

New York State Department of Environmental Conservation

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Alexander B. Grannis
Commissioner

March 30, 2010

Mr. Donald Denihan
The Denihan Company
500 West 37th Street
New York, New York 10018

Thomas M. Lopez, Esq.
Katsky Korins LLP
605 Third Avenue
New York, New York 10158

Re: 503-509 East 75th Street and 502-512 East 76th Street,
Site # V00425,
VCA Index No. P2-0001-01-05

Dear Sirs:

Release and Covenant Not To Sue

Unless otherwise specified in this letter, all terms used herein shall have the meaning assigned to them under the terms of the Voluntary Agreement entered into between the New York State Department of Environmental Conservation (the "Department") and the Denihan Company ("Volunteer"), Index No.P2—0001-01-05(the "Agreement").

The Department is pleased to report that the Department is satisfied that the Agreement's Work Plans covering the investigation and/or remediation of the Existing Contamination as defined in the Agreement at 503-509 east 75th Street and 502-512 76th Street, Borough of Manhattan, City of New York, Block 1487, Lots 4, 5, and 8 ("Property" or "Site") have been successfully implemented.

The Department therefore, hereby releases, covenants not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer and Volunteer's lessees and sub-lessees, and Volunteer's successors and assigns, and their respective secured creditors, for the further investigation and remediation of the Site, based upon the release or threatened release of any Covered Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of the Agreement continue to be or have been made to the Department, (b) Volunteer and/or

Volunteer's successors, or assigns promptly commence and diligently pursue to completion the Department-approved OM&M Plan, if appropriate notices and deed restrictions have been recorded in accordance with Paragraphs XI and XII of the Agreement, Nonetheless, the Department hereby reserves all of their respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to any further investigation or remedial action the Department deems necessary:

(i) due to off-Site migration of contaminants related to Existing Contamination resulting in impacts to environmental resources, to human health, or to other biota, that are not inconsequential and to off-Site migration of petroleum, irrespective of whether the information the information available to Volunteer and the Department at the time of the development of the RA Work Plan disclosed the existence or potential existence of such off-Site migration;

(ii) due to environmental conditions related Existing Contamination at the Property that were known to the Department at the time of its approval of the RA Work Plan which indicate that Property conditions are not sufficiently protective of human health and the environment for the Contemplated Uses;

(iii) due to information received, in whole or in part, after the Department's approval of the Final Engineering Report, which indicates that the activities carried out in accordance with the RA Work Plan are not sufficiently protective of human health and the environment for the Contemplated Use;

(iv) due to Volunteer's failure to implement the Agreement to the Department's satisfaction;
or

(v) due to fraud committed or mistake made by Volunteer in demonstrating that the Site-specific cleanup levels identified in, or to be identified in accordance with, the RA Work Plans were reached.

Additionally, the Department hereby reserves all of their rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to:

(i) Volunteer if Volunteer causes a, or suffers the, release or threat of release, at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law Section 172[15]), other than Covered Contamination: or if Volunteer causes a, or suffers the use of the Property to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to

(ii) any of Volunteer's lessees, sublessees, successors, or assigns who cause a, or suffer the, release or threat of release, at the Property of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law Section 172[15]), other than Covered Contamination, after the effective date of the Agreement; who causes a, or suffers the use of the Site to, change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; or who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same

established resulting solely from the Agreement's execution.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department, the one seeking the benefit of this release shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance:

(i) if with respect to the Property there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this release shall be construed, or deemed, to preclude the State of New York from recovering such claim;

(ii) except as provided in Subparagraph I. G of the Agreement and in this letter, nothing contained in the Agreement or in this letter shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's rights (including but not limited to, nor exemplified by, the right to recover natural resource damages) with respect to any party, including Volunteer;

(iii) nothing contained in this letter shall prejudice any rights of the Department to take any investigatory or remedial action it may deem necessary if Volunteer fails to comply with the Agreement or if contamination other than Existing Contamination or Covered Contamination is encountered at the Site;

(iv) nothing contained in this letter shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers; and

(v) nothing contained in this letter shall be construed to affect the Department's right to terminate this Agreement at any time during its implementation if Volunteer fails to comply substantially with the Agreement's terms and conditions.

In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: *Michael J. Lesser*

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