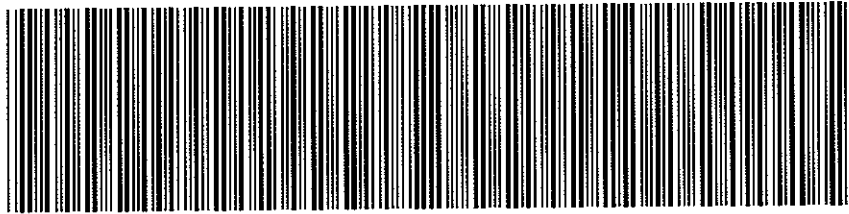


**NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER**

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2009102100873001003E0DB6

**RECORDING AND ENDORSEMENT COVER PAGE**

**PAGE 1 OF 37**

**Document ID: 2009102100873001**

**Document Date: 09-21-2009**

**Preparation Date: 10-21-2009**

**Document Type: SUNDRY AGREEMENT**

**Document Page Count: 35**

**PRESENTER:**

COMMONWEALTH/LAWYERS TITLE  
RETURN TO ROE  
140 EAST 45TH STREET, 22ND FLOOR  
NEW YORK, NY 10017  
212-949-0100  
sonja.kaelin@fnf.com/NY090562 K

**RETURN TO:**

===== TO BE PICKED UP BY ROE =====  
DAVIDOFF MALITO & HUTCHER LLP  
605 THIRD AVENUE  
NEW YORK, NY 10158  
ATTN: RON J. MANDEL, ESQ.

**PROPERTY DATA**

Borough	Block	Lot	Unit	Address
BROOKLYN	2134	1	Entire Lot	478 KENT AVENUE
<b>Property Type: COMMERCIAL REAL ESTATE</b>				
Borough	Block	Lot	Unit	Address
BROOKLYN	2134	150	Entire Lot	484 KENT AVENUE
<b>Property Type: INDUSTRIAL BUILDING</b>				

**CROSS REFERENCE DATA**

CRFN \_\_\_\_\_ or Document ID \_\_\_\_\_ or \_\_\_\_\_ Year \_\_\_\_\_ Reel \_\_\_\_\_ Page \_\_\_\_\_ or File Number \_\_\_\_\_

**PARTIES**

**PARTY 1:**

WATERFRONT REALTY II LLC  
C/O ISACK ROSENBERG, 470 KENT AVENUE  
BROOKLYN, NY 11211

☒ Additional Parties Listed on Continuation Page

**FEES AND TAXES**

<b>Mortgage</b>		<b>Filing Fee:</b>	
Mortgage Amount:	\$ 0.00		\$ 0.00
Taxable Mortgage Amount:	\$ 0.00	NYC Real Property Transfer Tax:	
Exemption:			\$ 0.00
TAXES: County (Basic):	\$ 0.00	NYS Real Estate Transfer Tax:	
City (Additional):	\$ 0.00		\$ 0.00
Spec (Additional):	\$ 0.00		
TASF:	\$ 0.00		
MTA:	\$ 0.00		
NYCTA:	\$ 0.00		
Additional MRT:	\$ 0.00		
<b>TOTAL:</b>	<b>\$ 0.00</b>		
Recording Fee:	\$ 215.00		
Affidavit Fee:	\$ 0.00		

**RECORDED OR FILED IN THE OFFICE  
OF THE CITY REGISTER OF THE  
CITY OF NEW YORK**

Recorded/Filed 10-28-2009 12:48

City Register File No.(CRFN):

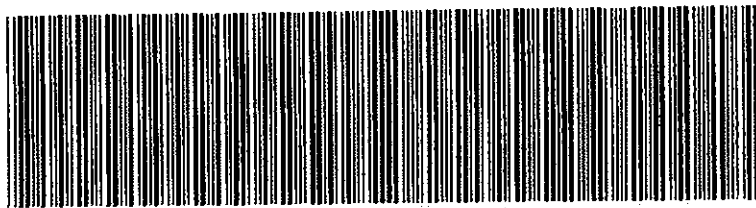
2009000352564



*Annette McHill*

**City Register Official Signature**

NYC DEPARTMENT OF FINANCE  
OFFICE OF THE CITY REGISTER



2009102100873001003C0F36

**RECORDING AND ENDORSEMENT COVER PAGE (CONTINUATION) PAGE 2 OF 37**

Document ID: 2009102100873001

Document Date: 09-21-2009

Preparation Date: 10-21-2009

Document Type: SUNDRY AGREEMENT

**PARTIES**

**PARTY 1:**

CERTIFIED LUMBER CORPORATION  
C/O ISACK ROSENBERG, 470 KENT AVENUE  
BROOKLYN, NY 11211

## **DECLARATION**

This DECLARATION made as of the 21 day of September 2009, by Waterfront Realty II LLC and Certified Lumber Corporation, both having an address c/o Isack Rosenberg, 470 Kent Avenue, Brooklyn, New York 11211 (hereinafter referred to as "Declarant");

## **WITNESSETH**

WHEREAS, Declarant is the fee owner of certain real property located in the County of Brooklyn, City and State of New York, designated for real property tax purposes as Lots 1 and 150 of Tax Block 2134 commonly known by the street address as 470-490 Kent Avenue, Brooklyn, New York (the "Subject Property") and is more particularly described in Exhibit A, annexed hereto and made part hereof; and

WHEREAS, Commonwealth Land Title Insurance Company ("Title Company"), has issued a Certification of Parties-In-Interest, annexed hereto as Exhibit B and made a part hereof, that as of July 11, 2009, Declarant, Capital One, N.A., 32nd Street Investors III LLC, Bank of Smithtown, NCC Capital, LLC, and RCGLV Maspeth LLC, hereinafter also referred to as a ("Party-in-Interest"), are the only Parties-in-Interest (as defined in subdivision (c) of the definition of "zoning lot" set forth in Section 12-10 of the Zoning Resolution of the City of New York) in the Subject Property; and

WHEREAS, all Parties-in-Interest to the Subject Property have either executed this Declaration or waived their rights to execute this Declaration by written instrument annexed hereto as Exhibits C-1 through C-5 and made a part hereof, which instrument is intended to be recorded simultaneously with this Declaration; and

WHEREAS, Declarant filed the following applications designated 080339ZMK, 080340ZSK, N080341ZAK, N080342ZCK and N100056ZRY (collectively, "the Application") with the Department of City Planning ("DCP"), for approval by City Planning Commission ("CPC"), under the Uniform Land Use Review Procedure (the "ULURP") as set forth in the New York City Charter, sections 197-c, 197-d, 200 and 201 and the procedures set forth in the paragraph immediately following; and

WHEREAS, the Application seeks a Zoning Map amendment; a zoning text amendment; a special permit granting certain bulk modifications for zoning lots within waterfront blocks (Zoning Resolution Section 62-736); an authorization allowing modification of certain waterfront public access and visual corridor requirements (Zoning Resolution Section 62-722[b]); and a Chairperson's certification pertaining to compliance with the requirements for public access and visual corridors, and design standards for waterfront areas, as modified by the authorization (Zoning Resolution Section 62-711), to permit the development of three predominantly residential buildings, including an accessory parking garage and retail space on the Subject Property (the "Current Project"); and

WHEREAS, an environmental assessment of the Subject Property pursuant to the State Environmental Quality Review Act (the "SEQRA") and the City Environmental Quality Review (the "CEQR") is under review in connection with the Application (CEQR # 08DCP056K) and, pursuant to the SEQRA and CEQR, the Department of Environmental Protection (the "DEP") has reviewed the environmental assessment, including the historic land use of the Subject Property; and

WHEREAS, the results of such review as documented in DEP's November 20, 2008 letter attached hereto as Exhibit D and made a part hereof, indicate the potential presence of hazardous materials; and

WHEREAS, Declarant desires to identify the existence of any potential hazardous materials and remediate any such hazardous materials found in connection with the development of the Subject Property for the Current Project and has submitted to DEP for its review a Phase I Environmental Site Assessment and DEP-approved Phase II site investigation, and Declarant shall provide for the remediation of such hazardous materials in accordance with a hazardous materials remediation plan (the "Remedial Action Plan"), including a health and safety plan, to be approved by DEP; and

WHEREAS, Declarant further desires to identify the existence of any potential hazardous materials and remediate any such hazardous materials found in connection with the development or redevelopment of the Subject Property involving a change in use or soil disturbance subsequent to the Current Project ("Future Project"), if applicable, and has agreed to submit to DEP for approval a hazardous materials sampling protocol prepared by a qualified consultant and including a health and safety plan, (the "Sampling Protocol"), specific to the Future Project, if applicable, and to test and identify any potential hazardous materials pursuant to the approved Sampling Protocol and, if any such hazardous materials are found, to submit to DEP for approval a Remedial Action Plan, based on the results of the DEP approved Sampling Protocol and upon the approval of the Remediation Plan by DEP, the Declarant shall provide for the remediation of such hazardous materials; and

WHEREAS, Declarant agrees to implement the Sampling Protocol and all hazardous material remediation required by the Remediation Plan, if any, for the Current Project and any Future Project and desires to restrict the manner in which the Subject Property may be developed or redeveloped by having the implementation of the Sampling Protocol and Remediation Plan, if any, for the Current Project or any Future Project performed to the satisfaction of DEP, as evidenced by a writing as set forth herein, be a condition precedent to any change of use or soil disturbance for the Current Project or any Future Project; and

WHEREAS, Declarant intends this Declaration to be binding upon all successors and assigns; and

WHEREAS, Declarant intends this Declaration to benefit all land owners and tenants including the City of New York ("the City") without consenting to the enforcement of this Declaration by any party or entity other than the City.

NOW, THEREFORE, Declarant does hereby declare and agree that the Subject Property shall be held, sold, transferred, and conveyed, subject to the restrictions and obligations which are for the purpose of protecting the value and desirability of the Subject Property and which shall run with the land, binding the successors and assigns of Declarant so long as they have any right, title or interest in the Subject Property or any part thereof:

1. (a) Declarant covenants and agrees that no application for grading, excavation, foundation, alteration, building or other permit respecting the Subject Property which permits soil disturbance for the Current Project or any Future Project shall be submitted to or accepted from the Department of Buildings (the "DOB") by the Declarant until DEP has issued to DOB, as applicable, either a Notice of No Objection as set forth in Paragraph 2(a), a Notice to Proceed as set forth in Paragraph 2(b), a Notice of Satisfaction as set forth in Paragraph 2(c) or a Final Notice of Satisfaction as set forth in Paragraph 2(d). Declarant shall submit a copy of the Notice of No Objection, Notice to Proceed, Notice of Satisfaction or Final Notice of Satisfaction to the DOB at the time of filing of any application set forth in this Paragraph 1(a).

(b) Declarant further covenants and agrees that no application for a temporary or permanent Certificate of Occupancy that reflects a change in use group respecting the Subject Property for the Current Project or any Future Project shall be submitted to or accepted from DOB by the Declarant until DEP has issued to DOB, as applicable, either a Notice of No Objection as set forth in Paragraph 2(a), a Notice of Satisfaction as set forth in Paragraph 2(c) or a Final Notice of Satisfaction as set forth in Paragraph 2(d). Declarant shall submit a copy of the Notice of No Objection, Notice of Satisfaction or Final Notice of Satisfaction to the DOB at the time of filing of any application set forth in this Paragraph 1(b).

2. (a) Notice of No Objection - DEP shall issue a Notice of No Objection for the Current Project or any Future Project after the Declarant has completed the work set forth in the project specific DEP approved Sampling Protocol and DEP has determined in writing that the results of such sampling demonstrate that no hazardous materials remediation is required for the proposed project.

(b) Notice to Proceed - DEP shall issue a Notice to Proceed for the Current Project or any Future Project after it determines that: (i) the project specific Remedial Action Plan or Remediation Plan has been approved by DEP and (ii) the permit(s) respecting the Subject Property that permit grading, excavation, foundation, alteration, building or other permit respecting the Subject Property which permits soil disturbance or construction of the superstructure for the Current Project or any Future Project are necessary to further the implementation of the DEP approved Remedial Action Plan.

(c) Notice of Satisfaction - DEP shall issue a Notice of Satisfaction for the Current Project or any Future Project after the project specific Remedial Action Plan has been prepared and accepted by DEP and DEP has determined in writing that such Remedial Action Plan or Remediation Plan has been completed to the satisfaction of DEP.

(d) Final Notice of Satisfaction - DEP shall issue a Final Notice of Satisfaction for the Current Project or any Future Project after the project specific Remedial Action Plan or Remediation Plan has been prepared and accepted by DEP and DEP has set forth in writing, that such Remedial Action Plan or Remediation Plan has been completed to the satisfaction of DEP and all potential hazardous materials have been removed or remediated and no further hazardous remediation is required on the Subject Property as determined by DEP.

3. Declarant represents and warrants with respect to the Subject Property, that no restrictions of record, nor any present or presently existing estate or interest in the Subject Property nor any lien, encumbrance, obligation, covenant of any kind preclude, presently or potentially, the imposition of the obligations and agreements of this Declaration.

4. Declarant acknowledges that the City is an interested party to this Declaration and consents to the enforcement of this Declaration solely by the City, administratively or at law or at equity, of the obligations, restrictions and agreements pursuant to this Declaration.

5. The provisions of this Declaration shall inure to the benefit of and be binding upon the respective successors and assigns of the Declarant, and references to the Declarant shall be deemed to include such successors and assigns as well as successors to their interest in the Subject Property. References in this Declaration to agencies or instrumentalities of the City shall be deemed to include agencies or instrumentalities succeeding to the jurisdiction thereof.

6. Declarant shall be liable in the performance of any term, provision, or covenant in this Declaration, subject to the following provisions:

The City and any other party relying on this Declaration will look solely to the fee estate interest of the Declarant in the Subject Property for the collection of any money judgment recovered against Declarant, and no other property of the Declarant shall be subject to levy, execution, or other enforcement procedure for the satisfaction of the remedies of the City or any other person or entity with respect to this Declaration. The Declarant, including its officers, managers and members, shall have no personal liability under this Declaration.

7. The obligations, restrictions and agreements herein shall be binding on the Declarant or other parties in interest only for the period during which the Declarant and any such Party-in-Interest holds an interest in the Subject Property; provided, however, that the obligations, restrictions and agreements contained in this Declaration may not be enforced against the holder of any mortgage unless and until such holder succeeds to the fee interest of the Declarant by way of foreclosure or deed in lieu of foreclosure.

8. Declarant shall indemnify the City, its respective officers, employees and agents from all claims, actions, or judgments for loss, damage or injury, including death or property damage of whatsoever kind or nature, arising from Declarant's obligations under this Declaration, including without limitation, the negligence or carelessness of the Declarant, its agents, servants or employees in undertaking such obligations; provided, however, that should such a claim be made or action brought, Declarant shall have the right to defend such claim or action with

attorneys reasonably acceptable to the City and no such claim or action shall be settled without the written consent of the City.

9. If Declarant is found by a court of competent jurisdiction to have been in default in the performance of its obligations under this Declaration, and such finding is upheld on a final appeal by a court of competent jurisdiction or by other proceeding or the time for further review of such finding or appeal has lapsed, Declarant shall indemnify and hold harmless the City from and against all reasonable legal and administrative expenses arising out of or in connection with the enforcement of Declarant's obligations under this Declaration as well as any reasonable legal and administrative expenses arising out of or in connection with the enforcement of any judgment obtained against the Declarant, including but not limited to the cost of undertaking the Remediation Plan, if any.

10. Declarant shall cause every individual or entity that between the date hereof and the date of recordation of this Declaration, becomes a Party-in-Interest (as defined in subdivision (c) of the definition of "zoning lot" set forth in Section 12-10 of the Zoning Resolution of the City of New York) to all or a portion of the Subject Property to waive its right to execute this Declaration and subordinate its interest in the Subject Property to this Declaration. Any mortgage or other lien encumbering the Subject Property in effect after the recording date of this Declaration shall be subject and subordinate hereto as provided herein. Such waivers and subordination shall be attached to this Declaration as Exhibits and recorded in the Office of the County or City Register.

11. This Declaration and the provisions hereof shall become effective as of the date of this Declaration. Within five (5) business days of execution of the Declaration and Exhibits B-1 through B-8, Declarant shall submit this Declaration for recording or shall cause this Declaration to be submitted for recording in the Office of the County or City Register, where it will be indexed against the Subject Property. Declarant shall promptly deliver to the DEP and the DCP proof of recording in the form of an affidavit of recording attaching the filing receipt and a copy of the Declaration as submitted for recording. Declarant shall also provide a certified copy of this Declaration as recorded to DEP and DCP as soon as a certified copy is available.

12. This Declaration may be amended or modified by Declarant only with the approval of DEP or the agency succeeding to its jurisdiction and no other approval or consent shall be required from any other public body, private person or legal entity of any kind. A statement signed by the Deputy Commissioner of the Bureau of Environmental Planning and Assessment of DEP, or such person as authorized by the Deputy Commissioner, certifying approval of an amendment or modification of this Declaration shall be annexed to any instrument embodying such amendment or modification.

13. Any submittals necessary under this Declaration from Declarant to DEP shall be addressed to the Deputy Commissioner of the Bureau of Environmental Planning and Assessment of DEP, or such person as authorized by the Deputy Commissioner. As of the date of this Declaration DEP's address is:

New York City Department of Environmental Protection  
59-17 Junction Blvd  
Flushing, New York 11373

14. Declarant expressly acknowledges that this Declaration is an essential element of the SEQRA review conducted in connection with the Application and as such the filing and recordation of this Declaration may be a precondition to the determination of significance pursuant to the SEQRA Regulations, Title 6 New York Code of Rules and Regulations ("NYCRR") Part 617.7.

15. Declarant acknowledges that the satisfaction of the obligations set forth in this Declaration does not relieve Declarant of any additional requirements imposed by Federal, State or Local laws.

16. This Declaration shall be governed by and construed in accordance with the laws of the State of New York.

17. Wherever in this Declaration, the certification, consent, approval, notice or other action of Declarants, DEP or the City is required or permitted, such certification, consent, approval, notice or other action shall not be unreasonably withheld or delayed.

18. In the event that any provision of this Declaration is deemed, decreed, adjudged or determined to be invalid or unlawful by a court of competent jurisdiction, such provision shall be severable and the remainder of this Declaration shall continue to be in full force and effect.

19. This Declaration and its obligations and agreements are in contemplation of Declarant receiving approvals or modified approvals of the Application. In the event that the Declarant withdraws the Application before a final determination or the Application is not approved, the obligations and agreements pursuant to this Declaration shall have no force and effect and this Declaration shall be cancelled.

20. Notice of Cancellation - Declarant may request that DEP issue a Notice of Cancellation upon the occurrence of the following steps: (i) Declarant has withdrawn the Application in writing before a final determination on the Application; (ii) the Application was not approved by the DCP; or (iii) DEP has issued a Final Notice of Satisfaction in accordance with paragraph 2 herein. Upon such request, DEP shall issue a Notice of Cancellation after it has determined to DEP's own satisfaction that the above referenced steps, as applicable, have occurred. Upon receipt of a Notice of Cancellation from DEP, Declarant shall cause such Notice to be recorded in the same manner as the Declaration herein, thus rendering this Restrictive Declaration null and void. Declarant shall promptly deliver to DEP and the DCP a certified copy of such Notice of Cancellation as recorded.



IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

WATERFRONT REALTY LLC

By: [Signature]

Name: Isack Rosenberg  
Title: President

CERTIFIED LUMBER CORPORATION

By: [Signature]

Name: Isack Rosenberg  
Title: President

### CERTIFICATE OF ACKNOWLEDGMENT

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

On the 21 day of September in the year 2009 before me, the undersigned, personally appeared Isack Rosenberg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies), and that by his/her/their signature on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature: Josef Friedman]  
Notary Public

JOSEF FRIEDMAN  
Notary Public, State of New York  
No. 01FR4510600  
Qualified in Kings County  
Commission Expires October 31, 2009

**SEALED**

**EXHIBIT A**

Legal Description of Subject Property  
Tax Block 2134, Lots 1 and 150

**Parcel 1 - (Block 2134 Lot 1):**

All that plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

**BEGINNING** at the corner formed by the intersection of the westerly side of Kent Avenue and the northerly side of Division Avenue;

**RUNNING THENCE** northerly along the westerly side of Kent Avenue, 551.35 feet;

**THENCE** westerly at 90 degrees, 188.58 feet;

**THENCE** southerly along a line drawn parallel with Kent Avenue and distant 188.58 feet westerly therefrom, 348.25 feet;

**THENCE** southeasterly, 162.01 feet to the northerly side of Division Avenue at a point distant 148.50 feet westerly from the corner formed by the intersection of the westerly side of Kent Avenue and the northerly side of Division Avenue measured along the northerly side of Division Avenue;

**THENCE** southeasterly along the northerly side of Division Avenue, 148.50 feet to the westerly side of Kent Avenue, at the point or place of **BEGINNING**.

All lots lines recited herein running along Kent Avenue parallel or in the same direction are in Local Standard Measurements.

All lot lines running in the direction to or from Kent Avenue and along Division Avenue are in United States Standard of Measurements.

**Parcel 2 - (Block 2134 Lot 150):**

All that plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

**BEGINNING** at a point on the northerly side of Division Avenue distant 148.50 feet westerly from the corner formed by the intersection of the northerly side of Division Avenue with the westerly side of Kent Avenue;

**RUNNING THENCE** westerly along the northerly side of Division Avenue 105.585 feet to the United States Pierhead and Bulkhead Line approved February 25, 1918;

**THENCE** northwesterly along the said U.S. Pierhead and Bulkhead Line 310.45 feet to its intersection with the United States Bulkhead Line approved February 25, 1918;

**THENCE** northerly along said U.S. Bulkhead Line 202.06 feet;

**THENCE** easterly at right angles to Kent Avenue 24.19 feet;

**THENCE** northerly parallel with Kent Avenue 0.50 feet;

**THENCE** easterly at right angles to Kent Avenue 145.50 feet;

**THENCE** southerly parallel with Kent Avenue 371.75 feet;

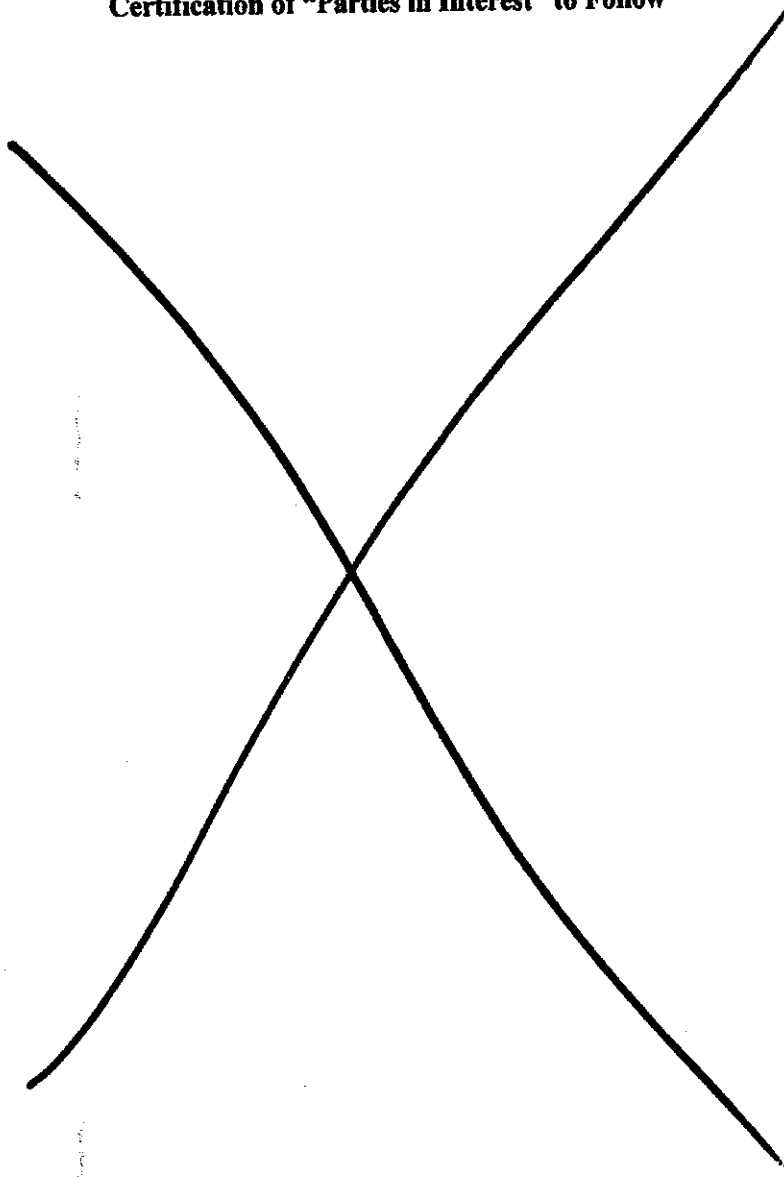
**THENCE** southeasterly in a straight line 162.01 feet to the northerly side of Division Avenue, the point or place of **BEGINNING**.

All lots lines recited herein running parallel with or in the same direction as Kent Avenue or along the United States Pierhead and Bulkhead Lines are in Local Standard of Measurements.

All lot lines running toward Kent Avenue along Division Avenue are in United States Standard of Measurements.

**EXHIBIT B**

**Certification of "Parties in Interest" to Follow**



**EXHIBIT "II"**

**CERTIFICATION PURSUANT TO ZONING LOT  
SUBDIVISION D OF SECTION 12 - 10  
OF THE ZONING RESOLUTION OF DECEMBER 15, 1961  
OF THE CITY OF NEW YORK - AS AMENDED  
EFFECTIVE AUGUST 18, 1977**

COMMONWEALTH LAND TITLE INSURANCE COMPANY, a Title Insurance Company licensed to do business in the State of New York and having its principal office at 140 East 45th Street, New York, New York, hereby certifies that as to the land hereafter described being a tract of land, either unsubdivided or consisting of two or more lots of record, contiguous for a minimum of ten linear feet, located within a single block, that all the parties in interest constituting a party as defined in Section 12 - 10, subdivision (d) of the Zoning Resolution of the City of New York, effective December 15, 1961, as amended, are the following:

NAME/ADDRESS	NATURE OF INTEREST	DECLARATION OR WAIVER
1. Waterfront Realty II LLC 470 Kent Avenue Brooklyn, NY 11211	Fee Owner of Tax Lot No. 1.	
2. Capital One, N.A., successor by merger to North Fork Bank 275 Broadhollow Road Melville, NY 11747	Mortgagee on Tax Lot No. 1; Plaintiff in Mortgage Foreclosure Action Index No. 8982-09.	
3. 32nd Street Investors III LLC c/o Atter Mantel, LLP 90 Park Avenue New York, NY 10016	Mortgagee on Tax Lot No. 1; Secured Party on UCC Financing Statements.	
4. Certified Lumber Corporation 470 Kent Avenue Brooklyn, NY 11211	Fee Owner of Tax Lot No. 150.	

**NAME/ADDRESS****NATURE OF  
INTEREST****DECLARATION  
OR WAIVER**

5.	Bank of Smithtown 100 Motor Parkway, Suite 160 Hauppauge, NY 11788	Mortgagee on Tax Lot No. 150.	
6.	NCC Capital, LLC 4309 13th Avenue Brooklyn, NY 11219	Mortgagee on Tax Lot No. 150.	
7.	RCGLV Maspeth LLC Seven Penn Plaza, Suite 310 New York, NY 10001	Secured Party on UCC Financing Statement CRFN 2005000491154. (Tax Lots No. 1 and No. 150).	

The subject tract of land with respect to which the foregoing parties are the parties in interest as aforesaid, is known as Tax Lot Numbers 1 and 150 in Block 2134 on the Tax Map of the City of New York, Kings County and more particularly described as follows:

SEE ATTACHED SCHEDULE "A"

**SCHEDULE A**

**Parcel 1 - (Block 2134 Lot 1):**

All that plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

**BEGINNING** at the corner formed by the intersection of the westerly side of Kent Avenue and the northerly side of Division Avenue;

**RUNNING THENCE** northerly along the westerly side of Kent Avenue, 551.35 feet;

**THENCE** westerly at 90 degrees, 188.58 feet;

**THENCE** southerly along a line drawn parallel with Kent Avenue and distant 188.58 feet westerly therefrom, 348.25 feet;

**THENCE** southeasterly, 162.01 feet to the northerly side of Division Avenue at a point distant 148.50 feet westerly from the corner formed by the intersection of the westerly side of Kent Avenue and the northerly side of Division Avenue measured along the northerly side of Division Avenue;

**THENCE** southeasterly along the northerly side of Division Avenue, 148.50 feet to the westerly side of Kent Avenue, at the point or place of **BEGINNING**.

All lots lines recited herein running along Kent Avenue parallel or in the same direction are in Local Standard Measurements.

All lot lines running in the direction to or from Kent Avenue and along Division Avenue are in United States Standard of Measurements.

**SCHEDULE A - continued**

**Parcel 2 - (Block 2134 Lot 150):**

All that plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of Division Avenue distant 148.50 feet westerly from the corner formed by the intersection of the northerly side of Division Avenue with the westerly side of Kent Avenue;

RUNNING THENCE westerly along the northerly side of Division Avenue 105.585 feet to the United States Pierhead and Bulkhead Line approved February 25, 1918;

THENCE northwesterly along the said U.S. Pierhead and Bulkhead Line 310.45 feet to its intersection with the United States Bulkhead Line approved February 25, 1918;

THENCE northerly along said U.S. Bulkhead Line 202.06 feet;

THENCE easterly at right angles to Kent Avenue 24.19 feet;

THENCE northerly parallel with Kent Avenue 0.50 feet;

THENCE easterly at right angles to Kent Avenue 145.50 feet;

THENCE southerly parallel with Kent Avenue 371.75 feet;

THENCE southeasterly in a straight line 162.01 feet to the northerly side of Division Avenue, the point or place of BEGINNING.

All lots lines recited herein running parallel with or in the same direction as Kent Avenue or along the United States Pierhead and Bulkhead Lines are in Local Standard of Measurements.

All lot lines running toward Kent Avenue along Division Avenue are in United States Standard of Measurements.

The said premises are known as and by street address 470-490 Kent Avenue, Brooklyn, NY as shown on the following DIAGRAM:

SEE ATTACHED DIAGRAM

CERTIFIED 7/11/2009 to:

Ron J. Mandel, Esq.  
Davidoff Malito & Hatcher LLP  
605 Third Avenue  
New York, NY 10158

NOTE:

A Zoning Lot may or may not coincide with a lot as shown on the Official Tax Map of the City of New York, or on any recorded subdivision plot or deed. A Zoning Lot may be subdivided into two or more Zoning Lots provided all the resulting Zoning Lots and all the buildings thereon shall comply with the applicable provisions of the Zoning Lot Resolution.

**THIS CERTIFICATE IS MADE FOR AND ACCEPTED BY THE APPLICANT UPON THE EXPRESS UNDERSTANDING THAT LIABILITY HEREUNDER IS LIMITED TO ONE THOUSAND (\$1,000.00) DOLLARS.**



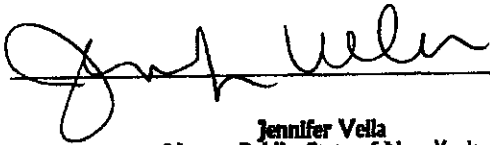
COMMONWEALTH LAND TITLE INSURANCE COMPANY

  
Francis M. Hoffman  
Assistant Vice President  
Associate Branch Counsel



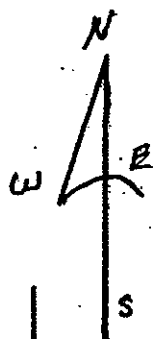
STATE OF NEW YORK, COUNTY OF NEW YORK ss:

On the 22nd day of July, 2009, before me, the undersigned, personally appeared Francis M. Hoffman personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

A handwritten signature in cursive script, appearing to read "Jennifer Vella", is written over a horizontal line.

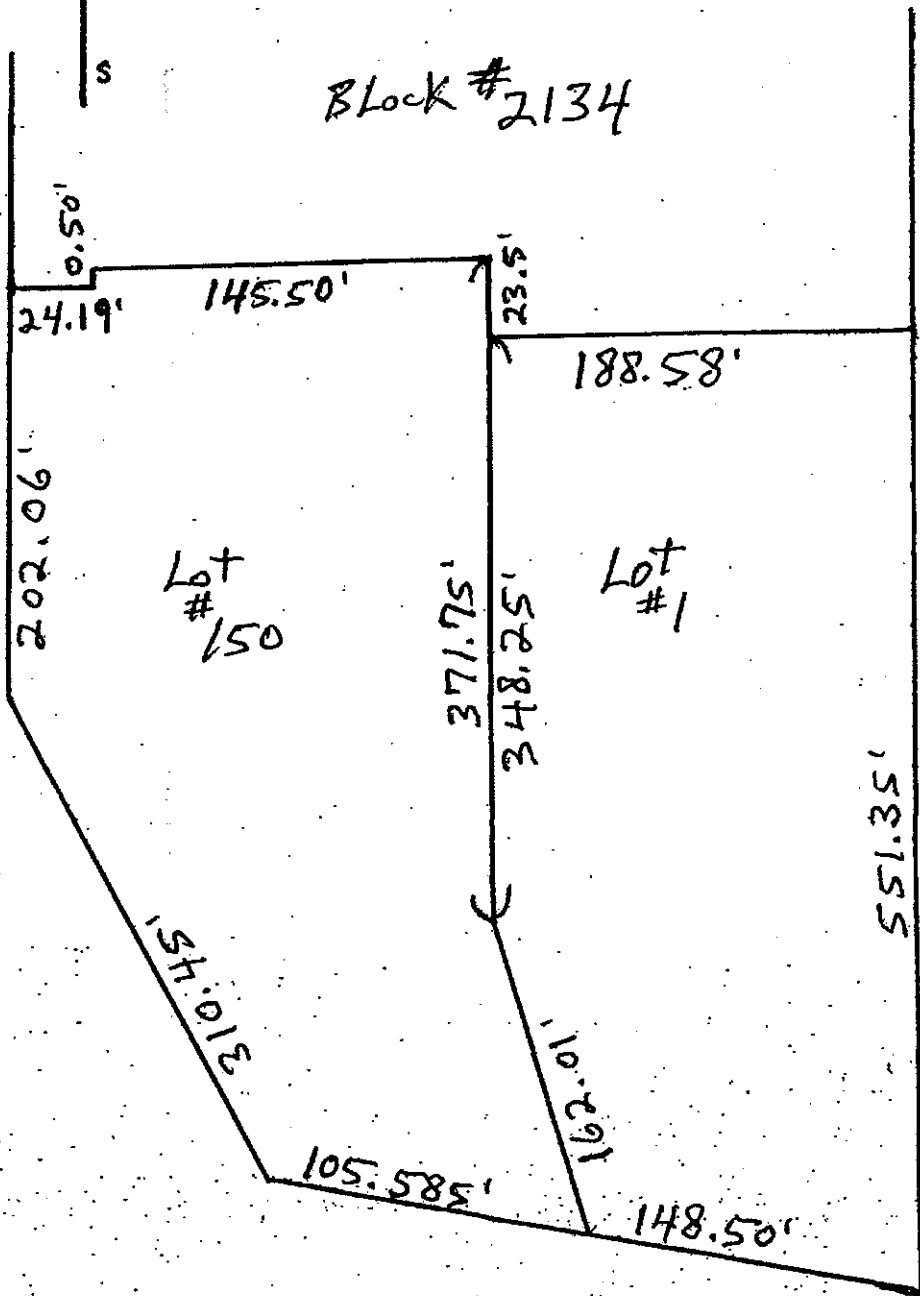
Jennifer Vella  
Notary Public, State of New York  
No. 01VE6012828  
Qualified in New York County  
Commission Expires Sept 8, 2010

DIAGRAM



Block # 2134

The East River



Kent Avenue

Division Avenue

**EXHIBIT C-1**

**WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION  
AND SUBORDINATION OF MORTGAGE**

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND  
SUBORDINATION OF MORTGAGE, made this 29<sup>th</sup> day of September, 2009 by Capital  
One, N.A., a national banking association, successor by merger to North Fork Bank (the  
“Mortgagee”), having its principal place of business at 275 Broadhollow Road, Melville, NY  
11747.

**WITNESSETH:**

WHEREAS, the Mortgagee is the lawful holder of that certain Extension and  
Modification Agreement, dated November 1, 2008 (the “Mortgage”) made by Waterfront Realty  
II LLC, a New York limited liability company (the “Mortgagor”), in favor of the Mortgagee,  
recorded in the Office of the Register/Clerk of the City of New York, County of Kings, on March  
10, 2009 under CRFN 2009000069316; and

WHEREAS, the Mortgage encumbers all or a portion of the property (the “Premises”)  
known as Block 2134 Lot 1 on the Tax Map of the City of New York, County of Kings, and  
more particularly described in Schedule A attached hereto and made a part hereof, and any  
improvements thereon (such improvements and the Premises are collectively referred to herein as  
the “Subject Property”), which Subject Property is the subject of a restrictive declaration dated  
September 21, 2009, (the “Declaration”), made by Waterfront Realty II LLC and Certified  
Lumber Corporation; and

WHEREAS, Mortgagee represents that the Mortgage represents its sole interest in the  
Subject Property; and

WHEREAS, the Declaration, which is intended to be recorded in the Office of said  
Register/Clerk simultaneously with the recording hereof, shall subject the Subject Property and  
the sale, conveyance, transfer, assignment, lease, occupancy, mortgage and encumbrance thereof  
to certain restrictions, covenants, obligations, easements and agreements contained in the  
Declaration; and

WHEREAS, the Mortgagee agrees, at the request of the Mortgagor, to waive its right to execute the Declaration and to subordinate the Mortgage to the Declaration.

NOW, THEREFORE, the Mortgagee (i) hereby waives any rights it has to execute, and consents to the execution by the Mortgagor of, the Declaration and (ii) hereby agrees that the Mortgage, any liens, operations and effects thereof, and any extensions, renewals, modifications and consolidations of the Mortgage, shall in all respects be subject and subordinate to the terms and provisions of the Declaration.

This Waiver of Execution of Restrictive Declaration and Subordination of Mortgage shall be binding upon the Mortgagee and its heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Mortgagee has duly executed this Waiver of Execution of Restrictive Declaration and Subordination of Mortgage as of the date and year first above written.

CAPITAL ONE, N.A.

By:

Name:

Title:

### CERTIFICATE OF ACKNOWLEDGEMENT

State of New York )  
 ) .ss.:  
County of Suffolk )

On the 24<sup>th</sup> day of September in the year 2009 before me, the undersigned, a notary public in and for said state, personally appeared Linda Burg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Dana Tebaldi  
Notary Public

DANA TEBALDI  
Notary Public, State of New York  
NO. 01TE6174898  
Qualified in Nassau County  
Commission Expires Sept. 24, 20 11

## **SCHEDULE A**

### **Parcel 1 - (Block 2134 Lot 1):**

All that plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

**BEGINNING** at the corner formed by the intersection of the westerly side of Kent Avenue and the northerly side of Division Avenue;

**RUNNING THENCE** northerly along the westerly side of Kent Avenue, 551.35 feet;

**THENCE** westerly at 90 degrees, 188.58 feet;

**THENCE** southerly along a line drawn parallel with Kent Avenue and distant 188.58 feet westerly therefrom, 348.25 feet;

**THENCE** southeasterly, 162.01 feet to the northerly side of Division Avenue at a point distant 148.50 feet westerly from the corner formed by the intersection of the westerly side of Kent Avenue and the northerly side of Division Avenue measured along the northerly side of Division Avenue;

**THENCE** southeasterly along the northerly side of Division Avenue, 148.50 feet to the westerly side of Kent Avenue, at the point or place of **BEGINNING**.

All lots lines recited herein running along Kent Avenue parallel or in the same direction are in Local Standard Measurements.

All lot lines running in the direction to or from Kent Avenue and along Division Avenue are in United States Standard of Measurements.

**EXHIBIT C-2**

**WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION  
AND SUBORDINATION OF MORTGAGE**

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND  
SUBORDINATION OF MORTGAGE, made this 23<sup>rd</sup> day of September, 2009 by 32nd  
Street Investors III LLC, New York Limited Liability Company (the "Mortgagee"), having its  
principal place of business at c/o Alter Mantel, LLP, 90 Park Avenue, New York, NY 10016.

**WITNESSETH:**

WHEREAS, the Mortgagee is the lawful holder of that certain mortgage, dated  
November 8, 2007 (the "Mortgage"), made by Boro Park Home Center Corp., Maspeth  
Properties LLC, Waterfront Realty II LLC and Franklin Realty Corp. (collectively, the  
"Mortgagor"), in favor of the Mortgagee, recorded in the Office of the Register/Clerk of the City  
of New York, County of Kings, on September 8, 2008 under CRFN 2008000356089; and

WHEREAS, the Mortgage encumbers all or a portion of the property (the "Premises")  
known as Block 2134 Lot 1 on the Tax Map of the City of New York, County of Kings, and  
more particularly described in Schedule A attached hereto and made a part hereof, and any  
improvements thereon (such improvements and the Premises are collectively referred to herein as  
the "Subject Property"), which Subject Property is the subject of a restrictive declaration dated  
September 21, 2009, (the "Declaration"), made by Waterfront Realty II LLC and Certified  
Lumber Corporation; and

WHEREAS, Mortgagee represents that the Mortgage represents its sole interest in the  
Subject Property; and

WHEREAS, the Declaration, which is intended to be recorded in the Office of said  
Register/Clerk simultaneously with the recording hereof, shall subject the Subject Property and  
the sale, conveyance, transfer, assignment, lease, occupancy, mortgage and encumbrance thereof  
to certain restrictions, covenants, obligations, easements and agreements contained in the  
Declaration; and

WHEREAS, the Mortgagee agrees, at the request of the Mortgagor, to waive its right to execute the Declaration and to subordinate the Mortgage to the Declaration.

NOW, THEREFORE, the Mortgagee (i) hereby waives any rights it has to execute, and consents to the execution by the Mortgagor of, the Declaration and (ii) hereby agrees that the Mortgage, any liens, operations and effects thereof, and any extensions, renewals, modifications and consolidations of the Mortgage, shall in all respects be subject and subordinate to the terms and provisions of the Declaration.

This Waiver of Execution of Restrictive Declaration and Subordination of Mortgage shall be binding upon the Mortgagee and its heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Mortgagee has duly executed this Waiver of Execution of Restrictive Declaration and Subordination of Mortgage as of the date and year first above written.

32ND STREET INVESTORS III LLC

By:

Name:

Title:

### CERTIFICATE OF ACKNOWLEDGEMENT

State of New York )  
County of Kings ) ss.:

On the 23<sup>rd</sup> day of September in the year 2009 before me, the undersigned, a notary public in and for said state, personally appeared Joe Brunner, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

JEREMY BOIM  
Notary Public, State of New York  
No. 01BO6133265  
Qualified in Nassau County  
Commission Expires September 12, 2013

00395584

SEE

## **SCHEDULE A**

### **Parcel 1 - (Block 2134 Lot 1):**

All that plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

**BEGINNING** at the corner formed by the intersection of the westerly side of Kent Avenue and the northerly side of Division Avenue;

**RUNNING THENCE** northerly along the westerly side of Kent Avenue, 551.35 feet;

**THENCE** westerly at 90 degrees, 188.58 feet;

**THENCE** southerly along a line drawn parallel with Kent Avenue and distant 188.58 feet westerly therefrom, 348.25 feet;

**THENCE** southeasterly, 162.01 feet to the northerly side of Division Avenue at a point distant 148.50 feet westerly from the corner formed by the intersection of the westerly side of Kent Avenue and the northerly side of Division Avenue measured along the northerly side of Division Avenue;

**THENCE** southeasterly along the northerly side of Division Avenue, 148.50 feet to the westerly side of Kent Avenue, at the point or place of **BEGINNING**.

All lots lines recited herein running along Kent Avenue parallel or in the same direction are in Local Standard Measurements.

All lot lines running in the direction to or from Kent Avenue and along Division Avenue are in United States Standard of Measurements.



**EXHIBIT C-3**

**WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION  
AND SUBORDINATION OF MORTGAGE**

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND  
SUBORDINATION OF MORTGAGE, made this 5<sup>th</sup> day of October, 2009 by Bank of  
Smithtown, a banking corporation duly organized under the laws of the State of New York (the  
"Mortgagee"), having its principal place of business at 100 Motor Parkway, Suite 160,  
Hauppauge, NY 11788.

**WITNESSETH:**

WHEREAS, the Mortgagee is the lawful holder of that certain mortgage, dated April 11,  
2008 (the "Mortgage") made by Certified Lumber Corporation, a corporation duly organized  
under the laws of the State of New York (the "Mortgagor"), in favor of the Mortgagee, recorded  
in the Office of the Register/Clerk of the City of New York, County of Kings, on April 21, 2008  
under CRFN 2008000158700; and

WHEREAS, the Mortgage encumbers all or a portion of the property (the "Premises")  
known as Block 2134 Lot 150 on the Tax Map of the City of New York, County of Kings, and  
more particularly described in Schedule A attached hereto and made a part hereof, and any  
improvements thereon (such improvements and the Premises are collectively referred to herein  
as the "Subject Property"), which Subject Property is the subject of a restrictive declaration  
dated September 21, 2009, (the "Declaration"), made by Waterfront Realty II LLC and  
Certified Lumber Corporation; and

WHEREAS, Mortgagee represents that the Mortgage represents its sole interest in the  
Subject Property; and

WHEREAS, the Declaration, which is intended to be recorded in the Office of said  
Register/Clerk simultaneously with the recording hereof, shall subject the Subject Property and  
the sale, conveyance, transfer, assignment, lease, occupancy, mortgage and encumbrance thereof  
to certain restrictions, covenants, obligations, easements and agreements contained in the  
Declaration; and

WHEREAS, the Mortgagee agrees, at the request of the Mortgagor, to waive its right to execute the Declaration and to subordinate the Mortgage to the Declaration.

NOW, THEREFORE, the Mortgagee (i) hereby waives any rights it has to execute, and consents to the execution by the Mortgagor of, the Declaration and (ii) hereby agrees that the Mortgage, any liens, operations and effects thereof, and any extensions, renewals, modifications and consolidations of the Mortgage, shall in all respects be subject and subordinate to the terms and provisions of the Declaration.

This Waiver of Execution of Restrictive Declaration and Subordination of Mortgage shall be binding upon the Mortgagee and its heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Mortgagee has duly executed this Waiver of Execution of Restrictive Declaration and Subordination of Mortgage as of the date and year first above written.

BANK OF SMITHTOWN

By:

Bradley E. Rock, Jr.  
Name: Bradley E. Rock, Jr.  
Title: Vice President

**CERTIFICATE OF ACKNOWLEDGEMENT**

State of NEW YORK )  
 ) ss.:  
County of SUFFOLK )

On the 5 day of OCTOBER in the year 2009 before me, the undersigned, a notary public in and for said state, personally appeared BRADLEY E. ROCK JR., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Cory Lyn Ewald  
Notary Public

**CORY LYN EWALD**  
NOTARY PUBLIC, STATE OF NEW YORK  
No. 01EW8134675  
QUALIFIED IN SUFFOLK COUNTY  
MY COMMISSION EXPIRES OCT. 3, 2013

00394129.2

SEAL

## **SCHEDULE A**

### **Parcel 2 - (Block 2134 Lot 150):**

All that plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

**BEGINNING** at a point on the northerly side of Division Avenue distant 148.50 feet westerly from the corner formed by the intersection of the northerly side of Division Avenue with the westerly side of Kent Avenue;

**RUNNING THENCE** westerly along the northerly side of Division Avenue 105.585 feet to the United States Pierhead and Bulkhead Line approved February 25, 1918;

**THENCE** northwesterly along the said U.S. Pierhead and Bulkhead Line 310.45 feet to its intersection with the United States Bulkhead Line approved February 25, 1918;

**THENCE** northerly along said U.S. Bulkhead Line 202.06 feet;

**THENCE** easterly at right angles to Kent Avenue 24.19 feet;

**THENCE** northerly parallel with Kent Avenue 0.50 feet;

**THENCE** easterly at right angles to Kent Avenue 145.50 feet;

**THENCE** southerly parallel with Kent Avenue 371.75 feet;

**THENCE** southeasterly in a straight line 162.01 feet to the northerly side of Division Avenue, the point or place of **BEGINNING**.

All lots lines recited herein running parallel with or in the same direction as Kent Avenue or along the United States Pierhead and Bulkhead Lines are in Local Standard of Measurements.

All lot lines running toward Kent Avenue along Division Avenue are in United States Standard of Measurements.

**EXHIBIT C-4**

**WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION  
AND SUBORDINATION OF MORTGAGE**

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND  
SUBORDINATION OF MORTGAGE, made this 7<sup>th</sup> day of October, 2009 by NCC  
Capital, LLC, a New York Limited Liability Company (the "Mortgagee"), having its principal  
place of business at 4309 13th Avenue, Brooklyn, NY 11219.

**WITNESSETH:**

WHEREAS, the Mortgagee is the lawful holder of that certain mortgage, dated February 12, 2008, and Spreader Agreement, dated November 24, 2008, (collectively, the "Mortgage") made by Franklin Realty Corp., a New York corporation, 54 Eldridge St. Corp., a New York corporation, and Certified Lumber Corporation, a New York corporation, (collectively, the "Mortgagor"), in favor of the Mortgagee, both recorded in the Office of the Register/Clerk of the City of New York, County of Kings, on February 25, 2008 under CRFN 2008000076774, and on December 2, 2008 under CRFN 2008000461852, respectively; and

WHEREAS, the Mortgage encumbers all or a portion of the property (the "Premises") known as Block 2134 Lot 150 on the Tax Map of the City of New York, County of Kings, and more particularly described in Schedule A attached hereto and made a part hereof, and any improvements thereon (such improvements and the Premises are collectively referred to herein as the "Subject Property"), which Subject Property is the subject of a restrictive declaration dated September 21, 2009, (the "Declaration"), made by Waterfront Realty II LLC and Certified Lumber Corporation; and

WHEREAS, Mortgagee represents that the Mortgage represents its sole interest in the Subject Property; and

WHEREAS, the Declaration, which is intended to be recorded in the Office of said Register/Clerk simultaneously with the recording hereof, shall subject the Subject Property and the sale, conveyance, transfer, assignment, lease, occupancy, mortgage and encumbrance thereof to certain restrictions, covenants, obligations, easements and agreements contained in the Declaration; and

WHEREAS, the Mortgagee agrees, at the request of the Mortgagor, to waive its right to

execute the Declaration and to subordinate the Mortgage to the Declaration.

NOW, THEREFORE, the Mortgagee (i) hereby waives any rights it has to execute, and consents to the execution by the Mortgagor of, the Declaration and (ii) hereby agrees that the Mortgage, any liens, operations and effects thereof, and any extensions, renewals, modifications and consolidations of the Mortgage, shall in all respects be subject and subordinate to the terms and provisions of the Declaration.

This Waiver of Execution of Restrictive Declaration and Subordination of Mortgage shall be binding upon the Mortgagee and its heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Mortgagee has duly executed this Waiver of Execution of Restrictive Declaration and Subordination of Mortgage as of the date and year first above written.

NCC CAPITAL, LLC

By:

Shimon Simonowicz  
Name: Shimon Simonowicz  
Title: **Authorized Signatory**

### CERTIFICATE OF ACKNOWLEDGEMENT

State of New York )  
 ) ss.:  
County of Kings )

On the 7 day of October in the year 2009 before me, the undersigned, a notary public in and for said state, personally appeared Shimon Simonowicz, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]  
Notary Public

00394133.2

**ELI BRIEGER**  
NOTARY PUBLIC, State Of  
No. 01BR614123  
Qualified In Kings County  
Commission Expires Feb. 21, 2010

**ELI BRIEGER**  
NOTARY PUBLIC, State Of New York  
No. 01BR6141234  
Qualified In Kings County  
Commission Expires Feb. 21, 2010

## **SCHEDULE A**

### **Parcel 2 - (Block 2134 Lot 150):**

**All that plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:**

**BEGINNING** at a point on the northerly side of Division Avenue distant 148.50 feet westerly from the corner formed by the intersection of the northerly side of Division Avenue with the westerly side of Kent Avenue;

**RUNNING THENCE** westerly along the northerly side of Division Avenue 105.585 feet to the United States Pierhead and Bulkhead Line approved February 25, 1918;

**THENCE** northwesterly along the said U.S. Pierhead and Bulkhead Line 310.45 feet to its intersection with the United States Bulkhead Line approved February 25, 1918;

**THENCE** northerly along said U.S. Bulkhead Line 202.06 feet;

**THENCE** easterly at right angles to Kent Avenue 24.19 feet;

**THENCE** northerly parallel with Kent Avenue 0.50 feet;

**THENCE** easterly at right angles to Kent Avenue 145.50 feet;

**THENCE** southerly parallel with Kent Avenue 371.75 feet;

**THENCE** southeasterly in a straight line 162.01 feet to the northerly side of Division Avenue, the point or place of **BEGINNING**.

**All lots lines recited herein running parallel with or in the same direction as Kent Avenue or along the United States Pierhead and Bulkhead Lines are in Local Standard of Measurements.**

**All lot lines running toward Kent Avenue along Division Avenue are in United States Standard of Measurements.**

**EXHIBIT C-5**

**WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION  
AND SUBORDINATION OF UCC FINANCING STATEMENT**

WAIVER OF EXECUTION OF RESTRICTIVE DECLARATION AND  
SUBORDINATION OF UCC FINANCING STATEMENT, made this 22<sup>nd</sup> day of September  
2009 by RCGLV Maspeth LLC, a New York Limited Liability Company (the "Mortgagee"),  
having its principal place of business at Seven Penn Plaza, Suite 310, New York, NY 10010.

**WITNESSETH:**

WHEREAS, the Mortgagee is a Secured Party on that certain UCC Financing Statement,  
identifying Isack Rosenberg and Abraham Rosenberg as debtors (collectively, the "Mortgagor"),  
in favor of the Mortgagee, recorded in the Office of the Register/Clerk of the City of New York,  
County of Kings, on September 1, 2005, under CRFN 2005000491154; and

WHEREAS, the UCC Financing Statement encumbers all or a portion of the property  
(the "Premises") known as Block 2134, Lots 1 and 150 on the Tax Map of the City of New York,  
County of Kings, and more particularly described in Schedule A attached hereto and made a part  
hereof, and any improvements thereon (such improvements and the Premises are collectively  
referred to herein as the "Subject Property"), which Subject Property is the subject of a restrictive  
declaration dated September 21, 2009, (the "Declaration"), made by Waterfront Realty II LLC  
and Certified Lumber Corporation; and

WHEREAS, Mortgagee represents that the UCC Financing Statement represents its sole  
interest in the Subject Property; and

WHEREAS, the Declaration, which is intended to be recorded in the Office of said  
Register/Clerk simultaneously with the recording hereof, shall subject the Subject Property and  
the sale, conveyance, transfer, assignment, lease, occupancy, mortgage and encumbrance thereof  
to certain restrictions, covenants, obligations, easements and agreements contained in the  
Declaration; and

WHEREAS, the Mortgagee agrees, at the request of the Mortgagor, to waive its right to execute the Declaration and to subordinate the UCC Financing Statement to the Declaration.

NOW, THEREFORE, the Mortgagee (i) hereby waives any rights it has to execute, and consents to the execution by the Mortgagor of, the Declaration and (ii) hereby agrees that the UCC Financing Statement, any liens, operations and effects thereof, and any extensions, renewals, modifications and consolidations of the UCC Financing Statement, shall in all respects be subject and subordinate to the terms and provisions of the Declaration.

This Waiver of Execution of Restrictive Declaration and Subordination of UCC Financing Statement shall be binding upon the Mortgagee and its heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the Mortgagee has duly executed this Waiver of Execution of Restrictive Declaration and Subordination of UCC Financing Statement as of the date and year first above written.

RCGLV MASPETH LLC

By: 

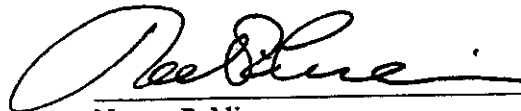
Name: DEAN KAVASA

Title: AUTHORIZED SIGNATORY

### CERTIFICATE OF ACKNOWLEDGEMENT

State of New York )  
 ) .ss.:  
County of New York )

On the 22<sup>nd</sup> day of September in the year 2009 before me, the undersigned, a notary public in and for said state, personally appeared Dean Kavasa, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

00395582

ROBERT F. LINER  
NOTARY PUBLIC, State of New York  
No. 4516746  
Qualified in Suffolk County  
Commission Expires September 30, 2011

SEAL



## SCHEDULE A

### Legal Description of Subject Property Tax Block 2134, Lots 1 and 150

#### Parcel 1 - (Block 2134 Lot 1):

All that plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the westerly side of Kent Avenue and the northerly side of Division Avenue;

RUNNING THENCE northerly along the westerly side of Kent Avenue, 551.35 feet;

THENCE westerly at 90 degrees, 188.58 feet;

THENCE southerly along a line drawn parallel with Kent Avenue and distant 188.58 feet westerly therefrom, 348.25 feet;

THENCE southeasterly, 162.01 feet to the northerly side of Division Avenue at a point distant 148.50 feet westerly from the corner formed by the intersection of the westerly side of Kent Avenue and the northerly side of Division Avenue measured along the northerly side of Division Avenue;

THENCE southeasterly along the northerly side of Division Avenue, 148.50 feet to the westerly side of Kent Avenue, at the point or place of BEGINNING.

All lot lines recited herein running along Kent Avenue parallel or in the same direction are in Local Standard Measurements.

All lot lines running in the direction to or from Kent Avenue and along Division Avenue are in United States Standard of Measurements.

#### Parcel 2 - (Block 2134 Lot 150):

All that plot, piece or parcel of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of Division Avenue distant 148.50 feet westerly from the corner formed by the intersection of the northerly side of Division Avenue with the westerly side of Kent Avenue;

RUNNING THENCE westerly along the northerly side of Division Avenue 105.585 feet to the United States Pierhead and Bulkhead Line approved February 25, 1918;

THENCE northwesterly along the said U.S. Pierhead and Bulkhead Line 310.45 feet to its intersection with the United States Bulkhead Line approved February 25, 1918;

THENCE northerly along said U.S. Bulkhead Line 202.06 feet;

THENCE easterly at right angles to Kent Avenue 24.19 feet;

THENCE northerly parallel with Kent Avenue 0.50 feet;

THENCE easterly at right angles to Kent Avenue 145.50 feet;

THENCE southerly parallel with Kent Avenue 371.75 feet;

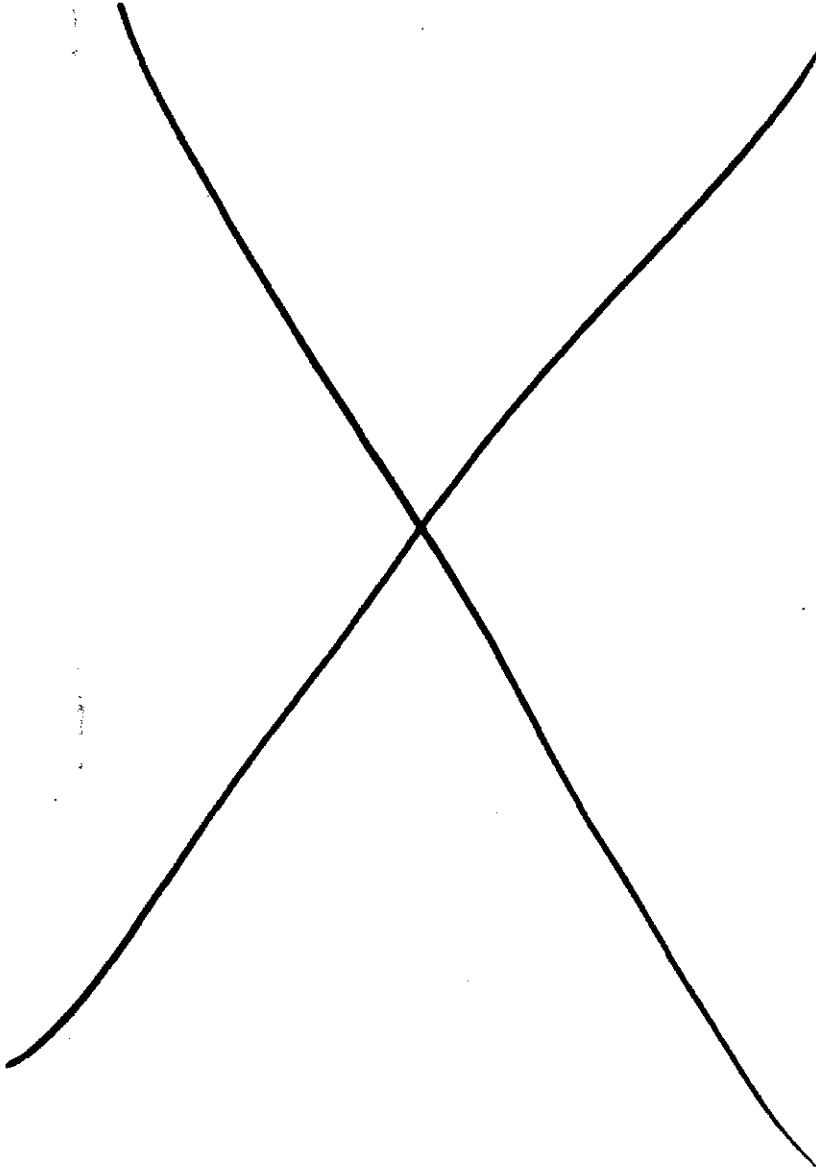
THENCE southeasterly in a straight line 162.01 feet to the northerly side of Division Avenue, the point or place of BEGINNING.

All lot lines recited herein running parallel with or in the same direction as Kent Avenue or along the United States Pierhead and Bulkhead Lines are in Local Standard of Measurements.

All lot lines running toward Kent Avenue along Division Avenue are in United States Standard of Measurements.

**EXHIBIT D**

**DEP Letter dated November 20, 2008 to Follow**





DEPARTMENT OF  
ENVIRONMENTAL  
PROTECTION

November 20, 2008

Robert Dobruskin  
Director, Environmental Assessment and Review Division  
New York City Department of City Planning  
22 Reade Street, Room 4E  
New York, NY 10007

Re: Rose Plaza on the River  
Block: 2134, Lots: 1 & 150  
08DCP056K / 09DEPTECH079K

Steven W. Lawitts  
Acting Commissioner

Dear Mr. Dobruskin:

Tel. (718) 595-6576  
Fax (718) 595-3557

Angela Licata  
Deputy Commissioner

Bureau of Environmental  
Planning & Analysis

Tel. (718) 595-4398  
Fax: (718) 595-4479  
[alicata@dcpl.nyc.gov](mailto:alicata@dcpl.nyc.gov)

The New York City Department of Environmental Protection Bureau of Environmental Planning and Analysis (DEP) has reviewed the March 2008 Environmental Assessment Statement (EAS) and the October 2005 Phase II Environmental Site Assessment (Phase II) prepared by AKRF for the above referenced site. It is our understanding that the applicant, Rose Plaza on the River LLC, is proposing several discretionary actions related to redevelopment of the subject site. Currently the site houses an industrial warehouse; the developer proposes to transform the site into a new mixed-use residential and commercial building complex with public access to the waterfront. The redevelopment would create three residential buildings with commercial uses in the ground floors, 801 dwelling units and 29,000 square feet of retail space.

The Phase I Environmental Site Assessment completed by AKRF in January 2004 identified several Recognized Environmental Conditions (RECs) for the site. The historical records for the site confirmed that the site had been developed since the 1880s and has continued to function as an industrial property since its first development to present. The property was occupied by a Manufactured Gas Plant entitled Brooklyn Union Gas, Peoples Works from 1871-1895. Later historical uses for the project site include: a stove yard, a molasses storage yard, a sugar refinery, a storage warehouse, and the F.M. Schaefer Brewing Company. There are two industrial buildings that currently occupy the lot, the three-story building was constructed in 1940, and the two-story building was constructed in two parts the first part was constructed in 1939 and the second in 1979. The current on-site structures are inhabited by three businesses: Certified Lumber occupies the 2-story building, and VIM and Street Beat occupy the 3-story building with storage and distribution operations. The Phase I report indicated that the site's historical use as a Manufactured Gas Plant, and current industrial uses represents a REC, and a Phase II investigation was recommended.

In October 2005 AKRF conducted a Phase II site investigation for the project site. The Phase II Workplan outlined a sampling plan including 14 soil borings with 5

borings advanced to groundwater. However, due to consistent shallow refusal at boring site 10, only 13 soil borings were completed on site, and 5 groundwater samples were collected. Borings were drilled to 10 feet below ground water interface to check for MGP contamination, however since no evidence of such could be found, a sample was taken from the upper-most interval (0-2') and the interval just above the soil/groundwater interface. During the sampling activities a petroleum-like odor was noted from samples SB-12 & SB-14. Creosote odors were noted from SB-2, SB-4, SB/MW-11, SB/MW-12 and SB-14, and marsh like odors were noted below the water table in 6 out of 13 borings. In total, 25 soil samples were collected from the site, and sent to Severn Trent Laboratories. Volatile organic compounds (VOCs) were found in all 25 samples. Almost all of these detections were below the regulatory limits; however, a small number of samples contained concentrations higher than New York State Department of Environmental Conservation (NYSDEC) Technical and Guidance Memorandum (TAGM) Recommended Soil Clean-up Objectives (RSCOs). The VOCs found in excess of TAGM were characterized as BTEX compounds, indicating that the contamination may have originated from past or currently on-site petroleum storage or spills. BTEX contamination was found in three soil borings (SB/MW-11, SB/MW-12, & SB/MW-5). These elevated BTEX levels are probably indicative of impacts from specific past on-site activities, i.e. underground storage tanks (USTs) and Coal Slag. The remainder of the site had elevated levels of semi-volatile organic compounds (SVOCs), metals and, in some areas, pesticides. The consultant attributes these elevated levels to low-grade historical fill materials not related to specific past onsite activities.

Groundwater sample analysis revealed the presence of varying levels of contaminants, some of which were found to be above NYSDEC Class GA water quality standards. The potential for petroleum contamination of groundwater was found in some sampling locations. Further excavation of the site during development may reveal more groundwater contamination. If further groundwater contamination is found, further investigation and remediation would be necessary.

In both the EAS and the Phase II the consultant states that the property is enrolled in a Voluntary Cleanup Program in association with Keyspan energy (the owner of the MGP facility that formerly occupied the property). According to this plan, Keyspan would work with NYSDEC to properly remediate the property.

Based upon our review of the submitted documentation, we have the following comments/recommendations:

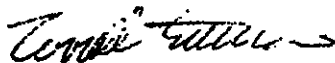
- As a result of the contamination levels detected on site, a Remedial Action Plan (RAP) should be developed for the subject site and submitted to DEP for review and approval. The RAP should delineate that all excavated soils and fill materials will be properly disposed of in accordance with all applicable NYSDEC Regulations at an appropriate facility. Note that additional testing of the soils may be required by the disposal and/or recycling facility. In addition, a NYSDEC-approved remediation plan should be provided to DEP.
- As a result of elevated concentrations of heavy metals exceeding NYSDEC

Guidance Levels, a site-specific Construction Health and Safety Plan (CHASP) should be prepared on the basis of workers exposure to these contaminants for the proposed construction project. The CHASP should be submitted to DEP for review/approval prior to the start of construction. Soil disturbance should not occur without DEP's written approval of the site-specific CHASP.

- Lead-based paint and asbestos containing material are associated with on-site structures. These materials should be properly removed or managed prior to the start of any demolition/ conversion activities in accordance with all federal, state and local regulations. An appropriate HASP for the handling and removal of these materials should also be implemented during the demolition/conversion phase of this project.
- Excavated soils, which are temporarily stockpiled on-site, must be covered with polyethylene sheeting while disposal options are determined. Additional testing may be required by the disposal/recycling facility.
- Petroleum-impacted soils (which display petroleum odors and/or staining) encountered during the excavation/grading activities, should be removed and properly disposed of in accordance with all NYSDEC Regulations.
- Dust suppression must be maintained by the contractor during the excavating and grading activities at the site.
- All known or found USTs and above-ground storage tanks (ASTs), including dispensers, piping, and fill-ports, must be properly removed/closed in accordance with all applicable NYSDEC Regulations.
- If de-watering into NYC storm/sewer drains will occur during the proposed construction project, then a DEP Sewer Discharge Permit must be obtained prior to the start of any de-watering activities at the site.

Please include DEP tracking number 09DEPTECH079K with all future correspondence. If you have any questions or comments, please contact Mitchell Wimbish at (718) 595-4451.

Sincerely,



Terrell Estes

Director, Office of City Project Review

cc: J. Wuthenow  
M. Smith  
M. Wimbish