This Section 9.4(b) is intended to comply with the minimum gain chargeback requirement in section 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

- (c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or Distributions described in section 1.704-1(b)(2)(ii)(d)(4), section 1.704-1(b)(2)(ii)(d)(5) or section 1.704-1(b)(2)(ii)(d)(6) of the Regulations which increase a Member's Adjusted Capital Account Deficit, items of Company income and gain shall be specially allocated to the Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible, provided that an allocation pursuant to this Section 9.4(c) shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article IX have been tentatively made as if this Section 9.4(c) were not in this Company Agreement.
- (d) Gross Income Allocation. In the event any Member has an Adjusted Capital Account Deficit, such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 9.4(d) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article IX have been made as if Section 9.4(c) and this Section 9.4(d) were not in this Company Agreement.
- (e) <u>Nonrecourse Deductions</u>. Nonrecourse Deductions for any Fiscal Year shall be specially allocated among the Members in proportion to their Sharing Ratios.
- (f) <u>Partner Nonrecourse Deductions</u>. Any Partner Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with section 1.704-2(i)(1) of the Regulations.
- (g) <u>Certain Book-ups</u>. To the extent an adjustment to (i) the adjusted tax basis of any Company asset pursuant to section 734(b) or 743(b) of the Code is required to be taken into account in determining Capital Accounts or (ii) pursuant to section 1.704-1(b)(2)(iv)(f) of the Regulations, the Gross Asset Value of any Company asset is permitted to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated, as provided in section 1.704-1(b)(2)(iv)(m) or 1.704-1(b)(2)(iv)(g) of the Regulations, respectively, as an item of Profit (if the adjustment increases such basis or Gross Asset Value of the asset) or Loss (if the adjustment decreases such basis or Gross Asset Value), and such Profit or Loss shall be specially allocated to the Members in a manner consistent with the manner in

which their Capital Accounts are required to be adjusted pursuant to such section of the Regulations.

(h) Mandatory Allocations under Section 704(c) of the Code.

- In the event section 704(c) of the Code or the principles of section (i) 704(c) of the Code applicable under section 1.704-1(b)(2)(iv) of the Regulations require allocations of income, gain, deduction or loss in a manner different than that set forth above, the provisions of section 704(c) of the Code and the Regulations thereunder shall control such allocations among the Members. Any item of Company income, gain, loss and deduction with respect to any Property (other than cash) that has been contributed by a Member to the capital of the Company and which is required or permitted to be allocated to such Member for income tax purposes under section 704(c) of the Code so as to take into account the variation between the tax basis of such Property and its Fair Market Value at the time of its contribution shall be allocated solely for income tax purposes in the manner so required or permitted under section 704(c) of the Code using the "traditional method" described in section 1.704-3(b) of the Regulations, provided, however, that any other method allowable under applicable Regulations may be used for any contribution of Property as to which there is agreement between the contributing Member and the Managing Member.
- (ii) In the event the Gross Asset Value of any Company asset is adjusted pursuant to Section 9.4(g) in accordance with section 1.704-1(b)(2)(iv)(f) of the Regulations, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in a manner consistent with Section 9.4(h)(i).
- (iii) Except as provided in Sections 9.4(h)(i) and (ii), for United States federal, state and local income tax purposes, the income, gains, losses and deductions of the Company shall, for each taxable period, be allocated among the Members in the same manner and in the same proportion that such items have been allocated among the Members' respective Capital Accounts.
- 9.5 Curative Allocations. The allocations set forth in Sections 9.3(b) and 9.4(a) through (f) (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction. Therefore, notwithstanding any other provision of this Article IX (other than the Regulatory Allocations), the Managing Member shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Company Agreement and all Company items were allocated pursuant to Sections 9.2 and 9.3(a). It exercising its discretion under this Section 9.5, the Managing Member (i) shall take into

account future Regulatory Allocations under Sections 9.4(a) and 9.4(b) that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 9.4(e) and 9.4(f).

9.6 Section 754 Election. Upon a transfer by a Member of an interest in the Company, which transfer is permitted by the terms of this Company Agreement, or upon the death of a Member or the Distribution of any Company Property to one or more Members, the Managing Member, upon the request of one or more of the transferees or distributees, shall cause the Company to file an election on behalf of the Company, adjusted for federal income tax purposes in the manner prescribed in section 734 or 743 of the Code, as the case may be. The cost of preparing such election and any additional accounting expenses of the Company occasioned by such election, shall be borne by such transferees or distributees.

9.7 Other Allocation Rules.

- (a) For purposes of determining the Profits, Losses or any other item allocable to any period (including allocations to take into account any changes in any Member's Sharing Ratio during a Fiscal Year and any transfer of any interest in the Company), Profits, Losses and any such other item shall be determined on a daily, monthly or other basis, as determined by the Managing Member using any permissible method under section 706 of the Code and the Regulations thereunder.
- (b) The Members are aware of the income tax consequences of the allocations made by this Article IX and hereby agree to be bound by the provisions of this Article IX in reporting their shares of Company income and loss for income tax purposes.
- (c) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of section 1.752-3(a)(3) of the Regulations, the Members' interests in Company Profits are in proportion to their Sharing Ratios.
- (d) To the extent permitted by section 1.704-2(h)(3) of the Regulations, the Managing Member shall endeavor to treat Distributions as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt only to the extent that such Distributions would not cause or increase an Adjusted Capital Account Deficit for any Member.
- (e) Except as otherwise provided in this Article IX, an allocation of Company Profits or Losses to a Member shall be treated as an allocation to such Member of the same share of each item of income, gain, loss and deduction taken into account in computing such Profits or Losses.
- (f) For purposes of determining the character (as ordinary income or capital gain) of any Profits allocated to the Members pursuant to this Article IX, such portion of Profits that is treated as ordinary income attributable to the recapture of depreciation shall, to the extent possible, be allocated among the Members in the proportion which (i) the amount of depreciation previously allocated to each Member bears to (ii) the total of such depreciation allocated to all Members. This Section 9.7(f) shall not alter the amount

of allocations among the Members pursuant to this Article IX, but merely the character of income so allocated.

(g) Except for arrangements expressly described in this Company Agreement, no Member shall enter into (or permit any Person related to the Member to enter into) any arrangement with respect to any liability of the Company that would result in such Member (or a person related to such Member under section 1.752-4(b) of the Regulations) bearing the economic risk of loss (within the meaning of section 1.752-2 of the Regulations) with respect to such liability unless such arrangement has been approved by all Members. To the extent a Member is permitted to guarantee the repayment of any Company indebtedness under this Company Agreement, each of the other Members shall be afforded the opportunity to guarantee such Member's pro rata share of such indebtedness, determined in accordance with the Members' respective Sharing Ratios.

9.8 Distribution of Net Cash Flow.

- (a) Amounts and Timing. Subject to the provisions of Section 13.3, Net Cash Flow for each Fiscal Year of the Company, to the extent not distributed previously under this Section 9.8, shall be distributed to the Members, at such time or times as may be designated by the Managing Member, in proportion to the amount of Profits allocated to each Member.
- (b) Amounts Withheld. All amounts required to be withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution or allocation to the Company or the Members shall be treated as amounts distributed to the Members pursuant to this Section 9.8 for all purposes under this Company Agreement. The Managing Member is authorized to withhold from Distributions, or with respect to allocations, to the Members and to pay over to any federal, state or local government any amounts required to be so withheld pursuant to the Code or any provisions of any other federal, state or local law, and shall allocate any such amounts to the Members with respect to which such amount was withheld.
 - Member a quarterly draw, not to exceed the amount reasonably necessary to provide for payment by the Members of any federal, state and local estimated taxes with respect to Profits allocated to the Members pursuant to this Article IX, and each such draw, if any, shall be treated as a loan from the Company to each Member receiving such draw and shall be deemed repaid by reducing the amount of each subsequent Distribution to the Member receiving such draw pursuant to this Section 9.8 by the lesser of (i) the entire amount of any unrepaid draws pursuant to this Section 9.8(c).

9.9 Allocation of Gain or Loss upon Winding Up.

(a) Gain Realized on Sale of Company Property. Upon the winding up of the Company, as provided in Article XIII, net gain realized on the sale or sales of Company

Property (each such sale a "Winding Up Sale") shall be allocated among the Members in accordance with Section 9.2.

- (b) <u>Loss Realized on Sale of Company Property</u>. Net loss realized on any Winding Up Sale shall be allocated among the Members in accordance with Section 9.3.
- (c) <u>Distributions in Kind</u>. In the event that, upon a winding up of the Company, pursuant to Section 13.3, either (i) any Company Property is required to be distributed in kind, or (ii) the Managing Member elects to distribute any Company Property in kind, the book value of such Property shall be adjusted to its Fair Market Value as of the date of such Distribution, and the amount of such adjustments shall be allocated to the Members' capital accounts in the manner and priorities provided in Sections 9.9(a) and (b) as though such Property had been sold at its Fair Market Value and gain or loss had been realized.

ARTICLE X TAXES

Tax Matters Partner. Managing Member shall be the Tax Matters Partner of the Company pursuant to section 6231(a)(7) of the Code. If the Managing Member shall cease to act as the Tax Matters Partner for any reason, the Members shall select another Member (subject to such Member's approval) to be the Tax Matters Partner. The Company has designated another Member as Tax Matters Partner and such Member has given its consent in writing to its appointment as Tax Matters Partner. The Tax Matters Partner shall receive no additional compensation from the Company for its services in that capacity, but all expenses incurred by the Tax Matters Partner in such capacity shall be borne by the Company. The Tax Matters Partner is authorized to employ such accountants, attorneys and agents as it, in its sole discretion, determines is necessary to or useful in the performance of its duties. The Tax Matters Partner is authorized to represent the Company before the Internal Revenue Service and any other governmental agency with jurisdiction, and to sign such consents and to enter into settlements and other agreements with such agencies as the Tax Matters Partner or its duly authorized officer deems necessary or advisable. Each Member shall give prompt notice to each other Member of any and all notices it receives from the Internal Revenue Service concerning the Company, including any notice of a 30 day appeal letter and any notice of deficiency in tax concerning the Company's federal income tax returns. The Tax Matters Partner shall give each Member periodic status reports regarding any negotiations between the Internal Revenue Service and the Company. The Tax Matters Partner shall serve in a similar capacity with respect to any similar tax related or other election provided by state or local laws.

ARTICLE XI TRANSFER OF MEMBERSHIP INTEREST

11.1 Compliance with Securities Laws. No Membership Interest has been registered under the Securities Act or under any applicable state securities laws. A Member may not transfer (a transfer, for purposes of this Company Agreement, shall be deemed to include, but not be limited to, any sale, transfer, assignment, pledge, creation of a security interest or other disposition) all or any part of such Member's Membership Interest, except upon compliance with

the applicable federal and state securities laws. The Managing Member shall have no obligation to register any Member's Membership Interest under the Securities Act or under any applicable state securities laws, or to make any exemption therefrom available to any Member.

- 11.2 Transfer of Economic Interest. The Economic Interest of any Member may not be transferred in whole or in part unless the following terms and conditions have been satisfied:
 - (a) The transferor shall have: (i) assumed all costs incurred by the Company in connection with the transfer, (ii) furnished the Company with a written opinion of counsel, satisfactory in form and substance to counsel for the Company, that such transfer complies with applicable federal and state securities laws and the Company Agreement and will not result in the Company being treated as a publicly traded partnership for purposes of section 7704 of the Code and (iii) complied with such other conditions as the Managing Member may reasonably require from time to time; and
 - (b) The transferee shall have assumed the obligations, if any, of the transferor to the Company, including the obligation to fulfill the pro rata portion of the transferor's then existing or subsequently arising Commitment related to the transferred Economic Interest or portion thereof.

Transfers of Economic Interests will be recognized by the Company as effective only upon the close of business on the last day of the calendar month following satisfaction of the above conditions. Any transfer in contravention of this Article XI and any transfer which if made would cause a termination of the Company for federal income tax purposes under section 708(b) of the Code shall be void when made and ineffectual and shall not bind the Company or the other Members.

- Interest who is not admitted as a Substitute Member shall be entitled only to receive that share of Profits, Losses and Distributions, and the return of Capital Contribution and Distributions upon a dissolution of the Company, to which the transferor would otherwise be entitled with respect to the interest transferred, and shall not have any Management Rights of a Member of the Company under the NY LLC Law or this Company Agreement including, without limitation, the right to obtain any information on account of the Company's transactions, to inspect the Company's books or to vote with the Members on, or to grant or withhold consents or approvals to, any matter. The Company shall, if a transferee and transferor jointly advise the Company in writing of a transfer of the Economic Interest, furnish the transferee with pertinent tax information at the end of each Fiscal Year.
- 11.4 Transfer of Management Rights; Admission of Substitute Member. A Member may transfer Management Rights and give the transferee the right to become a Member only after the following terms and conditions have been satisfied:
 - (a) The transferee shall also be the transferee of all or part of the transferor's Economic Interest, or shall be the owner of an Economic Interest;

- (b) The Members holding at least a majority of the Membership Interests shall have consented in writing to the admission of the Substitute Member, which consent may be arbitrarily withheld by any such Member; and
- (c) The transferor and the transferee shall have complied with such other requirements as the non-transferring Members may reasonably impose, including the conditions that the transferee:
 - (i) Adopt and approve in writing all the terms and provisions of the Company Agreement then in effect; and
 - (ii) Pay such fees as the Managing Member may reasonably require to pay the costs of the Company in effecting such substitution.
- of a Member, all or part of such Member's Economic Interest is transferred to the surviving spouse or to a lineal descendent of such Member (a "Permitted Transferree"), pursuant to the last will and testament of, or inter vivos trust created by, such Member, or pursuant to the laws of descent and distribution applicable to such Member's estate, such Permitted Transferee shall be admitted as a Substitute Member upon satisfaction of the terms and conditions of Section 11.4(c), to the extent applicable.
- death, dissolution, adjudication of bankruptcy, insanity or incompetency of a Member, such Member's successors, executors, administrators or legal representatives shall have all the rights of a Member (except as provided by the last sentence of this Section 11.6) for the purpose of settling or managing such Member's estate, including such power as such Member possessed to substitute a successor as a transferee of such Member's interest in the Company and to join with such transferee in making the application to substitute such transferee as a Member. However, except as provided in Section 11.5, such successors, executors, administrators or legal representatives will not have the right to become a Substitute Member in the place of their predecessor in interest unless the other Members shall so consent as provided in Section 11.4(b) hereof.
- 11.7 Dispositions not in Compliance with this Article Void. Any attempted Disposition of a Membership Interest, or any part thereof, not in compliance with this Article shall be void when made and ineffectual and shall not bind the Company.

ARTICLE XII DISSOCIATION OF A MEMBER

- 12.1 Dissociation. A Person shall cease to be a Member upon the happening of any of the following events:
 - (a) The resignation or withdrawal of a Member;
 - (b) A Member becoming a Bankrupt Person;

- (c) In the case of a Member who is a natural person, the death of the Member or the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage the Member's personal estate;
- (d) In the case of a Member that is a trust or who is acting as a Member by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);
- (e) In the case of a Member that is a separate Organization other than a corporation, the dissolution and commencement of winding up of the separate Organization;
- (f) In the case of a Member that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or
- (g) In the case of a Member that is an estate, the distribution by the fiduciary of the estate's entire interest in the Company.
- 12.2 Rights of Dissociating Member. In the event any Member dissociates prior to the expiration of the term of this Company Agreement:
 - (a) If the Dissociation causes a dissolution and winding up of the Company under Article XIII, the Member shall be entitled to participate in the winding up of the Company to the same extent as any other Member except that, if such Dissociation results from a withdrawal of a Member in violation of this Company Agreement, any Distributions to which such Member would have been entitled shall be reduced by that portion of the damages, if any, sustained by the Company as a result of the Dissolution Event and winding up that is chargeable to the Capital Accounts of the other Members; or
 - (b) If the Dissociation does not cause a dissolution and winding up of the Company under Article XIII, the Member shall be entitled to an amount equal to the value of the Member's Membership Interest in the Company, to be paid over a period not to exceed five years together with interest at the minimum rate necessary to avoid the imputation of interest under the Code. The value of the Member's Membership Interest shall include the amount of any Distributions to which the Member is entitled under the Company Agreement and the value of the Member's Membership Interest as of the date of Dissociation as determined by independent appraisal, reduced by an allocable portion of any damages sustained by the Company as a result of the Member's Dissociation.

ARTICLE XIII DISSOLUTION AND WINDING UP

- 13.1 Dissolution. The Company shall be dissolved without further action by the Members and its affairs wound up upon the first to occur of any of the following events (each of which shall constitute a Dissolution Event):
 - (a) The expiration of the term of the Company Agreement, unless the Company is continued with the consent of all of the Members;

- (b) The written consent of the Members holding at least two-thirds of the Membership Interests; and
 - [(c) At any time when there is but one Member.]
- 13.2 Effect of Dissolution. Upon dissolution, the Company shall not be terminated and shall continue until the winding up of the affairs of the Company is completed and articles of dissolution have been filed with the Department of State of New York.
- 13.3 Distribution of Assets on Dissolution. Upon the winding up of the Company, the Managing Member (or, if there is no Managing Member then remaining, such other Person(s) designated by the Members representing at least a majority of the Members' Membership Interests) shall take full account of the assets and liabilities of the Company, shall liquidate the assets (unless the Managing Member determines that a Distribution of any Company Property inkind would be more advantageous to the Members than the sale thereof) as promptly as is consistent with obtaining the Fair Market Value thereof, and shall apply and distribute the proceeds therefrom in the following order:
 - (a) First, to the payment of the debts and liabilities of the Company to creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of such debts and liabilities, and to the payment of necessary expenses of liquidation;
 - (b) Second, to the setting up of any reserves which the Managing Member may deem necessary or appropriate for any anticipated obligations or contingencies of the Company arising out of or in connection with the operation or business of the Company. Such reserves may be paid over by the Managing Member to an escrow agent or trustee selected by the Managing Member to be disbursed by such escrow agent or trustee in payment of any of the aforementioned obligations or contingencies and, if any balance remains at the expiration of such period as the Managing Member shall deem advisable, shall be distributed by such escrow agent or trustee in the manner hereinafter provided; and
 - (c) Then, to the Members in accordance with positive Capital Account balances taking into account all Capital Account adjustments for the Company's taxable year in which the liquidation occurs. Liquidation proceeds shall be paid within 60 days of the end of the Company's taxable year in which the liquidation occurs. Such Distributions shall be in cash or Property (which need not be distributed proportionately) or partly in both, as determined by the Managing Member.

If at the time of liquidation the Managing Member shall determine that an immediate sale of some or all Company Property would cause undue loss to the Members, the Managing Member may, in order to avoid such loss, defer liquidation.

13.4 Winding Up and Articles of Dissolution. The winding up of the Company shall be completed when all debts, liabilities and obligations of the Company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining Property of the Company has been distributed to the Members. Within 90 days following the

dissolution and commencement of the winding up of the Company, articles of dissolution shall be filed with the Department of State of New York. The articles of dissolution shall set forth the information required by the NY LLC Law.

ARTICLE XIV MISCELLANEOUS

- 14.1 Notices. Notices to the Managing Member shall be sent to the principal office of the Company. Notices to the other Members shall be sent to their addresses set forth on Exhibit A. Any Member may require notices to be sent to a different address by giving notice to the other Members in accordance with this Section 14.1. Any notice or other communication required or permitted hereunder shall be in writing, and shall be deemed to have been given with receipt confirmed if and when delivered personally, given by prepaid telegram or mailed first class, postage prepaid, delivered by courier, or sent by facsimile, to such Members at such address.
- 14.2 Meetings. A meeting of the Members may be called by the Managing Member at any time, and shall be called at the written request of the Members holding at least a majority of the Membership Interests. Written notice stating the place and time of the meeting, and the purpose thereof shall be given by the Managing Member to each Member at least ten days before the meeting.
- 14.3 Headings. All Article and Section headings in the Company Agreement are for convenience of reference only and are not intended to qualify the meaning of any Article or Section.
- 14.4 Entire Agreement. This Company Agreement constitutes the entire agreement among the parties and supersedes any prior agreement or understanding among them respecting the subject matter of this Company Agreement.
- 14.5 Binding Agreement. This Company Agreement shall be binding upon, and inure to the benefit of, the parties hereto, their successors, heirs, legatees, devisees, assigns, legal representatives, executors and administrators, except as otherwise provided herein.
- 14.6 Saving Clause. If any provision of this Company Agreement, or the application of such provision to any Person or circumstance, shall be held invalid, the remainder of this Company Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. If the operation of any provision of this Company Agreement would contravene the provisions of the NY LLC Law, such provision shall be void and ineffectual.
- 14.7 Counterparts. This Company Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on all the parties hereto, even though all parties are not signatories to the original or the same counterpart. Any counterpart of either the Company Agreement or the Articles of Organization shall for all purposes be deemed a fully executed instrument.

- 14.8 Governing Law. This Company Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to the principles of conflicts of laws.
- 14.9 No Partnership Intended for Nontax Purposes. The Members have formed the Company under the NY LLC Law, and expressly do not intend hereby to form a partnership under either the New York Uniform Partnership Law or the New York Uniform Limited Partnership Law. The Members do not intend to be partners one to another or partners as to any third party. To the extent any Member, by word or action, represents to another person that any Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Members who incur personal liability by reason of such wrongful representation.
- 14.10 No Rights of Creditors and Third Parties under Company Agreement. The Company Agreement is entered into among the Company and the Members for the exclusive benefit of the Company, its Members and their permitted successors and assignees. The Company Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or any third party shall have any rights under the Company Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.
- 14.11 Dispute Resolution. Whenever the Members shall have any dispute among themselves relating to the interpretation, construction or implementation of this Company Agreement or shall be deadlocked or shall otherwise be in dispute with respect to the relations among the Members or between the Members and the Company or any other matter related thereto, the Members shall resolve such dispute as follows:
 - (a) First, each Member involved in such dispute shall use its good faith efforts to negotiate a resolution thereof by engaging in discussions with the other Members so involved at reasonable times and places, by telephone or otherwise, during the 30 day period following notice by a Member to each of the other Members of its belief that there is a dispute which requires resolution in such manner;
 - (b) Second, if the Members are unable to resolve such dispute through good faith negotiations during the 30 day period provided in Section 14.11(a), the Members shall submit such dispute to an arbitration procedure that shall be selected by the Members involved in such dispute; and
 - (c) Third, if the Members are unable to resolve such dispute through the arbitration procedure selected by them, any Member involved in such dispute may bring an action or proceeding in any court having jurisdiction thereof; provided that (i) a Member may object to the venue of such action or proceeding or that such court does not have jurisdiction over such Member and (ii) each Member waives its right to trial by jury and its right to consequential, special and/or punitive damages.
- 14.12 General Interpretive Principles. For purposes of this Company Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) The terms defined in this Company Agreement include the plural as well as the singular;
- (b) Accounting terms not otherwise defined herein have the meanings given to them in the United States in accordance with generally accepted accounting principles;
- (c) References herein to "Sections," "paragraphs" and other subdivisions without reference to a document are to designated Sections, paragraphs and other subdivisions of this Company Agreement;
- (d) A reference to a paragraph without further reference to a Section is a reference to such paragraph as contained in the same Section in which the reference appears, and this rule shall also apply to other sub-divisions;
- (e) The words "herein," "hereof," "hereunder" and other words of similar import refer to this Company Agreement as a whole and not to any particular provision; and
- (f) The term "include" or "including" shall mean without limitation by reason of enumeration.

IN WITNESS WHEREOF, the parties hereto have executed this Company Agreement as of the Effective Date.

THE COMPANY	•	.//	
1. 1000.	130	///	
By:///WWW	5 000	· · ·	
Managing Men	nber		(0.7
		36	
By:			
Name:			
Title:			
MANACING ME	MRED.		
MANAGING ME	MBER:		
	EMBER:	¥(
Ву:	CMBER:	×	
By:Name:	EMBER:	¥	
Ву:	CMBER:		<u> </u>
By: Name: Title:	EMBER:	\$1 	
By:Name:	EMBER:		
By: Name: Title:	(e)	*	e
By: Name: Title:	(e)		- <u> </u>

EXHIBIT A

Name and Address of Me	ember	Initial Capital Contribution	Initial Mem Interest and Sharing	d Initial
Warren Be	le8	100 %	100	%
0				
Si .				OR.
			*	
		e		
02				
		•		K
				55
	6	2		2
	e ¹			· (C)
is a second of the second of t	=			g:
				MS

CONTRACT OF SALE - OFFICE, COMMERCIAL AND MULTI-FAMILY RESIDENTIAL PREMISES. This form was originally prepared by the Committee on Real Property Law of the Association of the Bar of the City of New York. This form may have been altered by the user and any such alterations may not be apparent. To view or download the original unaltered text of this form and an introduction to this form, visit the Real Estate Forms site at the Reports/Publications/ Forms link at www.nycbar.org.

Contract of Sale - Office, Commercial and Multi-Family Residential Premises

Between

458 East 99th Street LLC ("Seller")

and

Euro Woodworking Inc. ("Purchaser")

dated March 14, 2016

Premises:

Street Address:

485 East 99th Street Brooklyn, New York

City or Town: County:

Kings

State:

New York

Block/Lot

8131/56

Table of Contents

Section 1.	Sale of Premises and Acceptable Title	1
Section 2.	Purchase Price, Acceptable Funds, Existing Mortgages, Purchase Money Mortgage, Escrow of Downpayment and Foreign Persons	2
Section 3.	The Closing	
Section 4.	Representations and Warranties of Seller	8
Section 5.	"As Is" Condition, No Representations Not Expressly Set Out in Contract, Representations and Warranties of Purchaser	.13
Section 6.	Seller's Obligations as to Leases	.14
Section 7.	Responsibility for Violations	.17
Section 8.	Destruction, Damage or Condemnation	.18
Section 9.	Covenants of Seller	.20
Section 10.	Seller's Closing Obligations	.20
Section 11.	Purchaser's Closing Obligations	.23
Section 12.	Apportionments	25
Section 13.	Objections to Title, Failure of Seller or Purchaser to Perform and Vendee's Lien	26
Section 14.	Broker	28
Section 15.	Notices	29
Section 16.	Limitations on Survival of Representations, Warranties, Covenants and other Obligations	29
Section 17.	Due Diligence Period	29
Section 18.	Miscellaneous Provisions	30
	SCHEDULES	9
Schedule A.	DESCRIPTION OF PREMISES	A-1
Schedule B.	PERMITTED EXCEPTIONS	,B-1
Schedule C.	PURCHASE PRICE	.C-1
Schedule D.	MISCELLANEOUS	D-1
Schedule E.	RENT SCHEDULE	.E-1
Schedule F.	FORM OF ESTOPPEL LETTER	.F-1
Schedule G	INSURANCE POLICIES	G-1

Contract of Sale -- Office, Commercial and Multi-Family Residential Premises

CONTRACT OF SALE ("Contract") dated February _____, 2016 between Flatlands Christian Center Inc. ("Seller") and Clubhouse Studio NY LLC ("Purchaser").

Seller and Purchaser hereby covenant and agree as follows:

Section 1. Sale of Premises and Acceptable Title

- Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, at the price and upon the terms and conditions set forth in this contract: (a) the parcel of land more particularly described in Schedule A attached hereto ("Land"); (b) all buildings and improvements situated on the Land (collectively, "Building"); (c) all right, title and interest of Seller, if any, in and to the land lying in the bed of any street or highway in front of or adjoining the Land to the center line thereof and to any unpaid award for any taking by condemnation or any damage to the Land by reason of a change of grade of any street or highway; and (d) the appurtenances and all the estate and rights of Seller in and to the Land and Building (collectively, the "Premises"). For purposes of this contract, "appurtenances" shall include all right, title and interest of Seller, if any, in and to (i) streets, easements, rights-of-way and vehicle parking rights used in connection with the Premises; (ii) any strips or gores of land between the Land and abutting or adjacent properties; (iii) the leases, licenses and occupancy agreements for space in the Building, and all guarantees thereof, as shown on Schedule E attached hereto and any leases entered into by Seller between the date of this contract and the Closing (as hereinafter defined); (iv) the Service Contracts (as hereinafter defined); (v) plans, specifications, architectural and engineering drawings, prints, surveys, soil and substrata studies relating to the Premises in Seller's possession, whether or not stored, managed or contained on computer software or hardware; (vi) all operating manuals and books, data and records regarding the Premises and its component systems in Seller's possession; (vii) all licenses (except any liquor license), permits, certificates of occupancy and other approvals issued by any state, federal or local authority relating to the use, maintenance or operation of the Premises or the fixtures, machinery or equipment included in this sale to the extent that they may be transferred or assigned; (viii) all warranties or guaranties, if any, applicable to the Premises, to the extent such warranties or guaranties are assignable; (ix) all tradenames, trademarks, servicemarks, logos, copyrights and good will relating to or used in connection with the operation of the Premises and (x) air rights and development rights. This sale also includes all trade fixtures and all equipment, machinery, materials, supplies and other personal property attached or appurtenant to the Building or located at and used in the operation or maintenance of the Land or Building to the extent same are owned by Seller or any affiliate of Seller (the "Personal Property"). The street address of the Premises is set forth on Schedule D attached hereto.
- §1.02. Seller shall convey and Purchaser shall accept fee simple title to the Premises in accordance with the terms of this contract, subject only to: (a) the matters set forth in <u>Schedule B</u> attached hereto (collectively, "<u>Permitted Exceptions</u>"); and (b) such other matters as a reputable title insurer licensed to do business by the State of New

York and chosen by the Purchaser shall be willing to approve and insure in accordance with its standard form of title policy approved by the New York State Insurance Department, subject only to the matters provided for this contract

Section 2. Purchase Price, Acceptable Funds, Existing Mortgages, Purchase Money Mortgage, Escrow of Downpayment and Foreign Persons

- §2.01. Purchaser shall pay Seller the purchase price ("<u>Purchase Price</u>") set forth in <u>Schedule C</u> attached hereto, subject to the terms and conditions of this contract. Seller and Purchaser acknowledge that no portion of the Purchase Price is allocated to the Personal Property, if any, transferred pursuant to this contract.
- §2.02. Except for the Downpayment (hereinafter defined), all monies payable under this contract, unless otherwise specified in this contract, shall be paid by (a) certified checks of Purchaser or any person making a loan to Purchaser drawn on any bank or trust company having a banking office in the City of New York and which is a member of the New York Clearing House Association or (b) official bank checks drawn by any such banking institution, except that uncertified checks of Purchaser payable to the order of Seller up to the amount of \$2,500 shall be acceptable for sums payable to Seller at the Closing.
- §2.03. (a) If <u>Schedule C</u> provides for the acceptance of title by <u>Purchaser</u> subject to one or more existing mortgages (collectively, "<u>Existing Mortgage(s)</u>"), the amounts specified in <u>Schedule C</u> with reference thereto may be approximate and the following shall apply:
- (i) If at the Closing the aggregate principal amount of the Existing Mortgage(s), as reduced by payments required thereunder prior to the Closing, is less than the aggregate amount of the Existing Mortgage(s) as specified in Schedule C, the difference shall be added to the monies payable by Purchaser at the Closing, unless otherwise expressly provided herein.
- (ii) If any of the documents constituting the Existing Mortgage(s) or the note(s) secured thereby prohibits or restricts the conveyance of the Premises or any part thereof without the prior consent of the holder or holders thereof ("Mortgagee(s)") or confers upon the Mortgagee(s) the right to accelerate payment of the indebtedness or to change the terms of the Existing Mortgagee(s) if a conveyance is made without consent of the Mortgagee(s), Seller shall notify such Mortgagee(s) of the proposed conveyance to Purchaser within 10 days after execution and delivery of this contract, requesting the consent of such Mortgagee(s) thereto. Seller and Purchaser shall furnish the Mortgagee(s) with such information as may reasonably be required in connection with such request and shall otherwise cooperate with such Mortgagee(s) and with each other in an effort expeditiously to procure such consent, but neither shall be obligated to make any payment to obtain such consent. If such Mortgagee(s) shall fail or refuse to grant such consent in writing on or before the closing date specified in Schedule D or shall require as a condition of the granting of such consent (i) that additional consideration be paid to the Mortgagee(s) and neither Seller nor Purchaser is willing to pay such additional

consideration or (ii) that the terms of the Existing Mortgage(s) be changed and Purchaser is unwilling to accept such change(s), then unless Seller and Purchaser mutually agree to extend such date or otherwise modify the terms of this contract, either Purchaser or Seller may terminate this contract by notice given to the other party within five business days after notice of such Mortgagee's decision. If either Purchaser or Seller terminates this contract pursuant to this §2.03(b), such termination shall be subject to the provisions of §13.07.

- §2.04. Even if Schedule C does not provide for the acceptance of title by Purchaser subject to one or more Existing Mortgages, Seller shall, upon request of Purchaser, use commercially reasonable efforts to cause the holder(s) of the existing mortgage(s) encumbering the Premises to assign it (them) to Purchaser's lender at Closing, and to deliver to Purchaser's lender the original mortgage(s) and the original promissory note(s) secured thereby and Purchaser shall pay any and all costs in connection therewith. The amount paid by Purchaser (or its lender) to the holder(s) of such existing mortgage(s) as payment for the assignment of such mortgage(s) shall be deemed a payment on account of the Purchase Price in the connection that the connection therewith the purchase Price in the connection that the connection therewith the purchase Price in the connection that the connection therewith the connection the connection therewith the connection that the connection therewith the connection therewith the connection that the connection therewith the connection therewith the connection the connection therewith the connection the connection the connection the connection the connection the connection therewith the connection the connection therewith the connection
- §2.05. (a) If <u>Schedule C</u> provides for payment of a portion of the Purchase Price by execution and delivery to Seller of a note secured by a purchase money mortgage ("<u>Purchase Money Mortgage</u>"), such note and Purchase Money Mortgage shall be substantially in the forms attached hereto as <u>Schedule K</u>. At the Closing, Purchaser shall pay the mortgage recording tax and recording fees therefor, the filing fees for any financing statements delivered in connection therewith and the fees of Seller's attorney for preparing the note and Purchase Money Mortgage (to the extent such attorneys' fees do not exceed \$______).
- (b) If Schedule C provides for the acceptance of title by Purchaser subject to Existing Mortgage(s) prior in lien to the Purchase Money Mortgage, the Purchase Money Mortgage shall provide that it is subject and subordinate to the lien(s) of the Existing Mortgage(s) and shall be subject and subordinate to any extensions, modifications, renewals, consolidations, substitutions or replacements thereof (collectively, "Refinancing" or "Refinanced Mortgage"), provided that (i) the rate of interest payable under a Refinanced Mortgage shall not be greater than that specified in Schedule D as the Maximum Interest Rate or, if no Maximum Interest Rate is specified in Schedule D, shall not be greater than the rate of interest that was payable on the refinanced indebtedness immediately prior to such Refinancing, and (ii) if the principal amount of the Refinanced Mortgage plus the principal amount of other Existing Mortgage(s), if any, remaining after placement of a Refinanced Mortgage exceeds the amount of principal owing and unpaid on all mortgages on the Premises superior to the Purchase Money Mortgage immediately prior to the Refinancing, an amount equal to the excess shall be paid at the closing of the Refinancing to the holder of the Purchase Money Mortgage, without prepayment premium or other charge, in reduction of principal payments due thereunder in inverse order of maturity. The Purchase Money Mortgage shall further provide that the holder thereof shall, on demand and without charge therefor, execute, acknowledge and deliver any agreement or agreements reasonably required by the mortgagor to confirm such subordination.

- (e) The Purchase Money Mortgage shall contain the following additional provisions:
- (i) "The mortgagor or any owner of the mortgaged premises shall have the right to prepay the entire unpaid indebtedness secured by this mortgage, together with accrued interest, but without penalty, at any time on or after [insert the day following the last day of the fiscal year of the mortgagee in which the Closing occurs or, if a Prepayment Date is specified in Schedule D, the specified Prepayment Date], on not less than 10 days' written notice to the holder hereof."
- (ii) "Notwithstanding anything to the contrary contained herein, the obligation of the mortgager for the payment of the indebtedness and for the performance of the terms, covenants and conditions contained herein and in the note secured hereby is limited solely to recourse against the property secured by this mortgage, and in no event shall the mortgager or any principal of the mortgager, disclosed or undisclosed, be personally liable for any breach of or default under the note or this mortgage or for any deficiency resulting from or through any proceedings to foreclose this mortgage, nor shall any deficiency judgment, money judgment or other personal judgment be sought or entered against the mortgager or any principal of the mortgager, disclosed or undisclosed, but the foregoing shall not adversely affect the lien of this mortgage or the mortgagee's right of foreclosure. Notwithstanding the provisions of this subparagraph (ii), mortgager shall be personally liable to mortgagee for losses due to:
 - (A) fraud or intentional or willful misrepresentation;
- (B) mortgagor's misapplication or misappropriation of rents or other income received by mortgagor after the occurrence of an event of default.
- (C) mortgagor's misapplication or misappropriation of tenant security deposits or rents collected more than (1) month in advance;
- (D)—the misapplication or the misappropriation of insurance proceeds or condemnation awards:
- (E) mortgagor's failure to pay real estate taxes, water charges or sewer rents (except to the extent that sums sufficient to pay such amounts have been deposited in-escrow with mortgagee pursuant to the terms hereof) but only to the extent that the mortgaged premises generates sufficient income to pay the same when due;
- (F) any act of intentional waste or arson by mortgagor, or any officer, director, member or general partner of mortgagor;
- (G) subject to the rights of the holder of any superior mortgage, mortgagor's failure following any event of default to deliver to mortgagee on demand all rents and other income and books and records relating to the mortgaged premises;

- (H) damage to the mortgaged premises arising from the intentional misconduct or gross negligence of mortgagor, or any officer, director, member or general partner of mortgagor."
- (iii) "In addition to performing its obligations under Section 274 a of the Real Property Law, the mortgagee, if other than one of the institutions listed in Section 274 a, agrees that, within 10 days after written request by the mortgagor, but not more than twice during any period of 12 consecutive months, it will execute, acknowledge and delivor without charge a certificate of reduction in recordable form (a) certifying as to (1) the then unpaid principal balance of the indebtedness secured hereby, (2) the maturity date thereof, (3) the rate of interest, (4) the last date to which interest has been paid and (5) the amount of any escrow deposits then held by the mortgagee, and (b) stating, to the actual knowledge of the mortgagee, whether there are any alleged defaults hereunder and, if so, specifying the nature thereof."

(iv) The additional provisions, if any, specified in a rider hereto.

(a) All sums paid on account of the Purchase Price prior to the Closing (collectively, "Downpayment") shall be paid by good check or checks drawn to the order of and delivered to Seller's attorney-or another escrow agent designated in writing by the parties ("Escrowee"). The Escrowee shall hold the proceeds thereof in escrow in a special attorney escrow IOLA bank account at Astoria Bank (or as otherwise agreed in writing by Seller, Purchaser and Escrowee) until the Closing or sooner termination of this contract and shall pay over or apply such proceeds in accordance with the terms of this section. Escrowee shall hold such proceeds in a non-interest-bearing attorney IOLA account. , and such interest shall be paid to the same party entitled to the Downpayment, and the party receiving such interest shall pay any income taxes thereon. Eserowee shall not be responsible for any interest on the Downpayment except as is actually earned, or for the loss of any interest resulting from the withdrawal of the Downpayment prior to the date interest is posted thereon or for any loss caused by the failure, suspension, bankruptcy or dissolution of the institution in which the Downpayment is deposited. The tax identification numbers of the parties are set forth in Schedule D. Each of the parties, upon Escrowee's request, shall promptly furnish to Escrowee a completed and executed Form W-9, together with such other information as Escrowee shall reasonably require. At the Closing, such proceeds and the interest thereon, if any, shall be paid by Escrowee to Seller. If for any reason the Closing does not occur and either party makes a written demand upon Escrowee for payment of such amount, Escrowee shall give written notice to the other party of such demand. If Escrowee does not receive a written objection from the other party to the proposed payment within 10 business days after the giving of such notice, Escrowee is hereby authorized to make such payment. If Escrowee does receive such written objection within such 10 day period, Escrowee shall continue to hold such amount until otherwise directed by written instructions from the parties to this contract or a final and non-appealable judgment of a court. However, Escrowee shall have the right at any time todeposit the escrowed proceeds and interest thereon, if any, with the clerk of the Supreme Court of the county in which the Premises is located. Escrowee shall give written notice of such deposit to Seller and Purchaser. Upon such deposit Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder. If the

Downpayment is deposited in a money market account, dividends thereon shall be treated, for purposes of this Section, as interest.

- (b) The parties acknowledge that Escrowee is acting solely as a stakeholder at their request and for their convenience, that the duties of Escrowee hereunder are purely ministerial in nature and shall be expressly limited to the safekeeping and disposition of the Downpayment in accordance with the provisions of this contract, that Escrowee shall not be deemed to be the agent of either of the parties, and that Escrowee shall not be liable to either of the parties for any act or omission on its part unless taken or suffered in bad faith, in willful disregard of this contract or involving gross negligence. Seller and Purchaser shall jointly and severally indemnify and hold Escrowee harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith, in willful disregard of this contract or involving gross negligence on the part of Escrowee.
- (c) Escrowee has acknowledged agreement to these provisions by signing in the place indicated on the signature page of this contract.
- (d) If Escrowee is Seller's attorney, Escrowee or any member of its firm shall be permitted to act as counsel for Seller in any dispute as to the disbursement of the Downpayment or any other dispute between the parties whether or not Escrowee is in possession of the Downpayment and continues to act as Escrowee.
- (e) Escrowee may act or refrain from acting in respect of any matter referred to in this §2.06 in full reliance upon and with the advice of counsel which may be selected by it (including any member of its firm) and shall be fully protected in so acting or refraining from action upon the advice of such counsel.
- If Seller is a "foreign person", as defined in Internal Revenue Code Section 1445 and regulations issued thereunder (collectively, the "Code Withholding Section"), or if Seller fails to deliver the certification of non-foreign status required under §10.01(k), or if Purchaser is not entitled under the Code Withholding Section to rely on such certification, Purchaser shall deduct and withhold from the Purchase Price a sum equal to ten percent (10%) thereof and shall at Closing remit the withheld amount with Forms 8288 and 8288A (or any successor forms) to the Internal Revenue Service; and if the cash balance of the Purchase Price payable to Seller at the Closing after deduction of net adjustments, apportionments and credits (if any) to be made or allowed in favor of Seller at the Closing as herein provided is less than ten percent (10%) of the Purchase Price, Purchaser shall have the right to terminate this contract. If Purchaser so terminates this contract, such termination shall be subject to the provisions of §13.07. The right of termination provided for in this §2.07 shall be in addition to and not in limitation of any other rights or remedies available to Purchaser under applicable law.
- §2.08. **NEW MORTGAGE:** (a) This agreement is conditioned upon Purchaser securing, at Purchaser's cost and expense, a firm commitment for a

conventional mortgage loan in the sum of \$650,000.00 for a period of not more than 30 years, with interest at prevailing rate at the time of closing.

- (b) Purchaser agrees to make prompt application to lending institutions and forthwith to sign all papers necessary to process any application therefore, and in good faith to diligently comply with all requirements of the lending institution in order to secure said mortgage loan
- (c) Purchaser shall have 45 days with a one time automatic extension, if needed, not to exceed a total time period of 70 days after the Due Diligence Period (Section 17.01) expires to secure the above mortgage loan commitment. The Seller shall have the option to extend the period of time for purchaser to obtain a mortgage commitment for an additional fifteen (15) days provided that purchaser has shown a good faith effort to secure same.
- (d) In the event Purchaser cannot secure said commitment within the time herein specified, either party hereto shall have the right to cancel this agreement by notice in writing, addressed to Seller's or Purchaser's attorney, as the case may be, provided however that in the event of Seller's Cancellation as aforesaid Purchaser shall have 3 business days hereafter to notify Seller that Purchase has elected to close on an "all cash" basis.
- (e) Purchasers represent that they have sufficient cash over the mortgage to close this loan.
- (f) Upon receipt of the foregoing cancellation notice, this agreement shall be deemed terminated and discharged of further obligations hereunder. Seller shall immediately refund to Purchaser the amount paid on account of this contract, upon cancellation pursuant to this paragraph.
- (g) In the event Purchaser shall elect and close on more than one (l) mortgage loan, for any purpose whatsoever, they shall pay to seller's attorney, at closing, the sum of two hundred fifty (\$250.00) dollars, for the additional time required to close said additional loan.
- (h) Purchaser hall have 45 days with a one time automatic extension, if needed, not to exceed a total time period of 70 days after the Due Diligence Period (Section 17.01) expires to secure the above mortgage loan commitment. The <u>Seller shall have the option</u>, but not the obligation, to extend the Purchaser's time to obtain the requisite commitment.

Section 3. The Closing

§3.01. Except as otherwise provided in this contract, the closing of title pursuant to this contract ("Closing") shall take place on the scheduled date and at the time of closing specified in Schedule D (the actual date of the Closing being herein referred to as "Closing Date") at the place specified in Schedule D.

Section 4. Representations and Warranties of Seller

Seller represents and warrants to Purchaser as follow:

- §4.01. Seller is the sole owner of the Premises and has not granted any option to purchase the Premises or any right of first refusal or right of first offer to purchase the Premises. To the best of Seller's knowledge Seller has not transferred or agreed to transfer any development or air rights pertaining to the Premises and has no knowledge of any such transfer by any former owner of the Premises.
- §4.02. If the Premises are encumbered by an Existing Mortgage(s), no written notice has been received from the Mortgagee(s) asserting that a default or breach exists thereunder which remains uncured and no such notice shall have been received and remain uncured on the Closing Date. If Schedule C provides for the acceptance of title by Purchaser subject to one or more Existing Mortgages, Seller represents and warrants that Seller has delivered to Purchaser true and complete copies of the Existing Mortgage(s) and the promissory notes secured thereby, and that same have not been modified or amended except as shown in such documents.
- §4.03. The information concerning written leases, written licenses and written occupancy agreements (which together with all amendments and modifications thereof are collectively referred to as "Leases") and any tenancies or occupancies in the Premises not arising out of the Leases (collectively, "Tenancies"; and each, individually, a "Tenancy") set forth in Schedule E attached hereto ("Rent Schedule") is accurate as of the date set forth therein or, if no date is set forth therein, as of the date hereof, and there are no Leases or Tenancies of any space in the Premises other than those set forth therein and any subleases or subtenancies. Except as otherwise set forth in the Rent Schedule or elsewhere in this contract:
 - (a) all of the Leases are in full force and effect;
 - (b) none of the Leases has been modified, amended or extended;
- (c) no renewal or extension options or options for additional space have been granted to tenants, occupants or licensees;
- (d) no tenant, occupant or licensee has an option to purchase the Premises or a right of first refusal or first offer with respect to a sale of the Premises;
- (e) the rents and fees set forth are being collected on a current basis and there are no arrearages in excess of one month;
- (f) no tenant, occupant or licensee is entitled to rental concessions or abatements for any period subsequent to the scheduled date of Closing, other than an abatement by reason of a casualty disclosed to Purchaser that occurred after the date of execution and delivery of this contract;

- (g) Seller has not sent written notice to any tenant, occupant or licensee claiming that such tenant is in default, which default remains uncured;
- (h) no action or proceeding instituted against Seller by any tenant, occupant or licensee of all or part of the Premises is presently pending in any court or other tribunal, except with respect to claims involving personal injury or property damage which are covered by insurance;
- (i) there are no security deposits other than those set forth in the Ront Schedule:
- (j) the Rent Schedule accurately sets out all security deposits held by Seller with respect to the Leases and Tenancies;
- (k) true and complete copies of the Leases have been delivered to Purchaser or its counsel and initialed by representatives of Purchaser and Seller;
- (1) the tenants, occupants and licensees under the Leases and Tenancies are in actual possession of the space demised;
- (m) to Seller's actual knowledge, Seller has performed all of the landlord's obligations under the Leases and Tenancies;
- (n) Seller has received no notice(s) of any default of the landlord under the Leases that romains pending;
- (o) to Seller's actual knowledge, no action or proceeding, voluntary or involuntary, is pending against any tenant, licensee or occupant under any bankruptcy or insolvency act; and
- (p) no leasing commissions are due or owing with respect to any of the Leases or Tenancies and all leasing commissions have been paid in full with respect to all of the Leases and Tenancies, except to the extent any brokerage agreements may provide for payment of a commission in case of any renewal, extension or expansion of space.

If any Leases which have been exhibited to and initialed by Purchaser or its representative contain provisions that are inconsistent with the foregoing representations and warranties, such representations and warranties shall be deemed modified to the extent necessary to eliminate such inconsistency and to conform such representations and warranties to the provisions of the Leases.

§4.04. If the Premises or any part thereof are subject to the New York City Rent Stabilization Law, Seller is and on the Closing Date will be a member in good standing of the Real Estate Industry Stabilization Association, the rents shown are not in excess of the maximum collectible rents, and, except as otherwise set forth in the Rent Schedule, no tenants or occupants are entitled to senior citizen exemptions, there are no proceedings with any tenant presently pending before the New York State Division of Housing and Community Renewal in which a tenant has alleged an overcharge of rent or

diminution of services or similar grievance, and there are no outstanding orders or judgments of the Conciliation and Appeals Board or the New York State Division of Housing and Community Renewal that have not been complied with by Seller.

- §4.05. If the Premises or any part thereof are subject to the New York City Emergency Rent and Rehabilitation Law, the rents shown are not in excess of the maximum collectible rents, and, except as otherwise set forth in the Rent Schedule, no tenants are entitled to exemptions as senior citizens, there are no proceedings presently pending in which a tenant has alleged an overcharge of rent or diminution of services or other grievance, and there are no outstanding orders that have not been complied with by Seller.
- §4.06. <u>Schedule G</u> attached hereto lists all insurance policies presently affording coverage with respect to the Premises, and the information contained therein is accurate as of the date set forth therein or, if no date is set forth therein, as of the date hereof.
- Schedule H attached hereto lists all employees presently employed at the Premises and the compensation payable to each, and the information contained therein is accurate as of the date set forth therein or, if no date is set forth therein, as of the date of closing, and, except as otherwise set forth in such schedule, none of such employees is covered by a union contract and there are no retroactive increases or other accrued and unpaid sums owed to any employee. The employees listed in Schedule H attached hereto are covered by collective bargaining agreements with Locals _____ and - (the "Union Contracts"); Schedule H-lists the employment classification and union affiliation of each person employed at the Premises that is covered by the Union Contracts; Seller has timely made all contributions required to be made by Seller pursuant to the Union Contracts with respect to Seller's period of ownership of the Premises, including, but not limited to, Seller's obligations with respect to union pension and retirement benefit plans established pursuant to the Taft Hartley Act, 29 U.S.C. §186 ("Union Retirement Plans"), and Seller shall not, after the date of this contract, enter into any new union contract or modify any existing Union Contract without first obtaining Purchaser's approval, which approval shall not be unreasonably withheld or delayed. If the Premises are located in the City of New York and the employees presently employed at the Premises are not covered by the Union Contracts; Seller and Purchaser shall each comply with the applicable provisions of Section 22 505 of the New York City Administrative Code (the "Displaced Building Service Workers Act"). Seller and Purchaser shall each indemnify and hold harmless the other against any loss, costs, claims, liabilities and expenses it may incur, including reasonable attorneys' fees, by reason of the other party's breach of its obligations under the Union Retirement Plan and the Displaced Building Service Workers Act. The indomnification obligations set forth in this §4.07 shall survive Closing.
- §4.08. The schedule of service, maintenance, supply and management contracts ("Service Contracts") attached hereto as Exhibit I lists all such contracts affecting the Premises, and the information set forth therein is accurate as of the date set forth therein or, if no date is set forth therein, as of the date of Closing.

- §4.09. The copy of the certificate of occupancy for the Premises attached hereto as <u>Schedule J</u> is a true copy of the original and such certificate has not been amended or superseded, but <u>Seller makes no representation as to compliance with any such certificate.</u>
- §4.10. (a) As of the date of this contract: The assessed valuation of the Land and Building and the real estate taxes set forth in Schedule D, if any, are the assessed valuation of the Premises and the real estate taxes payable with respect thereto for the fiscal year(s) indicated in such schedule (subject to any abatements that may become applicable after the date of this contract and any increases or changes in real estate taxes resulting from a retroactive change in the tax rate). Except as otherwise set forth in Schedule D, there are no tax abatements or exemptions affecting the Premises as of the date of this contract.
- §4.11. (b) There are no pending proceedings or appeals to correct or reduce the assessed valuation of the Premises. Except as otherwise set forth in a schedule attached hereto, if any, if the Premises are used for residential purposes, (i) each apartment contains a range and a refrigerator, and all of the ranges and refrigerators and all of the items of personal property (or replacements thereof) listed in such schedule, if any, are and on the Closing Date will be owned by Seller free of liens and encumbrances other than the lien(s) of the Existing Mortgage(s), if any, and (ii) all apartments have been painted within the last three years.
- §4.12. The Personal Property, as of the Closing Date, is owned by Seller free of liens and encumbrances other than the lien(s) of the Existing Mortgage(s), if any.
- §4.13. To Seller's knowledge no incinerator, compactor, boiler or other burning equipment on the Premises is being operated in violation of applicable law. If copies of a certificate or certificates of operation therefor have been exhibited to and initialed by Purchaser or its representative, such copies are true copies of the originals.
- §4.14. Except as otherwise set forth in <u>Schedule D</u>, to Seller's knowledge, no assessment payable in annual installments, or any part thereof, has become a lien on the Premises.
- §4.15. Seller is not a "foreign person" as defined in the Code Withholding Section.
- §4.16. Seller has taken all necessary action to authorize the execution, delivery and performance of this contract and has the power and authority to execute, deliver and perform this contract and consummate the transaction contemplated hereby. The person signing this contract on behalf of Seller is authorized to do so. Assuming this contract has been duly authorized, executed and delivered by each of the other party(ies) to this contract, this contract and all obligations of Seller hereunder are the legal, valid and binding obligations of Seller, enforceable in accordance with the terms of this contract, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general

principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

- §4.17. The execution and delivery of this contract and the performance of its obligations hereunder by Seller will not conflict with any provision of any law or regulation to which Seller is subject or any agreement or instrument to which Seller is a party or by which it is bound or any order or decree applicable to Seller or result in the creation or imposition of any lien on any of Seller's assets or property which would materially and adversely affect the ability of Seller to carry out the terms of this contract.
 - §4.18. The Premises constitute one tax lot.
- §4.19. Seller has not received written notice of and has no knowledge of any action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Seller with respect to the Premises which if adversely determined could have a material adverse effect on the Premises or interfere or in any way affect with the consummation of the transaction contemplated by this contract.
- §4.20. Seller is not a, and is not acting directly or indirectly for or on behalf of any, person, group, entity or nation named by any Executive Order of the United States Treasury Department as a terrorist, "Specifically Designated National and Blocked Persons," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control and Seller is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.
- §4.21. To the best of Seller's knowledge there are no underground fuel storage tanks at the Premises.
- §4.22. Seller has received no notice of and has no knowledge of any actual or proposed taking in condemnation of all or any part of the Premises.
- §4.23. Seller has been known by no other name for the past ten (10) years except.
- §4.24. The representations and warranties of Seller set forth in this section 4 as restated as of the Closing shall survive the Closing for a period of [one year] (the "Survival Period"). None of Seller's other representations or warranties shall survive the Closing. No claim for a misrepresentation or breach of warranty of Seller shall be actionable or payable if the breach in question results from or is based on a condition, state of facts or other matter which was known to Purchaser prior to the Closing. Seller shall have no liability to Purchaser for any misrepresentation or breach of warranty of Seller (a) unless the valid claims for all such misrepresentations or breaches collectively aggregate more than [\$_____] (the "Floor"), in which event the full amount of such valid claims shall be actionable up to the aggregate amount of \$_____, and (b) unless written notice containing a description of the specific nature of such breach shall have been given by Purchaser to Seller prior to the expiration of the Survival Period, if any,

and an action shall have been commenced by Purchaser against Seller within the Survival Period, if any. The prevailing party in any litigation arising from a claim under this §4.25 shall be entitled to reimbursement for all legal fees and expenses in connection therewith.

For purposes of this Section, the phrase "to Seller's knowledge" shall mean the actual knowledge of the person executing this agreement on behalf of the Seller without any special investigation Except where limited specifically to the date of this contract or other date, the representations and warranties made by Seller in this contract are made as of the date of execution and delivery of this contract, and except as otherwise set forth in §6.05, shall be deemed restated and shall be true and accurate on the Closing Date.

Section 5. "As Is" Condition, No Representations Not Expressly Set Out in Contract, Representations and Warranties of Purchaser

§5.01. Purchaser acknowledges that:

- (a) Purchaser has inspected or has had an opportunity to inspect the Premises, is fully familiar with the physical condition and state of repair thereof, and, subject to the provisions of §7.01, §8.01, §9.04 Section 7 and except as otherwise set forth herein, shall accept the Premises "as is" and in their present condition, subject to reasonable use, wear, tear and natural deterioration between now and the Closing Date, without any reduction in the Purchase Price for any such change in condition. Seller shall not be liable for any patent or latent defects. Notwithstanding the foregoing the Premises shall be delivered with all current systems and equipment in working order and roof free of laeks as per Section 10(q) herein.
- (b) Before entering into this contract, Purchaser has made such examination of the Premises, the operation, income and expenses thereof and all other matters affecting or relating to this transaction as Purchaser deemed necessary. In entering into this contract, Purchaser has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by Seller or any agent, employee or other representative of Seller or by any broker or any other person representing or purporting to represent Seller, which are not expressly set forth in this contract, whether or not any such representations, warranties or statements were made in writing or verbally.

§5.02. Purchaser represents and warrants to Seller that:

- (a) The funds comprising the Purchase Price to be delivered to Seller in accordance with this contract are not derived from any illegal activity.
- (b) Purchaser has taken all necessary action to authorize the execution, delivery and performance of this contract and has the power and authority to execute, deliver and perform this contract and the transaction contemplated hereby. The person signing this contract on behalf of Purchaser is authorized to do so. Assuming this contract has been duly authorized, executed and delivered by each of the other party(ies) to this contract, this contract and all obligations of Purchaser hereunder are the legal, valid and binding obligations of Purchaser, enforceable in accordance with the terms of

this contract, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

- Money Mortgage required hereunder and the performance of its obligations hereunder by Purchaser will not conflict with any provision of any law or regulation to which Purchaser is subject or any agreement or instrument to which Purchaser is a party or by which it is bound or any order or decree applicable to Purchaser, and will not result in the creation or imposition of any lien on any of Purchaser's assets or property which would materially and adversely affect the ability of Purchaser to carry out the terms of this contract. Purchaser has obtained any consent, approval, authorization or order of any court or governmental agency or body required for the execution, delivery or performance by Purchaser of this contract.
- (d) Purchaser is a validly formed New York entity that has been duly organized and is in good standing under the laws of the state of its formation.
- (e) To Purchaser's knowledge, there is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Purchaser which, if adversely determined, could individually or in the aggregate materially interfere with the consummation of the transaction contemplated by this contract.
- (f) Purchaser is not a, and is not acting directly or indirectly for or on behalf of any, person, group, entity or nation named by Executive Order of the United States Treasury Department as a terrorist, "Specifically Designated National and Blocked Person," or other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control and Purchaser is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity or nation.
- (g) The representations and warranties of Purchaser set forth in this Section 5 are made as of the date of this contract and are restated as of the Closing and shall survive the Closing for a period of [one year], except that the representation in §5.02(d) shall not survive the Closing.

For purposes of this §5.02, the phrase "to Purchaser's knowledge" shall mean the actual knowledge of the person executing this contract without any special investigation.

Section 6. Seller's Obligations as to Leases

§6.01. Unless otherwise provided in a schedule attached to this contract, Seller shall not, between the date of this contract and the Closing, without Purchaser's prior written consent, which consent shall not be unreasonably withheld or delayed: (a) amend, renew or extend any Lease in any respect, except to the extent required by law or by the express terms of such Lease; (b) grant a written lease to any person or entity occupying

space without a Lease (except as required by law); (e) terminate any lease or Tenancy except by reason of a default by the tenant thereunder; (d) consent to the assignment of a Lease or subletting by any tenant except as required by the terms of the applicable Lease or by law or (e) permit anyone to use or occupy any space pursuant to an oral agreement except pursuant to the Tenancies. Seller shall not, without Purchaser's consent (which may be granted or denied at Purchaser's discretion) enter into any lease or other occupancy agreement with any person or entity directly or indirectly affiliated with or related to Seller, Seller's managing agent, or any principal of Seller or Seller's managing agent (a "Related Lease Transaction").

§6.02. Unless otherwise provided in a schedule attached to this contract, Soller shall not, between the date of this contract and the Closing, permit the occupancy of, or enter into any new lease, occupancy agreement or license agreement for, space in the Building which is presently vacant or which may hereafter become vacant, without first giving Purchaser written notice of the identity of the proposed tenant, occupant or licensee, together with (a) either a copy of the proposed lease, occupancy agreement or license agreement, or a summary of the terms thereof in reasonable detail and (b) a statement of the amount of the brokerage commission, if any, payable in connection therewith and the terms of payment thereof.

If (y) Purchaser objects to such proposed lease, occupancy agreement or license agreement and notifies Seller of its objection within seven business days after receipt of Seller's notice, or (z) such lease, occupancy agreement or license agreement constitutes a Related Transaction, Seller shall not enter into the proposed lease, occupancy agreement or license agreement. If clause (y) applies and the prospective tenant, licensee or occupant would have commenced paying rent or a license fee prior to the Closing Date if Purchaser had not objected, Purchaser shall pay to Seller at the Closing, in the manner specified in §2.02, (A) the rent, additional rent and other charges that would have been payable under the proposed lease, occupancy agreement or license agreement from the date on which the tenant's, occupant's or licensee's obligation to pay rent-would have commenced if Purchaser had not so objected until the Closing Date, less (B) the Reletting Expenses (hereinafter defined), as amortized over the period commencing on the proposed rent commencement date of such lease or agreement and ending on the proposed expiration date of such lease or agreement and apportioned as of the Closing Date. The "Reletting Expenses" shall equal the amount of the brokerage commission, any construction allowance or other monetary payment to be made to the proposed tenant, occupant or licensee, and the reasonable cost of decoration or other work required to be performed by the landlord under the terms of the proposed lease, occupancy agreement or license agreement to prepare the premises for the tenant's, occupant's or licensee's occupancy.

If Purchaser does not so notify Seller of its objection to a proposed lease, occupancy agreement or license agreement or consents to same and if such lease or agreement does not involve a Related Transaction, Seller shall have the right to enter into the proposed lease, occupancy agreement or license agreement with the tenant, occupant or licensee identified in Seller's notice. If Seller enters into such lease or agreement and Seller has reasonably incurred out-of-pocket expenses in connection with such

transaction, including brokerage commissions, reasonable legal fees, and/or fix up costs (the "Leasing Expenses"), then:

- 1. If the new tenant or occupant is not required to commence paying, and does not pay, rent until after the Closing Date, Purchaser shall reimburse Seller at the Closing for all the Leasing Expenses and Seller shall pay to the appropriate parties the Leasing Expenses, which obligation shall survive the Closing; but
- 2. If the new tenant or occupant commences paying rent prior to the Closing Date, Purchaser shall pay Seller at Closing the unamortized portion of the Leasing Expenses. The Leasing Expenses shall be amortized over a period commencing on the rent commencement date under such lease or agreement and ending on the expiration date of such lease or agreement (not taking into account any renewal or extension rights), and the unamortized portion shall be determined as of the Closing Date. Seller shall pay to the appropriate parties the Leasing Expenses, which obligation shall survive the Closing.

If Seller fails to pay the Leasing Expenses as required by this Section, Seller shall indemnify and hold harmless Purchaser from all loss, cost, expense, liability, and damages, including reasonable attorneys' fees, Purchaser may incur by reason of such failure, which indemnification obligation shall survive Closing.

- §6.03. If any space is vacant on the Closing Date, Purchaser shall accept the Premises subject to such vacancy, provided that the vacancy was not permitted or created by Seller in violation of any restrictions contained in this contract.
- §6.04. Seller shall not grant any concessions or rent abatements for any period following the Closing without Purchaser's prior written consent.
- §6.05. Seller does not warrant that any particular Lease or Tenancy will be in force or effect at the Closing or that the tenants will have performed their obligations thereunder. The termination of any Lease or Tenancy prior to the Closing by reason of the tenant's default shall not affect the obligations of Purchaser under this contract in any manner or entitle Purchaser to an abatement of or credit against the Purchase Price or give rise to any other claim on the part of Purchaser.
- §6.06. Seller hereby indemnifies and agrees to defend Purchaser against any claims made by tenants in the Premises with respect to their security deposits other than (a) claims with respect to tenants' security deposits to the extent paid, credited or assigned to Purchaser pursuant to §10.01, (b) claims made against Purchaser pursuant to §7.107 of the New York General Obligations Law ("GOL") with respect to funds for which Seller was not liable, and (c) claims made pursuant to §7.108 of the GOL by tenants to whom Purchaser failed to give the written notice specified in §7.108(2)(c) of the GOL within thirty days after the Closing Date. The foregoing indemnity and agreement shall survive the Closing and shall be in lieu of any escrew permitted by §7.

108(d) of the GOL, and Purchaser hereby waives any right it may have to require any such escrow.

Section 7. Responsibility for Violations

- Except as provided in §7.02 and §7.03, all notes or notices of violations of law or governmental ordinances, orders or requirements noted or issued as of the date of Closing by any governmental department, agency or bureau having jurisdiction or authority as to any conditions affecting the Premises and all obligations affecting the Premises incurred prior to the Closing pursuant to the Administrative Code of the City of New York, if applicable, shall be removed or complied with by Seller and Seller shall pay any fines or penalties imposed by reason of any such violations. The premises shall be conveyed free of them at Closing. If such payment of fines or penalties, as applicable, has not been paid prior to the Closing, Seller shall deposit sufficient monies with the title insurance company employed by Purchaser acceptable to and required by it to assure their discharge, but only if the title insurance company will insure Purchaser's title clear of the matters or insure against their enforcement out of the Premises and will insure Purchaser's Institutional Lender clear of such matters. pay to Purchaser at the Closing the reasonably estimated unpaid cost, including the reasonable fees of Purchaser's attorney, architect and expediter, to effect or complete such removal or compliance and any penalties imposed for non-compliance, and Purchaser shall be required to accept title to the Premises subject thereto, except that Purchaser shall not be required to accept such title and may terminate this contract if (a) Purchaser's institutional lender reasonably refuses to provide financing by reason thereof or (b) the Building is a multiple dwelling and either (i) such violation is rent impairing and causes rent to be unrecoverable under Section 302-a of the Multiple Dwelling Law or (ii) a proceeding has been validly commenced by tenants and is pending with respect to such violation for a judgment directing deposit and use of rents under Article 7-A of the Real Property Actions and Proceedings Law. All such notes or notices of violations noted or issued on or after the date of this contract shall be the sole responsibility of Purchaser.
- §7.02. If the reasonably estimated aggregate cost to remove or comply with any violations or liens which Seller is required to remove or comply with pursuant to the provisions of §7.01 shall exceed the Maximum Amount specified in Schedule D, Seller shall have the right to cancel this contract, unless Purchaser elects to accept title to the Premises subject to all such violations or liens, in which event Purchaser shall be entitled to a credit of an amount equal to the Maximum Amount against the monies payable at the Closing.
- §7.03. Seller's failure to remove or fully comply with any violations which a tenant unaffiliated with Seller is required to remove or comply with pursuant to the terms of its lease by reason of such tenant's use or occupancy shall not be an objection to title or a breach of Seller's obligations under this Section 7. Purchaser shall accept the Premises subject to all such violations without any liability of Seller with respect thereto or any abatement of or credit against the Purchase Price, except that if Purchaser's institutional lender reasonably refuses to provide financing by reason of a violation

described in this Section, Purchaser shall not be required to accept the Premises subject thereto and Purchaser shall have the right to terminate this contract.

- §7.04. If this contract is terminated by Purchaser or Seller pursuant to this Section 7, such termination shall be subject to the provisions of §13.07.
- §7.05. If required, Seller, upon written request by Purchaser, shall promptly furnish to Purchaser written authorizations to make any necessary searches for the purposes of determining whether notes or notices of violations have been noted or issued with respect to the Premises or liens have attached thereto.

Section 8. Destruction, Damage or Condemnation

§8.01. <u>Damage by Casualty.</u>

- If, prior to the Closing, there shall occur damage to the Premises caused by fire or other casualty which would cost less than \$10,000.00 (the "Casualty Threshold") to repair, as reasonably determined by an engineer selected by Seller and reasonably satisfactory to Purchaser, and such fire or other casualty does not adversely affect the lobby, building-wide systems, or common areas and the continued operation of the balance of the Premises not damaged and does not give rise to rent abatement or termination rights of lessees under leases covering more than _% (the "Percentage") of the rentable square feet of the Building, then Purchaser shall not have the right to terminate this contract by reason thereof, but Seller shall assign to Purchaser at the Closing, by written instrument in form and substance reasonably satisfactory to Purchaser, all of the insurance proceeds payable on account of any such fire or casualty, shall deliver to Purchaser any such proceeds actually paid to Seller, and shall afford to Purchaser at Closing a credit against the balance of the Purchase Price in an amount equal to any deductible. If the limit of Seller's insurance policy with respect to a casualty at the Premises is less than the cost of restoration, then Buyer shall be entitled to a further reduction in the Purchase Price in an amount equal to the difference between the cost of restoration and the limit of such insurance policy (less the deductible). The proceeds of rent interruption insurance, if any, shall on the Closing Date be appropriately apportioned between Purchaser and Seller.
- (b) If prior to the Closing there shall occur damage to the Premises caused by fire or other casualty which would cost an amount equal to the Casualty Threshold or more to repair, as reasonably determined by an engineer selected by Seller and reasonably satisfactory to Purchaser, or the damage affects the lobby, building-wide systems, or common areas or the continued operation of the balance of the Premises not damaged or gives rise to rent abatement or termination rights of lessees under leases eovering more than the Percentage of the rentable square feet of the Building, then Purchaser may elect to terminate this contract by notice given to Seller and Escrowee within ten (10) days after Seller has given Purchaser notice that such damage occurred, or at the Closing, whichever is earlier, upon which termination, Escrowee shall deliver the Downpayment to Purchaser, this contract shall thereupon be null and void and neither party hereto shall thereupon have any further obligation to the other, except for those

obligations and liabilities that are expressly stated to survive termination of this contract. If Purchaser does not elect to terminate this contract, then the Closing shall take place as herein provided, without abatement of the Purchase Price, and Seller shall assign to Purchaser at the Closing, by written instrument in form reasonably satisfactory to Purchaser, all of the insurance proceeds payable on account of any such fire or casualty, shall deliver to Purchaser any such proceeds or awards actually paid to Seller, and shall afford to Purchaser at Closing a credit against the balance of the Purchase Price in an amount equal to any deductible. The proceeds of rent interruption insurance, if any, shall on the Closing Date be appropriately apportioned between Purchaser and Seller.

- (c) Seller agrees not to repair any damage to the Premises (other than emergency repairs) without Purchaser's prior written consent and not to incur Reimbursable Amounts totaling in the aggregate in excess of \$5,000.00 without Purchaser's prior written consent. Purchaser shall have the right to participate in any discussions, claims adjustments or settlements with insurance companies regarding any damage to the Premises.
- (d) The term "Reimbursable Amounts" shall mean costs and expenses actually and reasonably incurred by or for the account of Seller in connection with fire or other casualty for (x) compliance with governmental ordinances, orders or requirements of any governmental department, agency or bureau having jurisdiction of the Premises, (y) safeguarding the Premises or any part thereof, including any protective restoration or (z) emergency repairs made by or on behalf of Seller (to the extent Seller has not theretofore been reimbursed by its insurance carrier).
- Condemnation. If after the execution and delivery of this contract and prior to Closing, any proceedings are instituted by any governmental authority which shall relate to the proposed taking of all or any portion of the Premises by eminent domain, or if any such proceedings are pending on the date of execution and delivery of this contract, or if all or any portion of the Premises is taken by eminent domain after the date of this contract and prior to the Closing, Seller shall promptly notify Purchaser in writing no later than two business days after Seller's receipt of any notification or the date of Closing, whichever occurs earlier. Purchaser shall thereafter have the right and option to terminate this contract by giving written notice to Seller and Escrowee within thirty (30) days after receipt by Purchaser of the notice from Seller or on the Closing Date, whichever is earlier. If the Closing Date was scheduled to occur after the institution of such proceeding, the Closing Date shall be deemed adjourned in order that Purchaser shall have its full thirty-day period within which to determine whether or not to proceed with Closing. If Purchaser timely terminates this contract, Purchaser shall be entitled to receive the Downpayment from Escrowee and this contract shall thereupon be terminated and become void and of no further effect, and neither party hereto shall have any obligations of any nature to the other hereunder or by reason hereof, except for those obligations and liabilities that are expressly stated to survive termination of this contract. If Purchaser does not elect to terminate this contract, the parties hereto shall proceed to the Closing and at the Closing, Seller shall assign to Purchaser all of its right, title and interest in all awards in connection with such taking and shall pay to Purchaser any award paid to Seller with respect to such taking. Purchaser shall have the right to participate in

discussions or proceedings with any governmental authority relating to the proposed taking of any portion of the Premises.

§8.03. The provisions of this Section 8 shall survive the Closing.

Section 9. Covenants of Seller

Seller covenants that between the date of this contract and the Closing:

- §9.01. If Purchaser is acquiring the Premises subject to the Existing Mortgage(s), the Existing Mortgage(s) shall not be amended or supplemented or prepaid in whole or in part. Seller shall pay or make, as and when due and payable, all payments of principal and interest and all deposits required to be paid or made under the Existing Mortgage(s).
- §9.02. Seller shall not modify or amend any Service Contract or enter into any new service contract unless the same is terminable without penalty or fee by the then owner of the Premises upon not more than 30 days' notice.
- §9.03. Seller shall maintain in full force and effect until the Closing the current insurance policies described in <u>Schedule G</u> attached hereto.
- §9.04. No fixtures, equipment or personal property included in this sale shall be removed from the Premises unless the same are replaced with similar items of at least equal quality prior to the Closing.
- §9.05. Seller shall not withdraw, settle or otherwise compromise any protest or reduction proceeding affecting real estate taxes assessed against the Premises for any fiscal period in which the Closing is to occur or any subsequent fiscal period without the prior written consent of Purchaser, which consent shall not be unreasonably withheld or delayed.
- §9.06. Seller shall allow Purchaser or Purchaser's representatives access to the Premises (provided such access shall not unreasonably interfere with the occupancy of tenants), the Leases and other documents required to be delivered under this contract upon reasonable prior notice at reasonable times and within 48 hours prior to the date set for closing
- §9.07. Seller shall operate the Premises in substantially the same manner as the Premises are being operated on the date of this contract.

Section 10. Seller's Closing Obligations

- §10.01. At the Closing, Seller shall deliver the following to Purchaser:
- (a) A statutory form of bargain and sale deed with covenants against grantor's acts, containing the covenant required by Section 13 of the Lien Law, and properly

executed and acknowledged and in proper form for recording so as to convey the title required by this contract.

- (b) All Leases, assignments of leases, subleases, subordination, nondisturbance and attornment agreements and tenant files and records.
- (c) A schedule of all security deposits (and, if the Premises contains six or more family dwelling units, the most recent reports with respect thereto issued by each banking organization in which they are deposited pursuant to GOL §7-103) and a check or credit to Purchaser in the amount of any cash security deposits, including any interest thereon, held by Seller on the Closing Date or, if held by an institutional lender, an assignment to Purchaser and written instructions to the holder of such deposits to transfer the same to Purchaser, and appropriate instruments of transfer or assignment with respect to any security deposits which are other than eash.
- (d) A schedule updating the Rent Schedule and setting forth all arrears in rents and all prepayments of rents.
- (e) All Service Contracts initialed by Purchaser and all others in Seller's possession which are in effect on the Closing Date and which are assignable by Seller.
- (f) An assignment to Purchaser, without recourse or warranty, of all of the interest of Seller in the Service Contracts, union contracts, if any, certificates, permits and other documents to be delivered to Purchaser at the Closing, if any, which are then in effect and are assignable by Seller.
- (g) (i) If <u>Schedule C</u> provides for the acceptance of title by Purchaser subject to one or more Existing Mortgages, written consent(s) of the Mortgagee(s), if required under §2.03(b), and (ii) certificate(s) executed by the Mortgagee(s) in proper form for recording and certifying (1) the amount of the unpaid principal balance thereof, (2) the maturity date thereof, (3) the interest rate, (4) the last date to which interest has been paid thereon and (5) the amount of any escrow deposits held by the Mortgagee(s). Seller shall pay the fees for recording such certificate(s). Any Mortgagee which is an institutional lender may furnish a letter complying with Section 274 a of the Real Property Law in lieu of such certificate.
- (h)— If <u>Schedule C</u> provides for the acceptance of title by Purchaser subject to one or more Existing Mortgages, an assignment of all Seller's right, title and interest in escrow deposits for real estate taxes, insurance premiums and other amounts, if any, then held by the Mortgagee(s).
- (i) To the extent they are then in Seller's possession and not posted at the Premises, certificates, licenses, permits, authorizations and approvals issued for or with respect to the Premises by governmental and quasi-governmental authorities having jurisdiction.
- (j) Such affidavits as Purchaser's title company shall reasonably require in order to omit from its title insurance policy all exceptions for judgments, bankruptcies,

work by the City of New York (if the Premises are in the City of New York), emergency repair liens of the City of New York (if the Premises are in the City of New York) or other returns against persons or entities whose names are the same as or similar to Seller's name, to omit the rights of parties who are no longer in possession and to limit the exception for tenants and occupants to those having "rights as tenants only".

- (k) (i) Checks to the order of the appropriate officers or the Title Company in payment of all applicable real property transfer taxes and copies of any required tax returns therefor executed by Seller, which checks shall be certified or official bank checks if required by the taxing authority or the Title Company unless Seller elects to have Purchaser pay any of such taxes and credit Purchaser with the amount thereof, and (ii) a certification of non-foreign status, in form required by the Code Withholding Section, signed under penalty of perjury, and (iii) Form RP-5217 (or, in New York City, Form RP-5217NYC). Seller understands that such certification will be retained by Purchaser and will be made available to the Internal Revenue Service on request. Seller to pay transfer tax. The obligation to pay any additional tax or deficiency and any interest or penalties thereon shall survive Closing.
- (l) To the extent they are then in Seller's possession, copies of current painting and payroll records. Purchaser shall make all other Building and tenant files and records, including those contained on computer software, available to Seller for copying, which obligation shall survive the Closing.
- (m) An original letter, executed by Seller or by its agent, advising the tenants of the sale of the Premises to Purchaser and directing that rents and other payments thereafter be sent to Purchaser or as Purchaser may direct.
- (n) If <u>Schedule C</u> provides for the acceptance of title by <u>Purchaser subject to</u> one or more <u>Existing Mortgages</u>, notice(s) to the <u>Mortgagee(s)</u>, executed by <u>Seller or by</u> its agent, advising of the sale of the <u>Premises to Purchaser and directing that future bills and other correspondence should thereafter be sent to <u>Purchaser or as Purchaser may direct.</u></u>
- (o) If Seller is a corporation and if required by Section 909 of the Business Corporation Law, a resolution of Seller's board of directors authorizing the sale and delivery of the deed and a certificate executed by the secretary or assistant secretary of Seller certifying as to the adoption of such resolution and setting forth facts showing that the transfer complies with the requirements of such law and the deed referred to in §10.01(a) shall also contain a recital sufficient to establish compliance with such law. If Seller is a partnership or limited liability company, the written consent of the partners or members to the extent required by the partnership agreement or operating agreement and delivery of a certificate executed by the general partner of any partnership or by the manager (if any) or a member of a limited liability company, attaching true and complete copies of the organizational documents of Seller and affirming that the sale and conveyance of title comply with the requirements of such organizational documents (or of the applicable statute, if any).

- (p) Possession of the Premises in the condition required by this contract, subject to the Leases and Tenancies, and the delivery of the Premises and all buildings(s) and improvements comprising a part thereof in broom clean condition, vacant and free of all leases and tenancies, together with all keys therefore. Seller shall remove: (a) all safes in the Premises.
- (q) All plumbing (including water supply and septic systems, if any), heating and air conditioning, if any, electrical and mechanical systems, equipment and machinery in the buildings(s) located on the Premises and all appliances which are included in this sale being in working order as of the date of Closing and the roof shall be free of leaks.
- (r) A blanket assignment, without recourse or representation, of all Seller's right, title and interest, if any, to all contractors', suppliers', materialmen's and builders' guarantees and warranties of workmanship and/or materials in force and effect with respect to the Premises on the Closing Date and a true and complete copy of each thereof.
- (s) Estoppel letters in the form attached hereto as <u>Schedule F</u> from the following tenants:
- (t) A certificate of Seller confirming that the warranties and representations of Seller set forth in this contract are true and complete on and as of the Closing Date (the statements made in such certificate shall be subject to the same limitations on survival as are applicable to Seller's representations and warranties under §4).
- (u) A-blanket assignment of all Leases and an agreement to indemnify and defend Purchaser against any claims made by tenants, subtenants, occupants or licensees with respect to any failure of Seller to perform its obligations prior to the Closing Date.
- (v) Upon request of Purchaser, a bill of sale transferring to Purchaser the Personal Property free and clear of all liens and encumbrances except, if applicable, for the lien of the holder of the Existing Mortgage.
 - (w) Any other documents required by this contract to be delivered by Seller.
- (x) The accuracy, as of the date of closing, of the representations and warranties of Seller made in this Contract.
- (y) The delivery by Seller to Purchaser of a valid and subsisting Certificate of Occupancy as per the annexed Schedule J.
- §10.02. Seller shall promptly after the Closing, notify the unions having Union Contracts affecting the Premises of the sale of the Premises and the name and address of Purchaser.

Section 11. Purchaser's Closing Obligations

At the Closing, Purchaser shall:

- §11.01. Pay to Seller (and/or to Seller's designee(s) provided Seller shall have given notice to Purchaser of the name(s) of such designee(s) not less than five days prior to Closing) by check, or wire transfer immediately available federal funds to Seller (and/or such designee(s)), the portion of the Purchase Price payable at the Closing, as adjusted for apportionments under §12 and any other credits or adjustments provided in this contract.
- §11.02. Deliver to Seller the Purchase Money Mortgage, if any, in proper form for recording, the note secured thereby, financing statements covering personal property, fixtures and equipment included in this sale and replacements thereof, all properly executed, and Purchaser shall pay the mortgage recording tax and recording fees for any Purchase Money Mortgage.
- §11.03. Deliver to Seller an agreement indemnifying and agreeing to defend Seller against any claims made by tenants with respect to tenants' security deposits to the extent paid, credited or assigned to Purchaser under §10.01(c).
- §11.04. Duly complete and sign all required real property transfer tax returns and all tax reports (such as RP-5217), and cause all such returns, reports and checks in payment of such taxes to be delivered to the appropriate officers promptly after the Closing.
- §11.05. Deliver to Seller an agreement assuming all-of landlord's obligations under the Leases and any subordination, nondisturbance and atternment agreement given by Seller to a subtenant from and after the Closing Date and indemnifying and agreeing to defend Seller against any claims made by tenants, subtenants, licensees or occupants with respect to any failure to perform such obligations.
- §11.06. Deliver to Seller a certificate confirming that the warranties and representations of Purchaser set forth in this contract are true and complete as of the Closing Date (the statements made in such certificate shall be subject to the same limitations on survival as are applicable to Purchaser's representations and warranties under §5).
- §11.07. Deliver to Seller an agreement assuming all Seller's obligations under the Union Contracts affecting the Premises from and after the Closing Date and indemnifying and agreeing to defend Seller against any claims made by the union(s) with respect to such obligations.
- §11.08. Deliver to Seller an agreement assuming all Seller's obligations for brokerage commissions payable after the Closing with respect to leases entered into by Seller prior to the Closing to the extent such obligations have been disclosed to Purchaser in Schedule E.
- §11.09. Deliver any other documents commercially and reasonably reltated to a premise and transaction of a similar nature and required by this contract to be delivered by Purchaser.

Section 12. Apportionments

- §12.01. The following apportionments shall be made between the parties at the Closing as of the close of business on the day prior to the Closing Date:
- (a) prepaid rents and Additional Rents (as defined in §12.03) and revenues, if any, from telephone booths, vending machines and other income-producing agreements to the extent collected;
- (b) interest on the Existing Mortgage(s) and any Existing Mortgage escrow accounts to the extent assigned to Purchaser;
- (c) real estate taxes, water charges and sewer rents, if any, on the basis of the fiscal period for which assessed, except that if there is a water meter on the Premises, apportionment at the Closing shall be based on a final/special reading to a date not more than 30 days prior to the date set for Closing and the unfixed meter charge and sewer rent, if any, shall be apportioned on the basis of such last reading.
- (d) wages, vacation pay, pension and welfare benefits and other fringe benefits of all persons employed at the Premises, whose employment was not terminated at or prior to the Closing;
- (e) value of fuel stored on the Premises, at the price then charged by Seller's supplier, including any taxes, as shown on the invoices of Seller's supplier;
- (f) charges under transferable Service Contracts or permitted renewals or replacements thereof;
 - (g) permitted administrative charges, if any, on tenants' security deposits;
 - (h) dues to rent stabilization associations, if any;
 - (i) Reletting Expenses under §6.02, if any;
 - (j) Accrued senior citizen exemptions, if any; and
 - (k) any other items listed in <u>Schedule D</u>, including assessments.

If on the Closing Date the Premises shall be affected by an assessment which is or may become payable in annual installments, all installments allocable to the period following the Closing Date shall be Purchaser's responsibility.

If the Closing shall occur before a new tax rate is fixed, the apportionment of taxes at the Closing shall be upon the basis of the old tax rate for the preceding period applied to the latest assessed valuation. Promptly after the new tax rate is fixed, the apportionment of taxes shall be recomputed. Any discrepancy resulting from such recomputation shall be promptly corrected, which obligation shall survive the Closing.

Any errors or omissions in computing apportionments at Closing shall be promptly corrected, which obligations shall survive the Closing.

Real estate tax refunds, abatements and credits received after the Closing Date which are attributable to the fiscal tax year during which the Closing Date occurs shall be apportioned between Seller and Purchaser, after deducting the expenses of collection thereof, which obligation shall survive the Closing.

Prior to the Closing Date Seller shall obtain from the agency of the City of New York having jurisdiction thereof final/special readings of all water meters at the Premises dated within the 30-day period preceding the Closing Date.

- §12.02. If any tenant is in arrears in the payment of rent on the Closing Date, rents received from such tenant after the Closing shall be applied in the following order of priority: (a) first to the month preceding the month in which the Closing occurred; (b) then to the month in which the Closing occurred; (c) then to any month or months following the month in which the Closing occurred; and (d) then to the period prior to the month preceding the month in which the Closing occurred. If rents or any portion thereof received by Seller or Purchaser after the Closing are payable to the other party by reason of this allocation, the appropriate sum, less a proportionate share of any reasonable attorneys' fees, costs and expenses of collection thereof, shall be promptly paid to the other parry, which obligation shall survive the Closing.
- §12.03. If any tenants are required to pay percentage rent, escalation or pass-through charges for real estate taxes, operating expenses, or other charges, cost of living adjustments or other charges of a similar nature ("Additional Rents") and any Additional Rents are collected by Purchaser after the Closing which are attributable in whole or in part to any period prior to the Closing, then Purchaser shall promptly pay to Seller Seller's proportionate share thereof, less a proportionate share of any reasonable attorneys' fees, costs and expenses of collection thereof, if and when the tenant paying the same has made all payments of rent and Additional Rent then due to Purchaser pursuant to the tenant's Lease, which obligation shall survive the Closing. If any tenant is or becomes entitled to a refund of overpayments of Additional Rent which are attributable in whole or in part to any period prior to the Closing, Seller shall pay to Purchaser an amount equal to the amount of such refund attributable to any such period within ten days after notice from Purchaser, which obligation shall survive the Closing.

Section 13. Objections to Title, Vendee's Lien, Remedies for Purchaser's Default, Procedure on Termination of Contract by Purchaser

§13.01. Purchaser shall promptly order an examination of title and shall cause a copy of the title report to be forwarded to Seller's attorney upon receipt. Seller shall be entitled to a reasonable adjournment or adjournments of the Closing for up to 60 days or, if Purchaser's obligation to close is conditioned on the issuance of a loan commitment, until the expiration date of any written commitment of Purchaser's institutional lender delivered to Purchaser prior to the scheduled date of Closing, whichever occurs first, to remove any defects in or objections to title (other than Permitted Exceptions) noted in

such title report and any other defects or objections (other than Permitted Exceptions) which may be disclosed on or prior to the Closing Date. Receipt of a title report by Seller's attorney shall be sufficient notice of any title defects or objections contained therein.

- §13.02. If Seller shall be unable to convey title to the Premises at the Closing in accordance with the provisions of this contract, Purchaser, nevertheless, may elect to accept such title as Seller may be able to convey without any credit against the monies payable at the Closing or liability on the part of Seller. If Purchaser shall not so elect, Purchaser may terminate this contract, which termination shall be subject to the provisions of §13.07. Seller shall not be required to bring any action or proceeding or to incur any expense in excess of the Maximum Expense specified in Schedule D to cure any title defect or to enable Seller otherwise to comply with the provisions of this contract, but the foregoing shall not permit Seller to refuse to pay off at the Closing, to the extent of the monies payable at the Closing, mortgages or other liens on the Premises which can be satisfied or discharged by payment of a sum certain, other than Existing Mortgages.
- §13.03. Any unpaid taxes, assessments, water charges and sewer rents, together with the interest and penalties thereon to a date not less than five business days following the Closing Date, may be paid out of the proceeds of the monies payable at the Closing or as an adjustment to the Purchase Price if Seller delivers to Purchaser on the Closing Date official bills for such taxes, assessments, water charges, sewer rents with interest and penalties thereon computed to said date. If at the Closing there are other liens or encumbrances that Seller is obligated to pay or discharge, Seller may use any portion of the cash balance of the Purchase Price to pay or discharge them, provided Seller shall simultaneously deliver to Purchaser at Closing instruments in recordable form and sufficient to satisfy and discharge any such liens and encumbrances of record, together with the cost of recording or filing said instruments. Upon request made a reasonable time before the Closing, Purchaser shall provide at the Closing separate checks for the foregoing payable to the order of the holder of any such lien, charge or encumbrance and otherwise complying with §2.02. As an alternative, and if Purchaser's title insurance company is willing to insure clear of any such matters both Purchaser and Purchaser's institutional lender, if any, at no additional charge or premium, that such charges, liens and encumbrances will not be collected out of or enforced against the Premises, then, unless Purchaser's institutional lender reasonably refuses to accept such insurance Seller shall have the right, in-lieu of payment and discharge, to deposit with Purchaser's title insurance company such funds or assurances or to pay such special or additional premiums as acceptable to the title insurance company and as they may require in order to ensure their discharge and to so insure. In such case the charges, liens and encumbrances with respect to which the title insurance company has agreed so to insure shall not be considered objections to title.
- §13.04. Notwithstanding anything to the contrary contained herein, if Purchaser shall willfully default in the performance of its obligations under this contract, the sole remedy of Seller shall be to retain the Downpayment as liquidated damages for all loss,

damage and expense suffered by Seller, including without limitation the loss of its bargain, subject, however, to Seller's rights under §14 and §17.04.

- §13.05. If Seller shall willfully default in the performance of its obligations under this contract, Purchaser shall have the right to seek specific performance of such obligations or damages for all loss, damage and expense suffered by Purchaser, including, without limitation, the loss of its bargain, excluding consequential or punitive damages.
- §13.06. Purchaser shall have a vendee's lien against the Premises for the amount of the Downpayment and the interest earned thereon, but such lien shall not continue after default by Purchaser beyond any notice and cure period under this contract or after deposit of the Downpayment in court by the Escrowee.
- §13.07. Except for matters that Purchaser elects the remedies under section 13.05 hereinabove, for Sellers willful default, if (a) Purchaser shall have grounds under this contract for refusing to consummate the purchase provided for herein, or (b) Purchaser or Seller terminates this contract pursuant to a provision that refers to this Section, the sole liability of Seller shall be to refund the Downpayment to Purchaser and to reimburse Purchaser for (i) the cost of title examination, but not to exceed the amount charged by Purchaser's title company therefor without issuance of a policy, (ii) the cost of updating the existing survey of the Premises or the cost of a new survey of the Premises if no existing survey was delivered to Purchaser by Seller or the existing survey was not capable of being updated and a new survey was required by Purchaser's institutional lender and (iii) the cost of departmental searches. Upon the giving of the termination notice and Seller's refund of the Downpayment, this contract shall be null and void and the parties hereto shall be relieved of all further obligations and liability other than any arising under §14 and §17.04.

Section 14. Broker

§14.01. If a broker is specified in <u>Schedule D</u>, Seller and Purchaser mutually represent and warrant that such broker is the only broker with whom they have dealt in connection with this contract and that neither Seller nor Purchaser knows of any other broker who has claimed or may have the right to claim a commission in connection with this transaction, unless otherwise indicated in <u>Schedule D</u>. The commission of such broker shall be paid pursuant to separate agreement by the party specified in <u>Schedule D</u>. If no broker is specified in <u>Schedule D</u>, the parties acknowledge that this contract was brought about by direct negotiation between Seller and Purchaser and that neither Seller nor Purchaser knows of any broker entitled to a commission in connection with this transaction. Unless otherwise provided in <u>Schedule D</u>, Seller and Purchaser shall indemnify and defend each other against any costs, claims or expenses, including reasonable attorneys' fees, arising out of the breach on their respective parts of any representations, warranties or agreements contained in this paragraph. The representations and obligations under this paragraph shall survive the Closing or, if the Closing does not occur, the termination of this contract.

Section 15. Notices

§15.01. All notices under this contract shall be in writing and shall be delivered personally with receipt acknowledged or shall be sent by (i) prepaid certified mail, or (ii) prepaid nationally recognized overnight courier for next business day delivery, or (iii) by e-mail in each case addressed as set forth in Schedule D or as Seller or Purchaser shall otherwise have given notice as herein provided. Notice sent by certified mail shall be deemed received on the third business day following mailing. Notice sent by overnight courier shall be deemed received on the first business day following delivery to the overnight courier. Notices sent by e-mail transmission shall be deemed received on the date received (or, if the date of receipt is not a business day, on the first business day following date of receipt). Notices under this contract may not be given by e-mail or other electronic system. Any notice under this contract may be given by the attorneys of the respective parties who are hereby authorized to do so on their behalf.

Section 16. Limitations on Survival of Representations, Warranties, Covenants and other Obligations

- §16.01. Except as those items stated in this contract to survive Closing, no representations, warranties, covenants or other obligations of Seller set forth in this contract shall survive the Closing, and no action based thereon shall be commenced after the Closing.
- §16.02. The delivery of the deed by Seller, and the acceptance thereof by Purchaser, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder, except those obligations of Seller which are expressly stated in this contract to survive the Closing.

Section 17. Due Diligence Period

- §17.01. During the period (the "<u>Due Diligence Period</u>") commencing on the date hereof and ending at 5:00 P.M. Eastern Standard Time on the 30th day following receipt of fully executed contracts by Purchaser's attorney pursuant to the Notice provision hereof Purchaser shall have the right to have the Premises inspected during reasonable hours, after reasonable notice to Seller, and to obtain the following inspection reports with respect to the Premises, at Purchaser's sole cost and expense:
- (a) An inspection and report (the "Environmental Report") from a licensed environmental inspection laboratory or a licensed engineer (the "Inspection Company") with respect to the presence or absence of hazardous or toxic substances or conditions at the Premises including, without limitation, asbestos, mold, polychlorinated biphenyls, petroleum products and those hazardous substances defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq. and all amendments thereto, the Superfund Amendments and Reauthorization Act, 42 U.S.C. §9601 et seq., and the rules and regulations promulgated thereunder, New York State Environmental Liability Review Act, New York Environmental Conservation Law (ECL)

§§8-0101 et seq., and the New York State Water Pollution Control Act, ECL §§17-0101 et seq. (collectively, "Hazardous Substances"); and

- (b) An inspection and report (the "<u>Engineering Report</u>") from a licensed engineer and other appropriate professionals (collectively, the "<u>Engineer</u>") with respect to the structural and general physical condition of the Premises, all mechanical systems and utilities servicing the Premises, curtain walls, roofs, wells, septic and drainage systems, and compliance with the Americans with Disabilities Act (collectively, "<u>Building Conditions</u>").
- §17.02. Purchaser shall cause copies of the Environmental Report and Engineering Report (collectively, the "Reports") to be delivered to Seller prior to the expiration of the Due Diligence Period. Purchaser may elect to cancel this contract, by written notice (the "Termination Notice") to Seller delivered on or before the last day of the Due Diligence Period, if the Environmental Report or the Engineering Report is unacceptable to Purchaser. If Purchaser so elects to terminate this contract, such termination shall be subject to the provisions of §13.07 except that Purchaser shall not be entitled to reimbursement from Seller of any of the costs listed in clauses (i), (ii), or (iii).
- §17.03. During the Due Diligence Period, Seller agrees to cooperate in all reasonable respects with Purchaser and agrees to make available to Purchaser and its agents all of the books, files and records relating to the Premises which are in the possession or under the control of Seller. Notwithstanding the foregoing, Purchaser shall not have the right to conduct a Phase II Environmental Assessment or make any other intrusive tests without Seller's prior written consent, which shall not be unreasonably withheld, delayed or conditioned.
- §17.04. Purchaser hereby indemnifies and agrees to defend and hold Seller harmless from all loss, cost (including, without limitation, reasonable attorneys' fees), claim or damage caused by the inspection of the Premises by Purchaser, its agents, consultants or representatives.
- §17.05. TIME SHALL BE OF THE ESSENCE WITH RESPECT TO PURCHASER'S ACTIONS PURSUANT TO THIS SECTION 17. If Purchaser shall (i) fail to have the Premises inspected prior to the expiration of the Due Diligence Period, (ii) fail to deliver a copy of the Reports to Seller prior to the expiration of the Due Diligence Period or (iii) fail to give the Termination Notice prior to the expiration of the Due Diligence Period, Purchaser shall be deemed to have waived the right to cancel this contract as provided in §17.02.

Section 18. Miscellaneous Provisions

§18.01. (a) Purchaser shall have the right to assign this contract or its rights hereunder without the prior written consent of Seller to an entity controlled and or in which the Purchaser is a majority stakeholder. No permitted assignment of Purchaser's rights under this contract shall be effective against Seller unless and until an executed counterpart of the instrument of assignment shall have been delivered to Seller and Seller

shall have been furnished with the name and address of the assignee. The term "Purchaser" shall be deemed to include the assignee under any such effective assignment.

- (b) Notwithstanding anything to the contrary in §18.01(a), if Seller or Purchaser is or may in the future be under contract with a qualified intermediary for the purpose of effecting a tax-deferred exchange in accordance with Section 1031 of the Internal Revenue Code of 1986, as amended, each party consents to the assignment of this contract to such intermediary. Each party shall cooperate with the other and with the qualified intermediary to accomplish such exchange and shall perform any acts and execute any and all documents reasonably necessary to assist in such exchange, provided that neither party shall be required to accept title to any property other than the Premises, expend any additional amounts of money above those amounts for which it is obligated under this contact or extend the Closing Date, and Seller's time to close under this contract shall not be reduced. Seller and Purchaser shall each defend, indemnify and hold the other harmless from and against expenses, costs and damages of any kind (including reasonable attorneys' fees) suffered by either resulting from the performance of, or failure to perform, any acts of cooperation necessitated by this Section.
- §18.02. This contract embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this contract. Neither this contract nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.
- §18.03. This contract shall be governed by, and construed in accordance with, the law of the State of New York.
- §18.04. The captions in this contract are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this contract or any of the provisions hereof.
- §18.05. This contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns.
- §18.06. This contract shall not be binding or effective until properly executed and delivered by Seller and Purchaser.
- §18.07. As used in this contract, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require.
- §18.08. If the provisions of any schedule or rider to this contract are inconsistent with the provisions of this contract, the provisions of such schedule or rider shall prevail. Set forth in Schedule D is a list of any and all schedules and riders which are attached hereto but which are not listed in the Table of Contents.

- \$18.09. This contract may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall be one instrument.
- §18.10. For purposes of this contract, an "institutional lender" is a bank, savings bank, trust company, savings and loan association, credit union or similar banking institution whether organized under the laws of the State of New York, the United States or any other state; a foreign banking corporation licensed by the Superintendent of Banks of New York or the Comptroller of the Currency to transact business in New York State; a mortgage banker licensed pursuant to Article 12-D of the Banking Law; any instrumentality created by the United States or any state with the power to make mortgage loans; an insurance company, pension fund, annuity company, pension plan or pension advisory firm, a mutual fund, a real estate investment trust, a real estate mortgage investment conduit ("REMIC") or similar vehicle, so long as the mortgage held by the REMIC or similar vehicle is serviced by an entity that is a rated servicer, and an investment bank.

<SIGNATURE PAGE FOLLOWS>

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the date first above written.

458 East 99th Street LLC

By: Warren Bell Name: Warren Bell

Purchaser:

Euro Woodworking Inc. and or an entity wholly controlled by Wolfgang Michelitsch

By: Wolfey Moltaltach
Name: O WOLFGANG MICHELITSOF Title: PRESIDENT

Receipt by Escrowee

The undersigned Escrowee hereby acknowledges receipt of \$155,000.00, by check subject to collection, to be held in escrow pursuant to §2.06.

PURCHASER'S RIDER TO CONTRACT OF SALE

BETWEEN: 458 East 99ths Street, LLC, AS SELLER AND: Euro Woodworking, Inc. AS PURCHASER

PROPERTY: 458 East 99th Street, Brooklyn NY

- 1. In the event of any inconsistencies between the terms of this Rider and the terms of the Contract of Sale or any riders thereto, the terms of this Rider shall be deemed to control and govern.
- 2. With regard to Section 1.02 and the matters set forth in Schedule B same shall not apply to the extent they render title uninsurable (at standard rates), or otherwise adversely affect the use of the premises as a space for woodworking and related fabrications/ manufacturing operations.
- 3. Other than as detailed in Article 2.08 of the body of the Contract, If the lender which issues the loan commitment shall fail or refuse to close the loan for any reason other than the Purchasers default or failure to cooperate, then this agreement, upon the receipt of notice to such effect by the Seller, shall be deemed canceled and both parties shall be released and discharged from all liability hereunder, except that the downpayment shall be promptly refunded to the Purchaser.
- 4. Seller shall at Sellers cost and expense undertake all necessary repairs and other action to satisfy and otherwise remove of record the "Partial Vacate" order presently recorded against the premises on the NYC Building Department records..
- 5. Intentionally Deleted
- 6. All time periods shall be computed as of the date that the Purchaser's attorney receives a fully executed copy of this Contract.
- 7. Seller shall furnish a final water meter reading (title reading) based on the last actual reading to a date not more than thirty (30) days before Closing.
- 8. At Closing the premises shall be delivered vacant and free of any tenants or occupants.
- 9. New York City and New York state transfer taxes shall be paid by Seller.
- 10. All real estate brokers commissions shall be paid by seller
- 11. Notwithstanding anything to the contrary herein sellers shall be required to discharge any mortgages, liens or encumbrances which can be discharged by the payment of a liquidated sum or the giving of an affidavit within the scope of the actual knowledge of the Seller.

- 12. Seller agrees to deliver to Buyer prior to closing all blueprints, architect's drawings, landscape architect designs, and all building and landscaping specifications, surveys and maps describing the property, presently in the Seller's possession.
- 13. Environmental Conditions To the best of Seller's knowledge, the Property is not in violation of any federal, state, local or administrative agency ordinance, law, rule, regulation, order or requirement relating to environmental conditions or Hazardous Material ("Environmental Laws")..").. For the purposes hereof, "Hazardous Material" shall mean any substance, chemical, waste or other material which is listed, defined or otherwise identified as "hazardous" or "'toxic" under any federal, New York State, local or administrative agency ordinance or law. As used herein, reference to "notice" to Seller or to "to Seller's knowledge" or words of like import means and refers to written notices actually received by, or to facts in question being actually known, without any due diligence or duty of inquiry.
- 14. Purchaser shall have the right to assign the contract herein to an newly formed limited liability company, or corporation, in which the purchaser has a majority interest.

15. The Engineering Report referenced in Section 17 of the Contract shall include a confirmation that the present Certificate of Occupancy does not restrict the use of the Premises as a woodworking shop.

Ethoc/Voodworking, Inc

458 East 99ths Street, LLC

Schedule A

DESCRIPTION OF PREMISES

(to be attached separately and to include tax map designation)

SCHEDULE A

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, known and designated as and by Lot Numbers 34, 35 and 36 in Block 8131 as shown on a certain map entitled, "Map of property of Brooklyn and Philadelphia Realty Company" located in the Thirty-Second Ward of the Borough of Brooklyn, City of New York, surveyed May 15, 1906 by Alex D. Murphy, Civil Engineer and Surveyor and filed in the Office of the Register of Kings County on February 7, 1911, as Map Number 1555, which said lots according to said map are bounded and described as follows:

BEGINNING at a point on the westerly side of East 99th Street, distant 180 feet northerly from the corner formed by the intersection of the westerly side of East 99th Street with the northerly side of Foster Avenue;

RUNNING THENCE westerly through a party wall and parallel with the northerly side of Foster Avenue (100 feet to a point;

RUNNING THENCE northerly parallel with the westerly side of East 99th Street, 60 feet to a point;

RUNNING THENCE easterly parallel with the northerly side of Foster Avenue 100 feet to the westerly side of East 99th Street; and

RUNNING THENCE southerly along the westerly side of East 99th Street 60 feet to the point or place of BEGINNING.

Being the same Premises as that conveyed to grantors herein by Deed dated November 14, 1975 and recorded November 21, 1975 in the Office of the City Register, Kings County in Reel 815 Page 1608.

Schedule B

PERMITTED EXCEPTIONS

- 1. Zoning and subdivision laws, regulations and ordinances which are not violated by the existing structures or present use thereof.
- 2. Consents by the Seller or any former owner of the Premises for the erection of any structure or structures on, under or above any street or streets on which the Premises may abut.
- 3. If Schedule C provides for the acceptance of title by Purchaser subject to one or more Existing Mortgage(s), the Existing Mortgage(s) and financing statements, assignments of leases and other agreements ancillary thereto.
- 4. Leases and Tenancies specified in the Rent Schedule and any new leases, tenancies, occupancy agreements and licenses not prohibited by this contract.
- 5. Unpaid installments of assessments not due and payable on or before the Closing Date; and real estate taxes that are a lien but are not yet due and payable.
- 6. Financing statements, chattel mortgages and liens on personalty filed more than 5 years prior to the Closing Date and not renewed, or filed against property or equipment no longer located on the Premises or owned by Tenants.
- 7. Rights of utility companies of record to lay, maintain, install and repair pipes, lines, poles, conduits, cable boxes and related equipment on, over and under the Premises, provided that none of such rights imposes any monetary obligation on the owner of the Premises or interferes with the existing use of the Premises or the following proposed use of the Premises
- 8. Minor Encroachments (under one (1) foot) of stoops, areas, cellar steps, trim cornices, lintels, window sills, awnings, canopies, ledges, fences, hedges, coping and retaining walls projecting from the Premises over any street or highway or over any adjoining property and minor encroachments of similar elements projecting from adjoining property over the Premises.
- 9. Revocability or lack of right to maintain vaults, coal chutes, excavations or sub-surface equipment beyond the line of the Premises.
- 10. Any state of facts that an accurate survey would disclose, provided that such facts do not render title uninsurable or give rise to an out of possession exception in Purchaser's title report.

Schedule C

PURCHASE PRICE

The Purchase Price shall be paid as follows:

(a)	By check subject to collection, the receipt of which is hereby acknowledged by Seller (the Downpayment):	\$155,000.00
(b)	By check or checks delivered or wire transfers of federal funds to Seller or Seller's designee(s) or the holder of any Existing Mortgage being assigned pursuant to §2.04 at the Closing in accordance with the provisions of §2.02:	\$
(c)	By acceptance of title subject to the following Existing Mortgage(s):	
(d)	By execution and delivery to Seller by Purchaser or its assignee of a note secured by a Purchase Money Mortgage on the Premises:	\$
(e)	Total Purchase Price:	\$1,550,000.00

Schedule D

MISCELLANEOUS

- 1. Address of Premises:458 East 99th Street, Brooklyn, New York
- 2. Title insurer designated by Purchaser (§1.02):
- 3. Last date for consent by Existing Mortgagee(s) (§2.03(b)):
- Prepayment Date on or after which Purchase Money Mortgage may be prepaid (§2.05(c)(1)):
- 5. Maximum Interest Rate of any Refinanced Mortgage (§2.05(b)):
- 6. Seller's tax identification number:
- 7. Purchaser's tax identification number:
- 8. Scheduled time and date of Closing (§3.01): On or about ninety (90) days from when Purchaser's attorney receives fully executed contracts pursuant to the Notice provisions contained herein and delivered in a commercially reasonable vacant and debris clean manner.
- 9. Place of Closing (§3.01): Seddio & Associates, PC- 9306 Flatlands Avenue, Brooklyn, New York 11236 or, upon reasonable notice, at Purchaser's lenders counsel office.
- 10. Assessed valuation of Premises (§4.10):

Actual Assessment:

Transition Assessment:

- 11. Fiscal year and annual real estate taxes on Premises (§4.10):
- 12. Tax abatements or exemptions affecting Premises (§4.10):
- 13. Assessments on Premises (§4.13):
- 14. Maximum Amount which Seller must spend to cure violations, etc. (§7.02): \$15,000.00
- 15. Maximum Expense of Seller to cure title defects, etc. (§13.02): \$15,000.00
- Broker, if any (§14:01): Crosstown Realty Inc. and Sholom and Zuckerbrot Realty LLC

- 17. Party to pay broker's commission (§14:01) Seller pursuant to a separate broker agreement.
- 1. Purchaser shall pay the Seller's attorney's fee in the sum of \$
- 18. Address for notices (§15.01):

If to Seller:

Frank R. Seddio, Esq.
9306 Flatlands Avenue,
Brooklyn, New York 11236
718-272-6040
E-mail: ianassist36@gmail.com
or Seddiolaw@gmail.com

If to Purchaser:

George Klein, Esq. George W. Klein & Associates 70-09 Austin Street, Suite 204 Forest Hills, New York 11375 (718) 575-3373 E-mail: gkleinlaw@verizon.net

19. Additional Schedules or Riders (§18.08): Schedule H, I and J

Schedule H

EMPLOYEES

NONE

Schedule I

SERVICE CONTRACTS

NONE

Schedule J CERTIFICATE OF OCCUPANCY

This Page Intentionally Blank

Appendix F

Deed Searh - 2018

RAM ABSTRACT, LTD 100 Merrick Road, Suite 350 Rockville Centre, New York 11570

Tel: 718-846-7800 Fax: 718-846-7801

August 21, 2018

Frank Seddio, Esq. 9306 Flatlands Avenue Brooklyn, NY 11236

Reference: Title No. NRA10111

458 99th Street Block: 8131 Lot: 56

Borough of Brooklyn, County of Kings, State of New York

Deed Search

Total \$100.00

Ram Abstract Ltd.

100 Merrick Road, Suite 350W Rockville Centre, NY 11570

Telephone: (718) 846-7800 Fax: (718) 846-7801

August 21, 2018

Frank Seddio, Esq. 9306 Flatlands Avenue Brooklyn, NY 11236

Reference: Title No. NRA10111

458 99th Street Block: 8131 Lot: 56

Borough of Brooklyn, County of Kings, State of New York

Dear Ian:

Please see attached Deeds from 1945 to 1966 as you requested.

Very truly yours,

Raffi Abstract Ltd. 2. 8

Letterhead

	LOT LIBER 7839 PC	G 615
BLOCK	Grantor(s): SYLVIA BATES	Grantee(s): DAVE SNYDER LUMBER
DATE 10-1-51	SYLVIA BATES	CORP
ACK. "		1.001
REC. 10-4-51		
HAB. FEE		
TITLE CO/NO:		
CONSID. \$10-OVC		
STAMPS \$8.80	METES & BOUNDS S/A: P.U.E	& MORE
Subject to:		
Notes:		

6.654-9-90 make and Sale David. Without Common and Common Common

Chis Indenture.

smile the

3 ~

day of October,

minutess, hundred and fifty-ime

bet worth

SYLVIA BATES,

residing at 959 East 89th Street, Brooklyn, New York,

DAVE SNYDER COMPER CORP. a domestic corporation with principal office at 152 dest 42nd Street, New York City

रकार्याम् वर

part of the second part,

shoney of the United Stabas and other valuable consideration paid by the part of the second part, do bereby great and release into the part of the second part.

1 to state on the second part.

are parted of hard, whitehead a distributed and description of head, strang, lying and being

and designated on a certain map entitled Map of Property of Brooklyn and Philadelphia Realty Company located on the 32nd WarpBorough of Brooklyn, City of New York, surveyed Brooklyn May 15th 1908, Alex D. Murphy, CE and CS and filed in the office of the Register of the County of Kings on February 7, 1911 as and by the lots numbers 33 and 34 in Block number 8131, which said lots taken together are bounded and described as follows:

Situate on the southwesterly side of East 99th Street at the distance of 180 feet horthwesterly from the northwesterly side of Foster Avenue (formerly Avenue E) containing in front or breadth on said East 99th Street 40 feet and extending that width in length or depth southwesterly between lines parallel with said Foster Avenue, 100 feet., 81so

All those two certain lots pieces or parcels of land situate, lying and being in the Borough of Brooklyn of the City of New York known and designated on a certain map entitled "map Property of Brooklyn and Philadelphia Bealty Company, located in the 32nd Ward, Borough of Brooklyn, City of New York, surveyed Brooklyn May 15, 1908, klex D. Marphy CE and CS and filed in the office of the Register of the County of Kings on February 7, 1911 as and by the lots numbers 35 and 38 in Block 8181 which said lots taken together are bounded and described as follows:

P/

The part 3 of the first part covenant that 6 he will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and that 6 he will apply the more first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

In Militigue Migerett the part ; of the first part ha go hereman see here

head

the day and year first above written.

is the Pressure of

to use known to be the individual described in and who executed the foregoing instr

CON 7839 AUG 18

STATE OF NEW YORK. COUNTY OF KINGS

On this

day of Dotober

in the year pineteen bundred sad

fifty-one

before my personally came Sylvin Baton

subscribing witness to the foregoing instrument, with

where I am personally acquainted, who, being by me duly sworn, sid depose and ally, that

that he is said their was stageshould

150.0

and long to be the individual described in, and who exaconal the foregoing hustrament; and that he, and solveribing witness, also present and any concerns the seems and he, and witness, at the seems those, subscribed in more as an express.

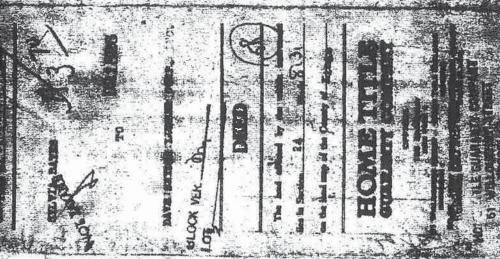
STATE OF NEW YORK

.

in the year minutions bands

below the personally mant

See mine leasures to be that individual described in and who executed the foregating instrument acknowledged to use that he executed the same.



61 61 61 744-48 ·

123 94017

BLOCK	LOT LIBER 8488 PG 506				
	Grantor(s):	Grantee(s):			
DATE 10-31-56	DAVE SNYDER LUMBER	RUDAY REALTY CORP.			
ACK. "	CORP.				
REC. 11-1-56					
HAB. FEE					
TITLE CO/NO:					
CONSID. \$10-OVC					
STAMPS SO	METES & BOUNDS S/A: P.U.E &	& MORE			
	w (r = 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1				
Subject to:		100000000000000000000000000000000000000			
Notes:					

THIS INDESTURE with the first description of the state of BETWEEN LAVE SKINES TOWN TORK, asvine its principal place of busimess in 118-02 than avenue, while there, therein, City and State of Kow Yerk.

can the Englanded RUMAY REALTY COMP. . having his principal place of business at 1,5-02 1 to svenue, Whitestone, urens, (lly and state at New York.

WITNESSETH, that the party of the first part, in consideration of ten dellars and other valuable consideration not to the party of the second party the steering plant sold some a more the party of the second part, the heirs is consistent and cought on the party of the second part, fore as

Allerta considers, piece of purel of land with the buildings and improvements thereon erected intage of single and being in the Borough of Bringhlyn, County of Kinga, City and State of New York, known and designated as and by lot numbers 30, 31, 32, 34, 39 and to in Block No. 5131 as shown and designated on a certain map smilled "Map of property of Brooklyn and Philadelphia Realty Company" located in the Thirty-second Ward of the Borough of Brooklyn, City of New York, surveyed May 15th, 1906 by Alex D. Murphy, C. E. and C. S. and Itlad in the Office of the Register of Kings County on February 7th, 1911, sa Map Ro. 1555, which said lots accarding to asid map are bounded and described as fellows:

distant 100 lest agretiwe sterly from the corner formed by the inter-section of the southwesterly side of East 99th Street with the morthwesteriy side of Foster Avenue; running thence southwesterly and parallel with Foster Avenue 100 feet; running thence morthwesterly and parallel with East 99th Sirest 140 feet; running thence morthsantecty and again porallel with Faster Avenue 100 feet to the southwesterly alde of East 99th Street; running thence southwesterly along the southwester; also of East 99th Street lift feet to the point or place of beginhing.

ALSO being known and designated on the Land Tax Map of the County of Kings, City ! Hew York, as balno in Section No. 24, Block No. 8131; let number fo.

TOGETHER with all the right, title and interest of the party of the first part in and to the land lying in said East 99th Street in front of and adjoining the above described presides, to the center line Truntaot.

SUBJECT to a first wortcage now a lien against the premises in the

principal, sum of \$10,000.00.
This dead being executed and delivered to replace a former dead execut ed between the tame parties dated Dec. 31, 1912, which former deed was lost, misplaced or destroyed without having been recorded.

TORGETHER with all right, this and deterred, if any; of the party of the first part in and to any streets and roads absorber the above description of the center hast thered. THE with the appartenances and all the exists and rights of the party of the first part or and of the provises. TO HAVE AND TO HOLD the provises between granted must be party of the second part, the heres or successives and assigns of the party of the second part forces.

AND the party of the last part, a companier with Section 43 of the Lieu Law, coverants that the party of the time part will receive the commercial a for this possessing and will bold the right to receive such comeration as a trust finishing being bed form for the plaquest of paying the root of the improvement and will apply the annearon to the payment of the country properties to the payment of the same for division partiese.

Sile to part of the first perfect proposed as follows, that and parts of the first part is selected in the said resource of the implies and has given riche to disastor the anneal that the parts of the according that the first cash present, that he had present are free from monitories, except as aforecastly that the arts of the first cash and contain or proposed and further necessary appropriate and the selection and presents; and that are parts of the selection and presents; and that are parts of the first cash and presents are the first cash presents.

the word "justs, that is serviced as it is all parties" where it the sense of this indentitie so respond th WITNESS WHEREOF, he was a first part be duly expected the deed the day and west first above

PF 28 19718 Steledard NY.H.T.M. Form 8082 Bargela and Sale Dord, with Currental against Granter's Arte Sudiridual of Corporation Single Shreet Consult your lawyer report tien ine this instrument—this instrument should be used by lawyers only.

315 815 AST 1608

This industries, made the 14th day of November, nineteen hundred and serventy-five Between RUDAY REALTY CORP., a domestic corporation, with office at 104-43 115th Street, Richmond Hill, New York,

party of the first part, and ABB'S RADIO, INC., a domestic corporation, with office at 1396 Rockaway Parkway, Brooklyn, New York,

party of the second part,

Witnesseds, that the party of the first part, an consideration of Ten Dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part foreyet,

All that pertain plot, piece or percel of lend, with the buildings and improvements thereon erected, cituate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, known and designated as and by lot numbers 34, 35 and 36 in Block 8131 as shown and designated on a certain map entitled "Map of property of Brooklyn and Philadelphia Realty Company bocated in the Thirtysecond Ward of the Borough of Brooklyn, City of New York, surveyed May 15th, 1906 by Alex D. Murphy, C.E. and C.S. and filed in the Office of the Register of Kings County of February 7th, 3911, as Map No. 1555, which said lots according to said map are bounded and described as follows:

BEGINNING at a point on the westerly side of East 99th Street, distant 180 feet northerly from the corner formed by the intersection of the mesterly side of Hast 99th Street with the northerly side of Foster Avenue; running thence westerly through a party wall and parallel with the northerty side of Poster Avenue 100 feet to a point; running thence northerly parallel with the westerly side of Bast 99th Street 60 feet to a point; running thence easterly parallel with the northerly side of Foster Avenue 100 feet to the westerly side of East 99th Street; and thence southerly along the westerly side of East 99th Street 60 feet to the point or place of SEGINTING. Said premises known as 454-458 East 99th Street, Brooklyn, New York.

Together with all right, little and interest, if any, of the porty of the first part in and to any afreets and food: abotting the above described premises to the center lines threed; Toorber with the appurtenance; and all the estate and rights of the party of the first part in and to said premises; To Hard And To Hold the promises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

And the party of the first part coverants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way evistover, except as electeraid.

And the party of the first part, in compliance with Section 13 of the Lien Law, coveragin that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before congulary part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indentive so requires.

In Witness Whereof, the purzy of the first part has duly executed this deed the day and year first above written.

On the

day of , before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

> REAL ESTATE THE STATE OF TRANSFER TAXT C THEW YORK

STATE OF NEW YORK, COUNTY OF QUEENS

On the M day of November 1975, before me personally came DAVE SAYDER to me known, who, being by me duly swarn, did depose and say that he resides at No. 104-43 US 97. RUTHAWN HILL MY that he is the PACE.

of RUDAY REALTY CORP, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seel; that it was offixed by order of the board of directors of said coppy tion, and that he signed it arome thereto by like

Bargain and Sale Beed

With Covenant Against Granter's Acts

RUDAY REALTY CORP.

ABE'S RADIO, INC.

This No. 75-24-01442
This No. USLife Time Ins. Co. of N.Y.

USLIFE TITLE INSURANCE

COMPANY of New York

STATE OF NEW YORK, COUNTY OF

On the personally came , before me

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that produted the same.

STATE OF NEW YORK, COUNTY OF

On the day of personally came

, belore ma

the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No.

to be the individual described in and who executed the laxegoing instrument; that the cald aubscribing witness, was present and saw

executed the same; and that - he, said witness. at the same time subscribed his name as witness thereto,

ANTHONY D. FOILIM.
NOTARY PUBLIC, STORE of the You
No. 90:311222 - Teach County
Tamb Expiris Morch 30, 19 3 7

MICHTENNIA. MACK

8131

56

TOJ

COUNTY HE SHEET Kings

Backerded by: LIFLINE TITLE INSURANCE

**** 4

Eventury of Nov. Yor E25 Members Lann Nov. York 35Y 10034L

Anthony D. Pistone, Eso. 37-94 103rd Street Corona, M.Y. 11368

Zie Sa

OTTE PACE FOR USE



This Page Intentionally Blank

Appendix G Brownfield Site Contact List

Section IX. Contact Information List

- 1. Chief Executive Officer and Planning Board Chairperson:
 - a. New York City Department of City Planning-Marisa Lago, Director
 - i. Brooklyn Office:16 Court Street, 7th Floor, Brooklyn, NY 11241-0103
 - ii. Phone: (718) 780-8280, Fax: (718) 596-2609
 - b. Brooklyn Borough President Eric L. Adams
 - i. Brooklyn Borough Hall, 209 Joralemon Street, Brooklyn, NY 11201
 - ii. Phone: (718) 802-3700, Fax: (718) 802-3778
 - c. New York City Mayor William DeBlasio
 - i. City Hall, New York, NY 10007
 - ii. Phone: (212) 639-9675
 - d. Mayor's Office of Environmental Coordination-Hilary Semel, Director
 - i. 253 Broadway, 14th Floor, New York, NY 10007
 - ii. Phone: (212) 676-3290
- 2. Residents, owners, and occupants of property and adjacent properties
 - a. Owner of Property-458 East 99th Street, LLC
 - i. 458 East 99th Street, Brooklyn, NY 11236
 - b. Owners of Adjacent Properties
 - i. 452 East 99th Street-Early Bird Food Distributor
 - 1. Section 8131, Block 54
 - 2. Owner-452 East 99th Street LLC, 3711 Neptune Avenue, Brooklyn, NY, 11224.
 - ii. 1227 Rockaway Avenue, Brooklyn, NY 11236-Saba Live Poultry
 - 1. Section 8131, Block 18
 - 2. Owners- Ahmed M. Nasser & Ahmed Mused, 9306 Flatlands Avenue, Brooklyn, NY 11236.
 - iii. 857 East 98 Street, Brooklyn NY-Gotham Steel Supply
 - 1. Section 8131, Block 13
 - 2. Owners- 1231 Rockaway Ave Realty Corp Inc., 1231 Rockaway Avenue, Brooklyn, NY & 734 Foch Blvd Realtycorp, Foch Blvd, Williston Park, NY
 - iv. 464 East 99th Street, Brooklyn NY, 11236-NY Façade and Glass
 - 1. Section 8131, Block 59
 - 2. Owner: Four Star Associates LLC, 29-37 41st Avenue, Long Island City, NY 11101
- 3. News Media
 - a. Local Newspapers: Canarsie Courier, Brooklyn Daily
- 4. Public Water Supplier:
 - a. New York City Department of Environmental Protection
 - i. Commissioner Vincent Sapienza, P.E.
 - ii. Phone: (212) 639-9675
- 5. Any Person who has requested to be placed on Brownfield Site Contact List

6. Administrator of any school or daycare located near the facility

- a. NYC Public School 66
 - i. 845 East 96th Street, Brooklyn, NY 11236
 - ii. Phone: (718) 922-3505, Fax: (718) 922-3105
- iii. Merve Williams, Principal
- b. Canarsie Ascend Lower School
 - i. 9719 Flatlands Avenue, Brooklyn, NY 11236
 - ii. Phone: (347) 713-0100
- iii. Anastasia Michals, School Director
- c. Uncommon Schools Leadership Prep Canarsie
 - i. 1001 East 100th Street, Brooklyn, NY 11236
 - ii. Phone: (347) 390-0570
- iii. Mallorie Bocachica, Principal
- d. Kappa 5 l\1iddle School
 - i. 985 Rockaway Avenue, Brooklyn, NY 11212
 - ii. Phone: (718) 922-4690
- iii. Ronda Phillips, Principal
- e. Cultural Arts Academy Charter School
 - i. 1400 Linden Boulevard, Brooklyn, NY 11212
 - ii. Phone: (718) 683-3300, Fax: (718) 272-1330
- iii. Dr. Laurie B. Midgette, Founding Principal
- f. The Fresh Creek School
 - i. 875 Williams Avenue, Brooklyn, NY 11236
 - ii. Phone: (718) 272-1843
- iii. Lisa Goodson, Principal
- g. NYC Public School 2797
 - i. 1070 East 104th Street, Brooklyn, NY 11236
 - ii. Phone: (718) 444-4316
- iii. Lorenzo Chambers, Principal
- h. Rise & Shine Daycare
 - i. 9802 Glenwood Road, Brooklyn, NY 11236
 - ii. Phone: (347) 529-0322
 - iii. Home daycare with no website or contact name.
- 1. J.A.C.E. Learning Tree Group Family Daycare Inc.
 - i. 9305 Glenwood Road, Brooklyn, NY 11236
 - ii. Phone: (917) 650-9402
 - iii. Home based daycare with no contact or website.
 - J. Blessings from Above Daycare
 - i. 919 East 102 Street Brooklyn, NY 11236
- 7. Location of a Document Repository
 - a. Brooklyn Public Library, 1580 Rockaway Parkway, Brooklyn, NY 11236
 Phone: (718) 257-6547
 Tom Muller, Managing Librarian
 - b. Brooklyn Community Board 18, 1097 Bergen Ave., Brooklyn, NY 11234 Phone: (718) 241-0422, Fax: (718) 531-3199, Email: bkbrd18@optonline.net Dorothy Turano, District Manager

- 8. Community Board 18
- a. Sandra Chapman, Lori Luis
- b. 1097 Bergen Avenue, Brooklyn 11234 c. Phone: (718) 241-0422, Fax: (718) 531-3199, Email: bkbrd18@optonline.net



AARON GERSHONOWITZ
PARTNER
(516) 248-1700
AGERSHONOWITZ@FORCHELLILAW.COM

July 25, 2019

Mr. Tom Muller Brooklyn Public Library 1580 Rockaway Parkway Brooklyn, New York 11236

Re: Brownfield Application for 458 East 99th Street, Brooklyn, New York, 11236

Dear Mr. Muller:

We have been retained by the owners of the above mentioned property to represent them in connection with a Brownfield Cleanup Program application. With respect thereto, the New York Department of Environmental Conservation (NYSDEC) has acknowledged receipt of our initial Brownfield Cleanup Program application package. As part of this application, the NYSDEC requested that the Brooklyn Public Library serve as a formal document repository for the project.

Please respond in writing that you agree to house a copy of all application materials and other project-related documents inside the Brooklyn Public Library located at 1580 Rockaway Parkway, Brooklyn, New York for access to the residents of the neighborhood.

Thank you.

Very truly yours,

FORCHELLI DEEGAN TERRANA LLP

By: Qan Ga Conf AARON GERSHONOWITZ

AG/ka

AGREED TO AND ACCEPTED:

i all til



AARON GERSHONOWITZ PARTNER (516) 248-1700 AGERSHONOWITZ@FORCHELLILAW.COM

July 25, 2019

Ms. Dorothy Turano, District Manager **Brooklyn Community Board 18** 1097 Bergen Avenue Brooklyn, New York 11234

Brownfield Application for 458 East 99th Street, Brooklyn, New York, 11236

Dear Ms. Turano:

We have been retained by the owners of the above mentioned property to represent them in connection with a Brownfield Cleanup Program application. With respect thereto, the New York State Department of Environmental Conservation (NYSDEC) has acknowledged receipt of our initial Brownfield Cleanup Program application package. As part of this application, the NYSDEC requested that the Community Board serve as a formal document repository for the project.

Please respond in writing that you agree to house a copy of all application materials and other project-related documents inside the Brooklyn Community Board 18 located at 1097 Bergen Avenue, Brooklyn, New York to provide access to the residents of the neighborhood.

Thank you.

Very truly yours,

FORCHELLI DEEGAN TERRANA LLP

By: Com Gent AARON GERSHONOWITZ

AG/ka

AGREED TO AND ACCEPTED:

By: Vorothy Turano

This Page Intentionally Blank

Appendix H Description of Overall Project

Description of Overall Project

NYS DEC Brownfield Cleanup Program

Remedial Investigation

458 East 99th Street Brooklyn, New York 11236 Block 8131, Lot 56

The following is a short description of the Remedial Investigation project for the subject site. The subject site is a single lot parcel, improved by a one (1) story office warehouse building, with no basement. There is no renovation proposed for the subject site. The subject site and subject building will remain as they currently.

The Remedial Investigation will start in June 2018, upon approval by the NYS DEC. Completion of the investigation is anticipated within 30 days of the start date.

Task 1 - Preliminary Activities

The following tasks will be completed prior to initiating intrusive investigation activities on the site.

Initial Submittal to NYS DEC

Preparation of the NYC DEC Brownfields Cleanup Program application. The form will be submitted with all environmental documents for review to the NYS DEC.

Health and Safety Plan (HASP)

A site-specific Health and Safety Plan (HASP) will be prepared for use by all employees while conducting field activities on the subject site. Information concerning potential contaminants that may be encountered during the work will be incorporated into the plan. The HASP will include a brief description of the health effects and/or hazards of the project. The HASP will be submitted to the NYS DEC for review and approval prior to the start of any field work.

Subsurface Investigation Work Plan

Prepare a Subsurface Investigation Work Plan for submittal, review and approval by the NYS DEC. Make the required revisions and perform the required work requested by the NYS DEC, and any other involved regulatory agency.

Locate Subsurface Utilities

Request a markout of all public utilities, as provided by the appropriate agencies, including Municipal Sewer District, Municipal Water Authority and County Traffic Signal. Such notification will be made at least three (3) business days prior to initiating the work.

Task 2 - Geophysical Investigation

Any areas of the subject site to be surveyed will need to be cleared prior to the field work. This includes all interior and exterior areas of the site. A Geophysical Investigation consisting of a TM-808 Magnetometer and Ground Penetrating Radar (GPR) equipment will be conducted at the subject site in order to identify possible sub-surface structures, specifically undocumented piping, floor drains, leaching structures, etc.

The suspect areas of the subject site, will be surveyed / characterized by geophysical surveys. The surveys will be conducted with a TM-808 magnetometer, radio-frequency metal detectors, EM utility-locating equipment, and Ground Penetrating Radar (GPR) equipment. The suspected areas will be assessed on a grid pattern. The unit will be carried along traverses spaced approximately two (2) feet apart, both parallel and perpendicular to the subject building, in an attempt to identify any buried structures which may be present.

The magnetometer will be utilized as the primary investigative tool. The magnetometer will be carried over the areas in a series of closely spaced transverses. Significant metal detector anomalies with an areal extent large enough to potentially represent a UST will be further investigated.

If site conditions permit, the significant metal detector anomalies will be further investigated utilizing GPR. Continuous bi-directional GPR data profiles will be collected over each anomaly to more fully characterize their source. In addition, GPR will be used in the areas where the metal-detector is found to be ineffective.

EM utility-locating instruments will be used to trace conductive piping that may be related to a UST. A radio-frequency signal will be conducted onto any piping observed. The signal will allow the line to be detected at the surface by an operator using a specialized receiver. GPR and the metal detector will be utilized to investigate for USTs at the locations where the piping is found to terminate. The surface trace of the detected features will be marked on the ground using spray paint.

If this geophysical investigation indicates the presence of buried structures, the specific location of the structure(s) will be outlined for the purpose of installing soil borings and/or future excavation, removal and disposal.

Limitations

The magnetometer and the GPR equipment is negatively affected by site conditions such as the heterogeneity of near-surface soil types, varied ground cover materials, and unknown moisture. The depth of penetration and usefulness of the data obtained cannot be known until the field work is begun and a five (5) minute test of applicability is performed.

Task 3 - Dve Testing / Line Tracing

Dye Testing / Smoke Testing / Line Tracing

All drainage points within the current building will be dye tested utilizing a US EPA approved biodegradable dye and/or smoke tested in order to determine the respective discharge location(s). It is presently assumed that the interior drainage points discharge to the municipal sewer system. If any on-site leaching structures are identified, then such structures will be accessed, inspected and sampled.

Task 4 - Subsurface Soil Sampling

A minimum of six (6) soil borings will be installed throughout the subject site, specifically located within the building footprint and the alleyway to the north of the subject building. The soil borings will be installed to a minimum depth of fifteen (15) feet below grade. The soil borings will be installed using Geoprobe® tooling, concrete core drill, hand auger, etc. Representative soil samples will be obtained. The samples will be collected utilizing a 2.25" diameter macro-core sampling sheath and connecting rods.

The samples will be field screened for the presence of volatile organic compounds (VOCs) utilizing a Perkin-Elmer Model 2020 Photo-Ionization Detector (PID). The samples will also be physically inspected for any evidence of contamination such as odors or staining. All field screening results and boring logs will be recorded.

Based on the results of the field screening, it is estimated that six (6) soil samples will be analyzed by a NELAP certified laboratory, specifically as follows from each of the six (6) soil boring locations:

- 0 to 2 feet below grade.
- 10 to 12 feet below grade.

The soil samples will be analyzed as follows:

- Part 375 volatile organic compounds (VOCs) utilizing EPA Method 8260.
- Part 375 semi-volatile organic compounds (SVOCs) utilizing EPA 8270.
- Pesticides utilizing EPA Method 8081.
- Poly-Chlorinated Biphenyls utilizing EPA Method 8082.
- Part 375 metals via EPA Method 6010B.

Review the results of the analysis and compare these to the Unrestricted Soil Cleanup Objectives listed in the New York State Department of Environmental Conservation (NYS DEC) "Division of Environmental Remediation 6 NYCRR Part 375".

Task 5 - Report Preparation

A Remedial Investigation (RI) report will be prepared, detailing the work performed, all field observations, laboratory analysis results, an AutoCAD site plan, PID reading results, conclusions, and recommendations.

- Two (2) original bound reports and one (1) electronic copy will be provided to the client.
- Two (2) original bound reports and one (1) electronic copy will be provided to the NYS DEC.

This Page Intentionally Blank

Appendix I

NYC DOB Records and Certificate of Occupancy





CRICK HERE TO STON UP FOR SUIDDINGS NEEDS

NYC Department of Buildings

Proposity Profile Overview

	n'	motivated a nomine cur	EIVIEW		
458 EAST 99 STREET		BROOKLYN 112	16	BIN# 3228	24
EAST 99 STREET	458 - 462	Health Area Census Tract Community Board Buildings on Lot	: 7520 : 1098 : 318	Tax Block Tax Lot Condo Vacant	: 8131 : 56 : NO : NO
View UCF Addresses_ E	knowse Block			***************************************	. 140
View Zamma Documents	View Challenge Results	Pre - US	2A	View Certificate	es of Occupancy
Cross Street(s): DOB Special Place Name: DOB Building Remarks:	AVENUE D. FOST	ER AVENUE			
Landmark Status:		Special Status:		N/A	
Local Law:	NO	Loft Law:		NO	
SRO Restricted:	NO	TA Restricted:		NO	
UB Restricted:	NO				
Environmental Restrictions:	N/A	Grandfathered S	ign:	NO	
Legal Adult Use:	NO	City Owned:		NO	
Additional BINs for Building:	NONE				
Additional Designation(s):	IBZ - INDUSTRIAL E	BUSINESS ZONE			
		= = = = = = = = = = = = = = = = = = = =			
Special District	UNKNOWN				

Special District: UNKNOWN

This property is not located in an area that may be affected by Tidal Wetlands, Freshwater Wetlands, Coastal Erosion Hazard Area, or Special Flood Hazard Area. Click here for more information

Department of Finance Building Classification:

E1-WAREHOUSE

Please Note: The Department of Finance's building classification information shows a building's tax status, which may not be the same as the legal use of the structure. To determine the legal use of a structure, research the records of the Department of Buildings

	Total	Open	Elevator Records
Complaints	7	0	Electrical Applications
Violations-DOB	0	0	Permits In-Process / Issued
Violations-ECB (DOB)	3	0	Illuminated Signs Annual Permits
Jobs/Filings	3		Plumbing Inspections
ARA / LAA Jobs	D		Open Plumbing Jobs / Work Types
Total Jobs	3		Facades
Actions	22		Marquee Annual Permits
	San Alex		Boiler Records
OR Enter Action Type:			DEP Boiler Information
OR Select from List: Select		▼	Crane Information
AND Show Actions			After Hours Variance Permits

DEPARTMENT OF BUILDINGS

BORGUGH OF Brooklyn

, THE CITY OF NEW YORK

CERTIFICATE OF OCCUPANCY

NO CHANGES OF USE OR OCCUPANCY NOT CONSISTENT WITH THE CHRISTCATE SHALL.

This .				
	certificate supersedes			8
ासाई	CERTIFIES that	the mail altered	building premises located at	
	ind he yyum i	inter:	Block TT: Lat 45	gina n
That :	the zoning lot and pr	mises above referr	red to are situated, bounded and described as follows:	
02	G at a point on the	eest.	side of Rest 99th Street	Q %
eistrait.	Foster Awa		from the corner formed by the intersection of and Baset 5922 Street	4
rounding them	e fiest ill		front a all among	ert :
sbence	ARST IU	9		et:
forming thene	*		feet; thencef	et:
to the point	or place of beginn	ing, conforms subs	stantially to the approved plans and specificanians and the	200
mants of the :	Bunkung Lode, Inc.	Loning Kesolumon	and all other laws and ordinances and of the rules of the Roard	of
Standards and	1 Арран, аррисан Петес кипотико	e to a building of i	its class and kind at the time the permit was issued; and	
CPLR1.	ed by a server of the	Time Commission	ions of Section 646e of the New York Charter have been compl	ed
Grand Ale N	01692/65	Fue Commission	er to the Rorough Superintendent.	2 00
	saification—Bus Es	Action Section	Construction classification Class 3 Description	No.
beta of comple	nion DOSSI - 13	17006	96 -	ti.
	ance of permit.	11/1/06	Located in 28 1 - Zoning Distri	ct.
This on	ance of permit.	malaine en ell a th		
All De comme	Board of Sand	and the m	mitations hereinafter specified and to the following res	0-
	Planeing Commi		(Calendar numbers	to E
In the Cay	T to married a Solution	Sales State	fite inverted have)	
		200000000000000000000000000000000000000		
		PERMISSIBLE	USE AND OCCUPANCY	4 (0
Mf-Street Parl	king Spaces			
S Chart I on	ding Berths			1
m-Direct Low	und ner manner			
				-1
STORY.	LIVE LOADS	PERSONS	1	
STORY	LIVE LOADS LOS per Sq. Fr.		USE	
STORY		PERSONS	USE	•
STORY		PERSONS	USE	
STORY		PERSONS	USE	
STORY		PERSONS		-
- In Survivo	Lbs. per Sq. Fr.	FERSONS ACCOMMODATED	Storage Warehouse for dry al contra	
	Lbs. per Sq. Fr.	FERSONS ACCOMMODATED	Storage Marshouse for dry classific	
- 10 - 20 - 10	Lbs. per Sq. Fr.	FERSONS ACCOMMODATED	Storage Marshouse for dry classing appellas and equipment (So fire hearded	
	Lbs. per Sq. Fr.	FERSONS ACCOMMODATED	Storage Marshouse for dry classific	
	Lbs. per Sq. Fr.	FERSONS ACCOMMODATED	Storage Marshouse for dry classing appellas and equipment (So fire hearded	
	Lbs. per Sq. Fr.	FERSONS ACCOMMODATED	Storage Marshouse for dry classing appellas and equipment (So fire hearded	
	Lbs. per Sq. Fr.	FERSONS ACCOMMODATED	Storage Marshouse for dry classing appellas and equipment (So fire hearded	
	Lbs. per Sq. Fr.	FERSONS ACCOMMODATED	Storage Marshouse for dry classing appellas and equipment (So fire hearded	
	Lbs. per Sq. Fr.	FERSONS ACCOMMODATED	Storage Marshouse for dry classing appellas and equipment (So fire hearded	
	Lbs. per Sq. Fr.	FERSONS ACCOMMODATED	Storage Marshouse for dry classing appellas and equipment (So fire hearded	
	Lbs. per Sq. Fr.	FERSONS ACCOMMODATED	Storage Marshouse for dry classing appellas and equipment (So fire hearded	
	Lbs. per Sq. Fr.	FERSONS ACCOMMODATED	Storage Marshouse for dry classing appellas and equipment (So fire hearded	
- 10 - 20 - 10	Lbs. per Sq. Fr.	FERSONS ACCOMMODATED	Storage Marshouse for dry classing appellas and equipment (So fire hearded	

TOTAL: AS STATED ABOVE

OFFICE COPT—DEPARTMENT OF BUILDINGS

PERMISSIBLE USE AND OCCUPANCY (continued)

7 - 7

ert.

ray or the property of exprosp, material seasons and the property of the control of the control

STORY	LIVE LOADS	PERSONS ACCOMMODATED	USE
		The state of the s	

No. 10 and 10 an

This Page Intentionally Blank

Appendix J

Site Drawings



Appendix K Owner's Authorization Letter

ACCESS AGREEMENT

This Access Agreement is made as of May 28 2019 by and between 458 East Owners LLC ("Owner") and 458 East 99th Street LLC ("Requestor"). Owner and Applicant are hereinafter referred to as the Parties.

Whereas, the Parties have been informed by the New York State Department of Environmental Conservation (DEC) that further investigation and remediation of environmental conditions at 458 East 99th Street (the Site) is necessary; and

Whereas, the Owner has agreed to enter into this agreement in order to assist the Requestor in applying to enter State's Brownfields Program;

Therefore, to facilitate the Brownfields application, and to define Applicant's rights of access to the property for purposes of the Brownfields application and for the performance of required investigation and remediation activities, the Parties agree as follows:

- 1. Owner hereby grants to Requestor and Requestor's consultants and contractors, access to the property for purposes of performing the required investigation and remediation. This right of access includes the right to place an environmental easement on the property if required by DEC.
- 2. Requestor agrees that in exercising it rights of access, it will cooperate with Owner to minimize the effects of the access on business operations at the Site. Minimally, that means providing drafts of workplans and providing Owner with a meaningful opportunity to participate in decisions regarding the location and timing of the investigation and remedial activities.
- 3. Requestor and its consultants and contractors shall comply with, and cause their employees, agents and contractors to comply with, all applicable laws and regulations related to the work at the Site
- 4. Owner's entry into this agreement is not an admission of liability or responsibility with regard to any conditions at the Site.
- 5. This Access Agreement shall remain in effect until the completion of the remediation, as evidenced by receipt of a Certificate of Completion from DEC or receipt of some other correspondence from DEC indicating that no further action is required. Upon completion of any work at the Site, Requestor's contractors shall repair any damage and return the Site to the Owner in the condition it was in prior to performance of the work.
- 6. This Access Agreement shall be governed by New York law.

IN WITNESS WHEREOF, the Parties hereto have signed this Access Agreement by their authorized signatories, effective as of the date written above.

Requestor
By:
Name:
Its:
Owner
110 11-0010
By: hoge Material
Name: Wolfgang Michetitsch
Its:

IN WITNESS WHEREOF, the Parties hereto have signed this Access Agreement by their authorized signatories, effective as of the date written above.

Requestor
By: Warren Bell Name: Warren Bell Its: President
Owner
Ву:
Name:
Its: