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NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION; THE
COMMISSIONER OF THE NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION; AND THE
ADMINISTRATOR OF THE NEW JERSEY
SPILL COMPENSATION FUND,

Plaintiffs,

v.

RICHARD PASCALE, INDIVIDUALLY;
IDEAL COOPERAGE, INC.; 39 NEW YORK
AVENUE DEVELOPMENT LLC; 39 NEW
YORK AVE LLC; 3-25 NEW YORK AVE.
CORP.; "ABC CORPORATIONS 1-10"
(Names Fictitious); and "XYZ
CORPORATIONS 1-10" (Names Fictitious),

Defendants.

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
HUDSON COUNTY

DOCKET NO. L-2617-15

CIVIL ACTION

**CONSENT JUDGMENT
BETWEEN PLAINTIFFS AND
DEFENDANT 3-25 NEW YORK
AVENUE CORP.**

This matter was opened to the Court by Gurbir S. Grewal, Attorney General of New Jersey, attorney for plaintiffs the New Jersey Department of Environmental Protection ("DEP" or the "Department"), the Commissioner of the New Jersey Department of Environmental Protection ("Commissioner"), and the Administrator of the New Jersey Spill Compensation Fund ("Administrator") (sometimes referred to herein individually as "Plaintiff" and collectively as "Plaintiffs"), Thomas Lihan, Deputy Attorney General, appearing; and Manko, Gold, Katcher &

Fox, LLP., attorneys for defendant 3-25 New York Avenue Corp. (“3-25” or “Settling Defendant”), Nicole R. Moshang, Esq., appearing; and the Plaintiffs and the Settling Defendant (together, the “Parties”) having amicably resolved their dispute before trial:

I. BACKGROUND

1. On June 22, 2015, the Plaintiffs initiated this action by filing a complaint (“Complaint”) against the Settling Defendant, among others, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 (“the Spill Act”), the Water Pollution Control Act, N.J.S.A. 58:10A-1 to -35, and the common law.

2. By Order entered December 11, 2018, this matter was voluntarily dismissed without prejudice, to enable the parties to obtain approval for closing papers or a Consent Judgment on terms yet to be approved by their respective clients/principals. The Order permitted Plaintiffs to restore the action by formal motion, returnable no later than Friday, April 26, 2019, which deadline was subsequently extended upon consent of the parties to Friday, May 24, 2019. By Order entered May 20, 2019, the Court extended the deadline to restore the action by formal motion returnable Friday, July 12, 2019, to allow the parties additional time to finalize and receive approval for an appropriate form of Consent Judgment. Upon motion filed by plaintiffs, the Court entered an order on July 12, 2019 extending the deadline to restore this action by formal motion returnable September 13, 2019. On August 28, 2019, Plaintiffs filed a motion to restore this matter, as the parties had not concluded their negotiations of the form of Consent Judgment. An Order reinstating the case was entered on September 13, 2019.

3. The parties have since concluded their negotiations of the closing papers, and Plaintiffs have obtained the necessary approvals to resolve this matter. The parties have informed the

Court that the within matter is resolved, subject to the Court's approval of this Consent Judgment.

4. The properties that are the subject matter of the Complaint were subdivided into two adjoining parcels in 1982, and consist of 39 New York Avenue (singly, the "Upper Lot") and 3 New York Avenue (singly, the "Lower Lot") in Jersey City, Hudson County, New Jersey, also known as Lots 35 and 36, respectively, of Block 6001 on the Tax Map of Jersey City (together, the "Property"). The Upper Lot lies immediately to the west of the Lower Lot, and together, the two lots consist of approximately 4.5 acres. The site consists of the Property as well as all other areas where any hazardous substances and pollutants discharged therefrom have come to be located (the "Site"), which the Department has designated as Program Interest Nos. G000004613 and 459020.

5. Plaintiffs, in their Complaint, seek reimbursement of all cleanup and removal costs that they allegedly incurred, and will incur, to Remediate the Site, but not damages for any natural resource of this State that has been, or may be, injured by the discharge of hazardous substances and pollutants at the Property ("Natural Resource Damages or "NRD"), as well as injunctive and other relief.

6. The Settling Defendant subsequently filed a responsive pleading in which it denied liability, and asserted various defenses to the allegations contained in the Plaintiffs' Complaint.

7. By entering into this Consent Judgment, the Settling Defendant does not admit any liability arising from the transactions or occurrences the Plaintiffs allege in the Complaint.

8. The Plaintiffs allege, and the Settling Defendant denies, that "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., have been "discharged" at the Lower Lot within the meaning of N.J.S.A. 58:10-23.11b.

9. The Plaintiffs further allege, and the Settling Defendant further denies, that "pollutants," as defined in N.J.S.A. 58:10A-3n., have been "discharged" at the Lower Lot within the meaning of N.J.S.A. 58:10A-3e.

10. Plaintiffs have not alleged in their Complaint that the Settling Defendant, itself, discharged any "hazardous substances" or "pollutants" at the Lower Lot, but averred in that pleading that Settling Defendant is the current owner, of the Lower Lot on which other entities or persons allegedly discharged "hazardous substances" or "pollutants."

11. From approximately 2000 through 2002, the Department alleges it performed a remedial investigation pursuant to N.J.S.A. 58:10-23.11f.a. and N.J.A.C. 7:26E, during which the Department alleges it investigated the nature and extent of the contamination at the Site.

12. The Department alleges that sampling results from the remedial investigation revealed the presence of various pollutants and hazardous substances at concentrations exceeding State cleanup criteria in the ground water, sediments and soils at the Property.

13. Plaintiffs entered into a Consent Judgment with Defendants 39 New York Avenue LLC and 39 New York Avenue Development LLC (collectively referred to as "the Upper Lot Defendants"), which resulted in the entry of an order dated April 16, 2018, marking Plaintiffs' claims against the Upper Lot Defendants in this action settled.

14. The parties acknowledge that pursuant to a separate Administrative Consent Order entered into by the Department and Devan Propco, LLC ("the ACO"), executed by the

Department and Devan Propco, LLC on July 19, 2019 and July 9, 2019, respectively, Devan Propco, LLC has agreed to pay the Department the amount of \$285,000 to resolve Plaintiffs' alleged claims for Past Cleanup and Removal Costs asserted against Settling Defendant in the Complaint and Plaintiffs' actual or potential claims for natural resource damages arising out of discharges of hazardous substances on the Lower Lot, and to complete the Lower Lot Remediation pursuant to the terms and conditions set forth therein. A true and correct copy of the ACO is attached hereto as Exhibit A.

15. The Parties to this Consent Judgment recognize, and this Court by entering this Consent Judgment finds, that the Parties to this Consent Judgment have negotiated this Consent Judgment in good faith; that the implementation of this Consent Judgment will avoid continued, prolonged and complicated litigation; and that this Consent Judgment is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Consent Judgment, it is hereby **ORDERED and ADJUDGED**:

II. JURISDICTION

16. This Court has jurisdiction over the subject matter of this action pursuant to the Spill Act, the Water Pollution Control Act, and the common law. This Court also has personal jurisdiction over the Parties to this Consent Judgment, solely for the purposes of implementing this Consent Judgment and resolving the underlying litigation.

17. The Parties to this Consent Judgment waive all objections and defenses they may have to the jurisdiction of this Court, or to venue in this County. The Parties shall not challenge the Court's jurisdiction to enforce this Consent Judgment.

III. PARTIES BOUND

18. This Consent Judgment applies to, and is binding upon, the Plaintiffs and the Settling Defendant. The provisions of sections 41(a) and 41(b) below apply to all Defendants.

IV. DEFINITIONS

19. Unless otherwise expressly provided, terms used in this Consent Judgment that are defined in the Spill Act, the Water Pollution Control Act, or in the regulations promulgated under these acts, shall have their statutory or regulatory meaning. Whenever the terms listed below are used in this Consent Judgment, the following definitions shall apply for purposes of this Consent Judgment only:

"Consent Judgment" shall mean this Consent Judgment.

"Day" shall mean a calendar day unless expressly stated to be a working day.

"Devan Propco Default Event" occurs upon the failure of Devan Propco, LLC to complete the Lower Lot Remediation pursuant to the terms set forth in the ACO, and the Six (6) Million Dollars committed to cover remediation costs under the ACO have been fully exhausted toward the completion of the Lower Lot Remediation.

"Future Cleanup and Removal Costs" shall mean all cleanup and removal costs, including direct and indirect costs, the Plaintiffs incur after the effective date of this Consent Judgment to Remediate the Site;

"Interest" shall mean interest at the rate established by R. 4:42 of the then current edition of the New Jersey Court Rules.

“Licensed Site Remediation Professional” or “LSRP” shall mean an individual who is licensed by the Site Remediation Professional Licensing Board pursuant to N.J.S.A. 58:10C-7.

“Lower Lot Remediation” shall mean the Remediation of hazardous substances or pollutants on or beneath the Lower Lot and all areas where any hazardous substance or pollutant discharged at the Lower Lot have come to be located, excluding hazardous substances or pollutants which migrated onto or beneath the Lower Lot from an off-site [lower case intended] location.

"Paragraph" shall mean a portion of this Consent Judgment identified by an Arabic numeral or an upper-case letter.

"Party" or "Parties" shall mean Plaintiff DEP, Plaintiff Commissioner, Plaintiff Administrator, and the Settling Defendant.

"Past Cleanup and Removal Costs" shall mean all cleanup and removal costs, including direct and indirect costs, the Plaintiffs incurred on or before the effective date of this Consent Judgment to Remediate the Site.

“Remediation” or “Remediate” shall mean all necessary actions to investigate and clean up or respond to any known, suspected or threatened discharge of hazardous substances or pollutants including, as necessary, the preliminary assessment, site investigation, remedial investigation and remedial action.

“Response Action Outcome” or “RAO” shall mean a response action outcome issued by an LSRP pursuant to N.J.S.A. 58:10C-14;

"Section" shall mean a portion of this Consent Judgment identified by a Roman numeral.

"Settling Defendant" shall mean 3-25 New York Ave. Corp., a corporation duly organized and existing under the laws of the State of New Jersey, with a principal place of business located at 888 Doremus Avenue, Newark, New Jersey.

"Site" shall have the definition ascribed to it on Section I, Paragraph 4 of this Consent Judgment.

"Working day" shall mean a day other than a Saturday, Sunday, or State holiday. In computing time under this Consent Judgment, where the last day would fall on a Saturday, Sunday, or State holiday, time shall run until the close of business of the next working day.

V. PARTIES' OBJECTIVES

20. The Parties' objectives in entering into this Consent Judgment are to protect public health and safety and the environment by requiring Settling Defendant to complete the Lower Lot Remediation in the event of a Devan Propco Default Event as defined herein, and the payment of certain Past Cleanup and Removal Costs to the extent said costs have not been paid pursuant to Paragraphs 25 and 26 of the ACO, and in return, Plaintiffs agree to dismiss with prejudice the Complaint against the Settling Defendant; thereby resolving all of Plaintiffs' claims against the Settling Defendant concerning the Site, in addition to resolving claims against Settling Defendant for injury to natural resources arising out of discharges of hazardous substances on the Lower Lot, except to the extent any claims are specifically reserved herein.

VI. SETTLING DEFENDANT'S COMMITMENTS

21. Upon the occurrence of a Devan Propco Default Event, Settling Defendant agrees to assume any remaining obligations under the ACO, including the payment of Past Cleanup and Removal Costs as defined in Paragraphs 25 and 26 of the ACO to the extent said amounts have not been paid under the terms of the ACO and to take any necessary actions to complete the Lower Lot Remediation, in accordance with the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C et seq., and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E et seq.

VII. PLAINTIFFS' COVENANTS & RELEASES

22. In consideration of Settling Defendant's assumption of responsibility to complete the Lower Lot Remediation upon the occurrence of a Devan Propco Default Event, Plaintiffs covenant not to sue and agree not to take administrative action against Settling Defendant for Past Cleanup and Removal Costs. Also, provided the Lower Lot Remediation is completed and an RAO is obtained in accordance with the terms of the ACO, Plaintiffs covenant not to sue and agree not to take administrative action against Settling Defendant for any Future Cleanup and Removal Costs; provided, however, that the covenant not to sue provided by this paragraph shall not extend to Future Cleanup and Removal Costs to Remediate a discharge of a hazardous substance or pollutant at the Lower Lot which Settling Defendant has an obligation to Remediate due to the occurrence of a Devan Propco Default Event, but has failed to Remediate ("Failed Lower Lot Remediation").

23. In further consideration of Settling Defendant's agreement to assume responsibility to complete the Lower Lot Remediation upon the occurrence of a Devan Propco Default Event,

Plaintiffs agree to dismiss, with prejudice, the Complaint against the Settling Defendant, within 10 days of the effective date of this Consent Judgment.

24. The covenant contained in Paragraph 22 subject to the carve out for Failed Lower Lot Remediation, shall take effect as to Settling Defendant once Plaintiffs receive payment, in full, of Plaintiffs' alleged Past Cleanup and Removal Costs pursuant to Paragraphs 25 and 26 of the ACO and shall remain in effect unless the Department notifies Settling Defendant of a Devan Propco Default Event, and Settling Defendant thereafter fails to complete the Lower Lot Remediation and obtain an RAO as set forth in this Consent Judgment.

25. The covenant contained in Paragraph 22 above extends only to Settling Defendant and not to any other person or entity.

26. In addition to the foregoing, Plaintiffs have agreed not to assert a claim against Settling Defendant for contribution towards Natural Resource Damages - i.e. compensation for damage to, or the loss of, natural resources, or for the restoration of natural resources on or off the property in connection with the discharge of a hazardous substance at the Lower Lot prior to Settling Defendant's acquisition of title to the Lower Lot.

VIII. PLAINTIFFS' RESERVATIONS

27. Subject to the provisions of this Consent Judgment, the Plaintiffs retain all authority, and reserve all rights, to undertake any further remediation authorized by law concerning the Lower Lot or, upon the occurrence of a Devan Propco Default Event, to direct Settling Defendant to undertake any remediation activities concerning the Lower Lot as set forth herein.

28. Notwithstanding any other provision of this Consent Judgment, the Plaintiffs reserve, and this Consent Judgment is without prejudice to, the Plaintiffs' right to sue or take administrative action in the event of a Devan Propco Default Event to compel Settling Defendant to undertake additional Lower Lot Remediation, or to reimburse the Plaintiffs for additional costs and damages, if after an RAO is obtained:

- a. Plaintiff DEP discovers conditions at the Lower Lot, previously unknown to Plaintiff DEP; or
- b. Plaintiff DEP receives information, previously unknown to Plaintiff DEP, in whole or in part; and

these previously unknown conditions or unknown information, together with any other relevant information, indicate that the Lower Lot Remediation is not protective of human health and safety, or the environment.

29. For the purposes of Paragraph 28, the information and the conditions known to the Plaintiffs shall include only information and conditions known to the Plaintiffs as of the date a RAO is obtained for the Lower Lot.

30. The covenants contained in Paragraphs 22 and 23 above do not pertain to any matters other than those expressly stated. The Plaintiffs reserve, and this Consent Judgment is without prejudice to, all rights against the Settling Defendant concerning all other matters, including the following:

- i. claims based on the Settling Defendant's failure to satisfy any term or provision of this Consent Judgment;

- ii. liability arising from the Settling Defendant's past, present or future discharge or unsatisfactory storage or containment of any hazardous substance outside the Site;
- iii. liability arising from Settling Defendant's discharge of any hazardous substance during the Lower Lot Remediation;
- iv. liability for any future discharge or unsatisfactory storage or containment of any hazardous substance by the Settling Defendant at the Lower Lot, other than as otherwise ordered or approved by Plaintiff DEP;
- v. criminal liability;
- vi. liability for any violation by the Settling Defendant of federal or state law, rule or regulation - including but not limited to, the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, ARRCs and the Tech Rules - that occurs during or after the Lower Lot Remediation; and
- vii. Future Cleanup and Removal Costs should, upon the occurrence of a Devan Propco Default Event, Settling Defendant fail to complete the Lower Lot Remediation and obtain a RAO in accordance with the terms of this Consent Judgment and/or for a Failed Lower Lot Remediation.

IX. SETTLING DEFENDANT'S COVENANTS

31. Settling Defendant covenants not to oppose entry of this Consent Judgment by this Court, or to challenge any provision of this Consent Judgment, unless the Plaintiffs notify the Settling Defendant, in writing, that they no longer support entry of the Consent Judgment.

32. The Settling Defendant further covenants, subject to Paragraphs 35 and 36 below, not to sue or assert any claim or cause of action against the State, including any department, agency or

instrumentality of the State, concerning the Site, other than as necessary to seek enforcement of any rights or benefits accorded to the Settling Defendant under this Consent Judgment. This covenant shall include the following:

- a. any direct or indirect claim for reimbursement from the Spill Compensation Fund ("Spill Fund") concerning the Site; and
- b. any claim or cause of action concerning the remediation of the Lower Lot, including Plaintiff DEP's selection, performance or oversight of the remediation, or Plaintiff DEP's approval of the plans for the remediation, other than any claim or cause of action based on alleged unreasonable, arbitrary and/or capricious conduct by Plaintiff DEP.

33. The Settling Defendant's covenant not to sue or to assert any claim or cause of action against the State pursuant to Paragraph 32 above does not apply where the Plaintiffs sue or take administrative action against the Settling Defendant pursuant to Paragraphs 27, 28 and 30 above.

34. So as to avoid Plaintiffs' involvement in dispute resolution concerning whether a discharge of a hazardous substance or pollutant originated at, or whether contaminants migrated from a discharge that originated at, either the Upper Lot (for which 39 New York Avenue Development LLC, a defendant named in this action, has responsibility to Remediate) or the Lower Lot (for which the owner of the Lower Lot has responsibility to Remediate), Settling Defendant agrees to submit any such dispute to binding, non-appealable arbitration for resolution. In order to ensure that any dispute is timely raised, Settling Defendant shall provide copies of all remediation documents to the owner of the Upper Lot simultaneously with their submission to DEP. Should a dispute be submitted to arbitration under this paragraph, Settling

Defendant and the owner of the Upper Lot shall be the only parties to the arbitration. Under no circumstances shall any of the Plaintiffs be made a party to the arbitration, and the outcome of the arbitration shall not be binding on any of the Plaintiffs. Nothing in this paragraph affects the contribution protection provided by XII.

X. SETTLING DEFENDANT'S RESERVATIONS

35. The Settling Defendant reserves, and this Consent Judgment is without prejudice to, claims against the State of New Jersey, subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to -12-3; the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 to 13-10; the New Jersey Constitution, N.J. Const. art. VIII, §2, ¶2; or any other applicable provision of law, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any State employee while acting within the scope of his or her office or employment under circumstances where the State, if a private person, would be liable to the claimant. Any such claim, however, shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a State employee as that term is defined in N.J.S.A. 59:1-3; nor shall any such claim concern the Lower Lot Remediation, including a claim based on Plaintiff DEP's selection of the remediation, or Plaintiff DEP's oversight or approval of Settling Defendant's plans or activities relating to the remediation of the Lower Lot. The foregoing applies only to claims that the Settling Defendant may bring pursuant to any statute other than the Spill Act or Water Pollution Control Act, and for which the waiver of sovereign immunity is found in a statute other than the Spill Act or Water Pollution Control Act.

36. Nothing in this Consent Judgment shall be deemed to constitute preauthorization of a claim against the Spill Fund within the meaning of N.J.S.A. 58:10-23.11k. or N.J.A.C. 7:1J.

XI. FINDINGS & ADMISSIONS OF LIABILITY

37. Nothing contained in this Consent Judgment shall be considered an admission by the Settling Defendant, or a finding by the Plaintiffs, of any wrongdoing or liability on the Settling Defendant's part for anything the Plaintiffs have alleged or have actual knowledge of having occurred at the Site as of the effective date of this Consent Judgment.

XII. EFFECT OF SETTLEMENT & CONTRIBUTION PROTECTION

38. Nothing in this Consent Judgment shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Judgment. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Judgment may have under applicable law.

39. Unless otherwise waived under Paragraph 41 below, the Settling Defendant expressly reserves all rights, including any right to contribution, defenses, claims, demands, and causes of action that the Settling Defendant may have concerning any matter, transaction, or occurrence concerning the Site against any person not a Party to this Consent Judgment.

40. When entered, this Consent Judgment will constitute a judicially approved settlement within the meaning of N.J.S.A. 58:10-23.11f.a.(2)(b) and 42 U.S.C.A. § 9613(f)(2) for the purpose of providing protection to Settling Defendant from contribution actions.

41. The Parties further agree, and by entering into this Consent Judgment, the Court finds that when the ACO becomes effective, Settling Defendant's fair share of the costs and damages

asserted by the Plaintiffs in the Complaint will be paid by Devan Propco, LLC on behalf of Settling Defendant pursuant to Paragraphs 25 and 26 of the ACO, and that Settling Defendant has no obligation to contribute toward Natural Resource Damages, and that Settling Defendant is entitled to protection from contribution or indemnification actions or claims for Matters Addressed in this Consent Judgment (defined in in the following sentence), except for Future Cleanup and Removal Costs. “Matters Addressed” shall mean those matters contained in this Consent Judgment, specifically, (a) Past Cleanup and Removal Costs, (b) Future Cleanup and Removal Costs, (c) Natural Resource Damages and (d) the Lower Lot Remediation. Settling Defendant and Devan Propco, LLC, together with Covered Persons (as defined in the ACO) shall be entitled to protection from contribution actions or claims for Future Cleanup and Removal Costs immediately upon entry of this Consent Judgment, subject to completion of the Lower Lot Remediation and the obtaining of an RAO in accordance with the terms of the ACO, or this Consent Judgment, as may be applicable.

a. Judgment Reduction Provision. So long as no Event of Default under the ACO by Devan Propco, LLC has occurred and is continuing, to the extent any person or entity (such person a “Claimant”), commences an action, lawsuit or arbitration (“a Proceeding”) against any other person or entity, including Devan Propco, LLC or any Covered Person, which seeks to recover any losses, costs, expenses or damages arising by reason of acts or omissions in connection with the Property or the Site, and any party to such Proceeding in turn, assert(s) a claim against Devan Propco, LLC or any Covered Person, (collectively the “Released Parties”) for contribution, indemnification, recovery of loss or potential

loss, or otherwise, however denominated, arising under state or federal law, including claims based upon tort or contract, as direct claims, cross-claims, counterclaims or third party claims (each a “Contribution Claim” and collectively “Contribution Claims”), then such Claimant shall automatically, and without any further act on the part of any party, credit against or reduce the amount of any judgment it may obtain against any party to such Proceeding by an amount equal to the amount as is determined by trial or otherwise in a Final Order to be the amount due to such Person or Entity from such Released Party by reason of the assertion of a Contribution Claim against such Released Party.

b. Injunction. All Defendants other than Settling Defendants are permanently enjoined and restrained from commencing or continuing any Proceeding which seeks to obtain a judgment against, impose any form of liability upon, or obtain injunctive relief, arising from or related to any conditions on the Site, against Settling Defendant, Devan Propco, LLC, or any Covered Person, so long as no Event of Default under the ACO by Devan Propco, LLC has occurred and is continuing.

42. The Parties further agree that Plaintiffs will not oppose any motion or application by the Settling Defendant, Devan Propco, LLC or any Covered Person, in any Proceeding in which the Settling Defendant, Devan Propco, LLC or any Covered Person seeks to enforce the provisions of sections 41(a) and 41(b) of this Consent Judgment. Plaintiffs further agree that they will require in any settlement that they reach with any other person for the Site, a provision that such person will not seek and waives all rights of contribution against Settling Defendant for the

matters addressed in such settlement. Settling Defendant for its part agrees that it will not seek and will waive all rights of contribution against such person for the matters addressed in this Consent Judgment. Notwithstanding the foregoing, nothing herein operates as a waiver by Settling Defendant of its position that it is already legally entitled to contribution protection with regard to the Site.

43. In order for the Settling Defendant to obtain protection under N.J.S.A. 58:10-23.11f.a.(2)(b) from contribution claims for Matters Addressed in this Consent Judgment under N.J.S.A. 58:10-23.11f.a.(2)(b), the Plaintiffs published notice of this Consent Judgment in the New Jersey Register and on Plaintiff DEP's website on _____, in accordance with N.J.S.A. 58:10-23.11e.2. Such notice included the following information:

- a. the caption of this case;
- b. the name and location of the Lower Lot;
- c. the name of the Settling Defendant;
- d. a summary of the terms of this Consent Judgment; and
- e. that there are 60 days to comment on the proposed Consent Judgment.

44. The Plaintiffs, in accordance with N.J.S.A. 58:10-23.11.e.2, arranged for written notice of the Consent Judgment to all other potentially responsible parties of whom the Plaintiffs had notice as of the date the Plaintiffs published notice of the proposed settlement in this matter in the New Jersey Register in accordance with Paragraph 43 above.

45. Upon conclusion of the Plaintiffs' review of any public comments received as a result of the notice described in Paragraphs 43 and 44 above, the Plaintiffs will submit this Consent Judgment to the Court for entry pursuant to Paragraph 61 below, unless they receive information

that disclose material facts or considerations that indicate to them, in their sole discretion, that the Consent Judgment is inappropriate, improper or inadequate.

46. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for relief concerning the Site permitted under this Consent Judgment as set forth in Plaintiffs' Reservations under Paragraphs 27, 28, or 30, the Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, the entire controversy doctrine or other defenses based upon any contention that such claims the Plaintiffs raise in the subsequent proceeding were or should have been brought in this case; provided, however, that nothing in this Paragraph affects the enforceability of this Consent Judgment.

XIII. NULL AND VOID

47. Failure of Devan Propco LLC to Take Title.

a. In the event that Devan Propco, LLC does not take title to the Lower Lot within ninety (90) days of the entry of the Consent Judgment by the Court, the settlement between Plaintiffs and Settling Defendant set forth in this Consent Judgment shall automatically be deemed null and void. Settling Defendant agrees that in such event, it waives any jurisdictional defenses, including res judicata and collateral estoppel, it otherwise might be able to assert against a subsequent civil and/or administrative action(s) that Plaintiffs may, in their discretion, bring against Settling Defendant arising out of the discharge of hazardous substances on the Lower Lot. The parties further agree that in the event the Consent Judgment is deemed null and void pursuant to this Paragraph 47(a), the terms of the Consent Judgment shall not, except as otherwise expressly permitted herein, be used as evidence in any litigation, administrative

proceeding, or other proceeding absent the express consent of all parties. In accordance with the terms of this Paragraph 47(a), the Department shall be entitled to seek recovery of the full amount of any lien filed by the Department against Settling Defendant in the event this Consent Judgment is deemed null and void.

b. The parties further agree that in the event this Consent Judgment is deemed null and void in accordance with the provisions of Paragraph 47(a), Settling Defendant shall, within thirty (30) days, take all commercially reasonable steps in good faith to market the Lower Lot for fair market value to a purchaser acceptable to the Department. In accordance with the immediately preceding sentence, Settling Defendant shall obtain the Department's express written consent, which consent shall not be unreasonably withheld, prior to transfer of title from Settling Defendant to another. Settling Defendant shall provide a written report to the Department, no less than quarterly, detailing all steps that it has taken to market the Lower Lot in accordance with the terms of this Paragraph 47(b). In accordance with Paragraph 47(a), the Department shall have the discretion, but not the obligation, to bring a civil and/or administrative action(s) against Settling Defendant in the event Settling Defendant fails to undertake all commercially reasonable steps in good faith to market the Lower Lot for fair market value as set forth in this Paragraph 47(b).

XIII. GENERAL PROVISIONS

48. Site Access. In addition to the Department's statutory and regulatory authority to enter and inspect the Lower Lot, Settling Defendants, to the extent Settling Defendant is the owner of the Lower Lot, shall allow the Department and its authorized representatives access, upon reasonable written notice, to all areas of the Lower Lot to:

- a. remediate the Lower Lot in the event of a Failed Lower Lot Remediation;
- b. monitor Devan Propco, LLC's compliance with the ACO and Lower Lot Remediation;
- c. perform any remedial investigation or remedial action for the Lower Lot that Plaintiff DEP orders, and/or which Devan Propco, LLC is required to, but unwilling and/or unable to perform pursuant to the terms of the ACO; and
- d. assess, restore or replace, or oversee the assessment, restoration or replacement of, any natural resource and natural resource service of this State injured by the discharge of hazardous substances at the Site.

49. Settling Defendant shall ensure that any sale or transfer of the Lower Lot by Settling Defendant to any entity other than Devan Propco, LLC is conditioned upon the Department and its authorized representatives having continuing access for the purposes stated in Paragraph 48 above. This obligation shall cease upon the issuance of a Response Action Outcome for the Lower Lot Remediation. Notwithstanding anything herein to the contrary, upon Settling Defendant's sale and/or transfer of the Lower Lot to Devan Propco, LLC, then DEP's access rights shall be pursuant to the terms of the ACO.

50. The Plaintiffs enter into this Consent Judgment pursuant to the police powers of the State of New Jersey for the enforcement of the laws of the State and the protection of the public health and safety and the environment. All obligations imposed upon the Settling Defendant by this Consent Judgment are continuing regulatory obligations pursuant to these police powers.

XIV. ACCESS TO INFORMATION

51. Upon receipt of a written request by one or more of the Plaintiffs, the Settling Defendant shall submit or make available to the Plaintiffs all information the Settling Defendant has concerning the Site, including technical records and contractual documents, provided that such non-privileged information requested by one or more Plaintiffs is not already in the possession or control of any Plaintiff.

52. The Settling Defendant may withhold information based on a claim of confidentiality or privilege for any information requested by the Plaintiffs pursuant to this Consent Judgment, provided that the Settling Defendant shall produce a privilege log in a manner consistent with the New Jersey Rules of Court detailing any information withheld on the basis of confidentiality or privilege. The Settling Defendant, however, agrees not to assert any privilege or confidentiality claim to data related to Site conditions, sampling, or monitoring.

XV. RETENTION OF RECORDS

53. The Settling Defendant shall preserve for a minimum of seven years after the effective date of this Consent Judgment, all data and information, including technical records, potential evidentiary documentation and contractual documents, in the Settling Defendant's possession or in the possession of its divisions, employees, agents, accountants, or contractors, which in any way concern the Lower Lot, despite any document retention policy to the contrary.

54. After the seven-year period specified in Paragraph 53 above, the Settling Defendant may advise Plaintiff DEP, in writing, that it will discard or destroy any information or documents that in any way concern the Lower Lot. Such written notice shall be accompanied by a description of

the documents involved, including the name of each document, date, name and title of the sender and receiver and a statement of contents.

XVI. NOTICES AND SUBMISSIONS

55. Except as otherwise provided in this Consent Judgment, whenever written notice or other documents are required to be submitted by one Party to another, they shall be directed to the individuals at the addresses specified below, unless those persons or their successors give notice of a change to the other Parties in writing.

As to Plaintiffs DEP, Commissioner & Administrator:

New Jersey Department of Environmental Protection
Bureau of Case Assignment and Initial Notice
Mail Code 401-05H
401 East State Street, Fifth Floor
P.O. Box 420
Trenton, New Jersey 08625-0420

As to Defendant 3-25 New York Avenue Corp.:

Anthony Berritto
Salson Logistics
888 Doremus Avenue
Newark, New Jersey 07114

With a copy to:

Nicole R. Moshang, Esq.
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 901
Bala Cynwyd, Pennsylvania 19004
NMoshang@mankogold.com

With a copy to:

Ursa Development Group, LLC
Attn: Michael Sciarra
71 Grand Street
Hoboken, NJ 07030

56. All submissions shall be considered effective upon receipt, unless otherwise provided in this Consent Judgment.

XVII. EFFECTIVE DATE

57. The effective date of this Consent Judgment shall be the date upon which this Consent Judgment is entered by the Court.

XVIII. RETENTION OF JURISDICTION

58. This Court retains jurisdiction over both the subject matter of this Consent Judgment and the Parties for the duration of the performance of the terms and provisions of this Consent Judgment for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Judgment, or to effectuate or enforce compliance with its terms, or to resolve disputes, including any appeal from an administrative determination of a dispute between the Parties.

XIX. MODIFICATION

59. Nothing in this Consent Judgment shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Judgment.

XX. ENTRY OF THIS CONSENT JUDGMENT

60. The Settling Defendant consents to the entry of this Consent Judgment without further notice.

61. Upon conclusion of the public comment period specified in Paragraph 43 above, the Plaintiffs shall promptly submit this Consent Decree to the Court for entry.

62. If for any reason the Court should decline to approve this Consent Judgment in the form presented, this Consent Judgment is voidable at the sole discretion of any Party, and the terms of the Consent Judgment may not be used as evidence in any litigation between the Parties.

63. Within 30 days of the Plaintiffs' receipt of the payment of \$285,000.00, Plaintiffs shall dismiss this action as to the Settling Defendant with prejudice.

XXI. SIGNATORIES/SERVICE

64. Each undersigned representative of a Party to this Consent Judgment certifies that he or she is authorized to enter into the terms and conditions of this Consent Judgment, and to execute and legally bind such Party to this Consent Judgment.

65. This Consent Judgment may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Consent Judgment.

66. Settling Defendant shall identify on the attached signature pages, the name, address and telephone number of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Judgment. The Settling Defendant agrees to accept service in this manner, and to waive the formal service requirements set forth in R. 4:4-4, including service of a summons.

NEW JERSEY SPILL COMPENSATION FUND

Dated:

By: _____
Administrator
New Jersey Spill Compensation Fund

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

Dated:

By: _____
Thomas Lihan
Deputy Attorney General

3-25 NEW YORK AVENUE CORP.

Dated:

By: _____
Anthony Berritto

Person Authorized to Accept Service on Behalf of Settling Defendants. See Paragraph 55.