UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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NEXT MILLENNIUM REALTY, L.L.C., and 101 FROST STREET ASSOCIATES,

Plaintiffs,

- against -

ADCHEM CORP., LINCOLN PROCESSING CORP., NORTHERN STATE REALTY CORP., NORTHERN STATE REALTY CO., and PUFAHL REALTY CORP.,

Defendants;

----------X

ADCHEM CORP., LINCOLN PROCESSING CORP., NORTHERN STATE REALTY CORP., NORTHERN STATE REALTY CO., and PUFAHL REALTY CORP.,

Third-Party Plaintiffs,

- against -

THE ESTATE OF JERRY SPIEGEL, and ALAN EIDLER, PAMELA SPIEGEL SANDERS, and LISE SPIEGEL WILKS, AS EXECUTORS OF THE ESTATE OF JERRY SPIEGEL,

Third-Party Defendants.

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Case No. CV-03-5985 (ARL)

NOTICE OF DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

ORAL ARGUMENT REQUESTED

PLEASE TAKE NOTICE, that upon the annexed affirmation of Daniel Riesel, Esq., the exhibits annexed thereto, the accompanying memorandum of law and Local Civil Rule 56.1 statement, and upon all the pleadings and proceedings heretofore had herein, the Defendants/Third-party Plaintiffs, Pufahl Realty Corp., Northern State Realty Corp., Northern State Realty Co., Adchem Corp., and Lincoln Processing Corp., will move this Court before United States Magistrate Judge Arlene Lindsay, in the United States District Court for the Eastern District of New York, 100 Federal Plaza, Central Islip, NY 11722 on a date to be selected by this Court or as soon thereafter as counsel can be heard,

for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure awarding partial summary judgment to Defendants/Third-party Plaintiffs and dismissing with prejudice Plaintiffs' claims that Pufahl Realty Corp., Northern State Realty Corp., and Northern State Realty Co. are liable under the Comprehensive Environmental Response, Compensation and Liability Act as "owners" of a facility that they leased from Plaintiffs' predecessor, and for such other relief as this Court may deem just and proper.

Pursuant to Local Civil Rule 56.1, annexed hereto is Defendants'/Third-party Plaintiffs' statement, in numbered paragraphs, of the material facts as to which they contend there is no genuine issue to be tried.

Dated: New York, New York
January 28, 2014

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Case No. CV-03-5985 (ARL)

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT DISMISSING PLAINTIFFS' CLAIMS FOR RELIEF BASED ON THE 89 FROST STREET LEASE

ORAL ARGUMENT REQUESTED

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PRELIMINARY STATEMENT

Defendants and third-party plaintiffs Pufahl Realty Corp. ("Pufahl Realty"), Northern State Realty Corp. ("NSR Corp."), Northern State Realty Co. ("NSR Co.") (together, "Lessee Defendants"), and Adchem Corp. ("Adchem") and Lincoln Processing Corp. ("Lincoln"), submit this memorandum in support of their motion for partial summary judgment. Defendants seek dismissal of Plaintiffs' claims that the Lessee Defendants are liable as "owners" of a facility that they leased from Plaintiffs' predecessor at the time of a release of hazardous substances that caused the incurrence of response costs under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). (3d Am. Compl. ¶¶ 34, 50 and 51.)

The instant motion arises out of the April 1, 1966 lease (the "Lease") from Jerry Spiegel ("Spiegel" or "owner"), Plaintiffs' predecessor-in-interest, to defendant Pufahl Realty for 89 Frost Street ("89 Frost" or "Site") in Westbury, New York. It is undisputed that hazardous substances were released at 89 Frost in May 1976 by Marvex Processing and Finishing Corp. ("Marvex"), then a subtenant of Defendant NSR Co. and the sole occupant of 89 Frost. Plaintiffs brought this litigation to recover costs incurred at 89 Frost and the adjacent sites, 101 Frost Street ("101 Frost") and 770 Main Street ("770 Main") (collectively, the "Frost Street Sites"). Plaintiffs and Spiegel have owned the Frost Street Sites since 1958, and Plaintiffs currently collect millions of dollars in annual rent on the properties.

Plaintiffs did not sue Marvex, but sued the Defendants: the dissolved Lessee Defendants that leased 89 Frost from Spiegel between 1966 and 1976; Lincoln, a dissolved entity that manufactured on Site between 1966 and 1972; and Adchem, whose sole connection to the Site was the use of a conference room and some administrative personnel located there. Plaintiffs, however, claim that this Court should transform the Lessee Defendants into CERCLA "owners" due to the "indicia of ownership" purportedly granted them by the Lease.

Plaintiffs' claim fails because, under the Second Circuit's holding in Commander Oil,[1] lessees like the Lessee Defendants are presumed not to be CERCLA owners, and a typical lease such as the one at bar cannot convert a tenant into a "de facto" owner. The decision also sets forth limited exceptions to the rule, and includes a non-exclusive list of lease "factors" that could be important because they "might transform a lessee into an owner." None of the exceptions apply here, and the five factors – as well as a host of other relevant Lease characteristics not enumerated in Commander Oil – militate against Plaintiffs' attempt to transform the Lessee Defendants into owners.

Plaintiffs argue that the Lease's typicality is irrelevant, and did not contradict Defendants' experts' conclusion that the Lease is a typical commercial lease. Thus, Plaintiffs ignore Commander Oil's threshold rule and concede, by operation of Local Rule 56.1, the Lease's typicality. This concession is fatal to Plaintiffs' owner liability claim, as is an analysis of the Lease terms.

Spiegel, like most owners, retained a "priority of rights and claims" under the Lease. This included the power to unilaterally terminate the Lease in a range of circumstances, which Spiegel did following a 1976 fire – midway through the Lease term and before the tenant's contingent purchase option vested. NSR Co. (Pufahl Realty's successor) sued Spiegel to preserve the Lease or exercise that option; the litigation settled with Spiegel retaining title to 89 Frost, collecting $855,000 in fire insurance proceeds, and releasing Defendants from all liability arising out of and in connection with the Lease. Now, after retaining the benefits of Site ownership, Plaintiffs seek to pass their ownership burdens upon a former tenant by way of Commander Oil. (Point I, infra.)

Even if the Lease renders Lessee Defendants liable as "owners," Plaintiffs' claim must be dismissed given Spiegel's release of all liability arising out of and in connection with the Lease, which release expressly applies to Plaintiffs as Spiegel's successors. (Point II, infra.)

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[1] Commander Oil v. Barlo Equip., 215 F.3d 321 (2d Cir. 2000) cert. den., 531 U.S. 979 (2000) ("Commander Oil").

STATEMENT OF THE FACTS

The relevant facts are set forth in the documents and deposition excerpts attached to the Affirmation of Daniel Riesel dated January 27, 2014, and in Defendants' Nov. 20, 2013 Local Rule 56.1 Statement of Undisputed Facts ("Defs.' 56.1"),[2] and may be summarized as follows:

Plaintiffs own the Frost Street Sites, which have been contaminated with tetrachloroethylene ("PCE," or "perc"). (Defs.' 56.1 ¶¶1-3.) Plaintiffs sued for remedial costs (3d Am. Compl.), but admit that no Defendant ever owned or operated at 101 Frost or 770 Main, or were responsible for any contamination there. (Id. ¶¶8, 38, 44, 53.) There is no dispute that Marvex released PCE at 89 Frost during its 1973-1976 subtenancy. (Id. ¶16.)

1. The Lease

By the Lease, Defendant Pufahl Realty, a real estate management company, leased 89 Frost from Spiegel. (Lease p.1; Defs.' 56.1 ¶¶11, 29-30.) The Lease was drafted using a standard Blumberg lease form with two addenda, and was for a 20-year term with no options for renewal or tenant holdover rights. (Lease p.1 & ¶59; see also Pls.' Counter-56.1 ¶56, 63.) In accordance with the typical "triple net" lease arrangement for single industrial tenants, the Lease obligated Pufahl Realty to pay, as "additional rent," utilities, insurance, assessments and taxes, except for taxes reflecting ownership interests in the property such as transfer, inheritance, or corporate franchise taxes. (Defs.' 56.1 ¶¶99-101.)

Spiegel was obligated to make all repairs to the building in the first two Lease years, and all structural repairs thereafter, except those caused by the tenant. (Lease ¶¶4, 34; Lease

[2] Where Plaintiffs do not dispute a fact in Defendants' Local Rule 56.1 Statement, we will cite to Defendants' Local Rule 56.1 Statement. Where Plaintiffs claim that such a fact is disputed, we will cite to Plaintiffs' Local Rule 56.1 Counter-Statement of Facts ("Pls.' Counter-56.1") and, where appropriate, the relevant evidence. Similarly, while the language of the relevant documents cannot be disputed, the parties dispute each others' characterizations of certain terms of those documents. In general we will cite to the document itself; where the parties differ on the characterization of the cited terms, we will also cite to the parties' Rule 56.1 statements.

Addendum ¶4.) Tenant was obligated to make non-structural repairs starting in the third Lease year, but if the tenant failed to do so, Spiegel could enter the premises and perform repairs at the tenant's expense or declare a default. (Lease ¶¶2, 39, 66.) Tenant was originally permitted to make repairs that the owner should have but failed to make. (Id. ¶56.) However, the Lease also required the tenant to agree to changes in the Lease terms imposed by a mortgagee (id. ¶46), which eliminated tenant's right to make repairs that the owner would ordinarily be required to make. (Defs.' 56.1 ¶96; see also Certificate and Agreement between Jerry Spiegel, Pufahl Realty Corp., and the Prudential Insurance Co. (May 24, 1966) ("Mortgage") at ¶ 12(f), Lease ¶ 56.)

The Lease required tenant to obtain liability and boiler insurance protecting the owner, to reimburse owner for the fire insurance premiums, and to maintain rent insurance. (Lease ¶¶30, 35, 66, 70.) Tenant's failure to obtain such insurance would constitute a default and permit owner to terminate the Lease. (Id. ¶¶8, 13, 66.) The Lease specified several provisions that the owner required be included in any tenant insurance policies maintained on the Site for the owner's benefit. (Lease Rider.)

In furtherance of Spiegel's control and protection of his property, the Lease included the following restrictions on Tenant's occupancy of 89 Frost:

- Tenant could use 89 Frost only for "lamination and coating of papers, textiles and fabrics and for general manufacturing purposes not in violation" of local zoning (Lease Addendum ¶15);
- Tenant could not conduct any activities at, or bring any items onto, 89 Frost that would increase the cost of fire insurance, or permit any other person to do so (Lease ¶19);
- Tenant was prohibited from encumbering or obstructing, or allowing anyone else to encumber or obstruct, the sidewalk fronting the premises for any reason (Lease ¶10);
- Tenant was prohibited from committing a waste or injury to the premises (Lease ¶61);
- Tenant was obligated "to keep the grass trimmed and maintain the grounds in presentable condition ... and keep the sidewalks and entranceways unobstructed and clean and free of

rubbish, ice and snow" (id.), and to keep the premises "free and clear of all cuttings, rubbish, waste paper and other waste material...." (Lease ¶58);

- Tenant was prohibited from doing any act or making any contract which could lead to any mechanic's lien on the Site, and was required to immediately cause the cancellation and discharge of any such liens filed against the property (Lease ¶62);

- Tenant was not permitted to post signs except in compliance with owner's terms (Lease ¶¶11, 32);

- Tenant was prohibited from altering the Site without owner's written consent (Lease ¶4);

- Tenant could not remove improvements to the Site without 30 days written notice to the owner, and any such removal was conditioned on an increase in the security deposit to cover the owner's estimated cost of restoration (Lease ¶31); and

- Tenant was obligated to return the Site "in good order and condition" at the end of the term (Lease ¶2).

The Lease also required the tenant to agree that "any and all loans...made by the Tenant from any one or more of the stockholders, officers and/or directors of said Tenant, shall be subordinate to this lease...and to all mortgages" on 89 Frost. This provision was made self-executing and appointed Spiegel as tenant's "attorney in fact." (Lease ¶ 69.)

Although the Lease allowed tenant to assign the Lease or sublease the premises, tenant could only do so if (1) tenant remained liable under the original Lease for the entire term, (2) any assignee assumed all Lease conditions, and (3) any assignment was recordable. (Lease ¶¶4, 34.) The Lease prohibited tenant from assigning or subletting to any party whose activities would increase the cost of fire insurance. (Id. ¶19.) The Mortgage placed further restrictions on Tenant's right to assign the Lease, including a requirement that Tenant assign the Lease to its purchaser or successor in the event that all or substantially all of Tenant's assets or business were sold or transferred. (Pls.' Counter-56.1 ¶80; Mortgage ¶¶ 2(f), 11.)

The owner retained extensive rights under the Lease to enter the premises to inspect, make repairs or alterations, enforce Lease terms and perform tenant's obligations at tenant's

expense, declare a default and eject Tenant via summary proceedings, and show the Site to prospective purchasers or tenants as the Lease term ended. (Lease ¶¶6, 7, 8, 13, 60, 66.)

The owner retained several options to terminate the Lease before the expiration of its 20-year term, some of which options were in addition to the standard lease form provisions:

- the owner was empowered with the standard clause providing the remedy of Lease termination by five days' written notice if the lessee defaulted in payment of rent or performance of any of its covenants, failed to abide by any law, or had a petition of bankruptcy filed against it (Lease ¶17);

- the owner could terminate the Lease upon any tenant default (Lease ¶¶8, 13, 60, 66);

- the owner had the right to re-enter the premises in the event of any tenant default "by fault, summary proceeding or otherwise and to remove all persons therefrom without being liable to prosecution," without notice to the tenant (Lease ¶8), and to either re-let the premises without releasing the tenant from its obligations under the Lease (id.) or to re-possess the premises (Lease ¶13);

- the owner had the right to terminate the Lease if he could not obtain a mortgage on the premises (Lease ¶72), or if Tenant did not agree to new terms imposed by a mortgagee (Lease ¶46);

- the owner had the right to terminate the Lease in case of fire or other damage to the building (Lease ¶5); in the event that the building was destroyed, the Lease permitted owner, at his sole discretion, to rebuild the premises or to terminate the Lease (id.); and

- the owner had the right to terminate the Lease upon partial or total condemnation, and provided that, in the event of condemnation, tenant lost all interest in the premises without any part of the condemnation award or other compensation. (Lease ¶21.) The Lease also provided that in such an instance, tenant "shall have no claim against the owner for the value of any unexpired term in said lease." (Id.)

The Lease contained an option to purchase the premises, but only in the Lease's twelfth year, and contingent on the requirement that the tenant had "fully and completely performed all [Lease] terms and conditions." Spiegel set the option price based on his calculation that he would have substantially recouped his Site investment in the twelfth Lease year. (Defs.' 56.1 ¶¶91-93.)

2. Expert Testimony

Both sides presented expert testimony. Defendants presented the report of David Tesler, a

real estate lawyer by training and head of LeaseProbe, which analyses leases for clients acquiring or selling lease-encumbered commercial properties. Tesler has reviewed thousands of commercial and industrial leases, including many from the 1960s. (Expert Report of David Tesler, May 5, 2013 ("Tesler Rep.") at 1-2; Tesler Dep. at 50:4-13.) Defendants also served the report of Jack O'Connor, a commercial real-estate broker familiar with Long Island rentals and sales. (Expert Report of Jack O'Connor, May 15, 2013 ("O'Connor Rep.").)

Both Tesler and O'Connor opined that the Lease was a typical arrangement for a single industrial tenant. (Tesler Rep. at 2, 6; O'Connor Rep. at 1-2.) Tesler explained that it was typical for a single industrial tenant in a building to be subject to a triple-net rental arrangement. (Tesler Rep. at 2, 6; Tesler Dep. at 50:4-13, 58:18-60:21.) O'Connor noted the Lease clauses reflecting the owner's significant ability to protect its ownership interest in 89 Frost. (O'Connor Rep. at 2-5.) Plaintiffs contend that Lease typicality is irrelevant: in response to Defendants' Rule 56.1 Statement that "[t]he Lease is a typical commercial lease reflecting the usual relationship between an owner and a single industrial tenant," Plaintiffs did not provide any facts or evidence to dispute the Lease's typical nature, instead asserting that "the characterization of the Lease as 'typical' or 'usual'... [is] of no import" under Commander Oil. (E.g., Pls.' Counter-56.1 ¶¶57.)

Plaintiffs presented the report of Benjamin Weinstock, a real estate lawyer for Spiegel and his successors who negotiated the current 21-year lease for 89 Frost and 770 Main for plaintiff Next Millennium. (Weinstock Dep. 4:2-13.) Weinstock conceded that Commander Oil involved a rule of environmental law, in which he had no expertise. (Id. at 22:13-23:4.) Weinstock did not address Tesler's or O'Connor's opinion that the Lease was a typical or usual lease arrangement; instead, Weinstock opined on the ultimate legal issue in the case, that is,

whether the Lease gave rise to owner liability under CERCLA for the tenant. (Report of Benjamin Weinstock, Aug. 29, 2013 ("Weinstock Rep."), at 2; Weinstock Dep. 15:3-6.)

3. Operations at 89 Frost

Lincoln, a textile processor, subleased and operated at 89 Frost until about 1972.[3] Pufahl Realty changed its name to NSR Corp. and later assigned the Lease to NSR Co., a general partnership that managed real property. In 1973, NSR Co. sublet 89 Frost to an entity connected to Marvex, which occupied the Site from 1973-76. (Defs.' 56.1 ¶¶12-15, 28.) Marvex installed a dry cleaning machine at the Site that utilized PCE from a connected above-ground storage tank. Marvex stored 55-gallon drums at 89 Frost which likely contained virgin PCE, spent PCE, and/or solvent still waste. (Id. ¶¶110-15, 118-26.)

In 1976, there was a catastrophic fire at 89 Frost. Marvex's foreman was convicted of arson, and Marvex's owner pled guilty to grand larceny after being charged with insurance fraud, falsifying business records, and witness tampering. The fire destroyed 89 Frost's manufacturing area, including Marvex's dry cleaning machine, and solvent still and storage. PCE was released to the subsurface via floor drains when the storage vessels ruptured. (Id. ¶¶127-32.) The Marvex fire is the major known source of 89 Frost's PCE contamination. (Id. ¶¶130-131.)

4. Post-Fire Litigation, Settlement, and Release of Liability

The 1976 fire occurred in the 10th year of the Lease, two years before Lessee Defendants' option to purchase 89 Frost vested. Hence, Spiegel terminated his Lease with NSR Co. pursuant to the Lease provision allowing owner to terminate the Lease if the premises were destroyed by fire and the owner decided not to rebuild. NSR Co. sued Spiegel, seeking a declaration that the

[3] Lincoln asserts that its manufacturing process was incompatible with PCE, and that Lincoln never used or released PCE at 89 Frost or any other location where it conducted manufacturing; however, there are issues of fact regarding whether Lincoln used a small dry-cleaning machine that used PCE. (See Pls.' Counter-56.1 ¶16.)

Lease's purchase option had not been terminated. NSR Co. also named as a defendant Allendale Mutual Insurance Co. ("Allendale") – the issuer of the fire insurance policy covering 89 Frost – and sought to require Allendale to pay the insurance proceeds either to NSR Co. or to Spiegel with the stipulation that 89 Frost be rebuilt. (Id. ¶¶134-35, 137-38.)

That litigation settled in 1977. Although neither Lincoln nor Adchem was a party, Allendale insisted those entities be included in the settlement as named insureds on policy 85865, which covered all of the locations leased by the various Defendants. The settlement provided in relevant part for: (1) termination of the Lease; (2) Allendale to issue the $855,000 in fire insurance proceeds to Spiegel; (3) payment of $75,000 to NSR Co. by Spiegel; (4) five-year extensions of the leases on two other properties; and (5) a general release from Spiegel and his successors and assigns in favor of the Defendants ("Release"). (Defs.' 56.1 ¶¶139-46, 150-51.)

By the broadly-worded Release, Spiegel released Defendants from:

> all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against the Releasees, the Releasor, Releasor's heirs, executors, administrators, successors and assigns ever had, now have or hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this Release, arising out of and in connection with [the Lease] ..., including but not limited to a certain option granted to the tenant to purchase said property ... and with respect to a certain action commenced in the Supreme Court, Nassau County, by NORTHERN STATE REALTY CO., plaintiff, against JERRY SPIEGEL, [and] Allendale ....

(Release pp. 1-2 (emphasis added); see also Defs.' 56.1 ¶147.) Defendants interpreted the Release as extinguishing "any and all obligations" connected to the Site Lease, including future environmental liabilities.[4] (J. Pufahl Dep. 148:10-24, 150:6-151:25.)

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[4] By contrast, as part of the 1977 settlement, Defendants executed a limited release in Spiegel's favor relating to fire damages and the Lease option. By its terms, that release is "limited to any and all claims for damages sustained to

continued

Spiegel rebuilt and leased out 89 Frost in 1978. Plaintiffs now receive over $2.5 million in annual rent for the Frost Street Sites, and the 89 Frost/770 Main tenant holds a triple-net, 21-year lease with four ten-year renewal options. (Defs.' 56.1 ¶¶153-157.)

ARGUMENT

POINT I

THE 89 FROST LEASE DOES NOT RENDER DEFENDANTS LIABLE AS CERCLA "OWNERS"

Liability under CERCLA is limited to four categories of parties enumerated in Section 107(a), 42 U.S.C. § 9607(a). For purposes of these motions, the only relevant category is "past owner" liability, applicable to "any person who at the time of disposal of any hazardous substance owned … any facility at which such hazardous substances were disposed of …" Id. § 9607(a)(2).[5]

Plaintiffs concede that no Defendant ever held title to any of the Frost Street Sites, which have at all relevant times been owned by Plaintiffs or Spiegel. (Defs.' 56.1 ¶¶10, 19-21, 38, 44.) Instead, Plaintiffs argue that Commander Oil imposes owner liability on the Lessee Defendants based on their Lease of 89 Frost. (3d Am. Compl. ¶¶50-51.) Far from supporting Plaintiffs' request, Commander Oil establishes the general rule that lessees – which are not mentioned in CERCLA's liability provisions – are not liable as site owners, subject only to extraordinary exceptions that have never been applied to a lease like the one before the Court.[6] As set forth below, Plaintiffs'

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continued…
building premises 89 Frost Street…resulting from a fire which occurred at said premises on May 30, 1976 and insured under a certain policy of insurance…issued by Allendale…and with respect to the aforementioned action commenced…by Northern State Realty Co., plaintiff, against Jerry Spiegel [and] Allendale…and with respect to [the Lease]…." (Release to Spiegel pp. 2-3 (emphasis added); see also Defs.' 56.1 ¶148.)

[5] Plaintiffs also alleged that Defendants are liable as "past operators" under 42 U.S.C. § 9607(a). Defendants deny such allegations, but neither Plaintiffs nor Defendants have moved for summary judgment that issue at this time.

[6] See Commander Oil, 215 F.3d at 329-30. Commander Oil, like this case, involved a property owner (Commander Oil), a lessee (Barlo) and a sublessee (Pasley) alleged to have released hazardous substances. The Second Circuit held that Barlo was not liable as a CERCLA owner, even though Barlo, inter alia: (a) held a five-year lease with an option to renew; (b) was responsible for all non-structural repairs; and (c) paid for the Site's insurance, assessments and increases in taxes. (Id. at 332.) Noting that "most lessees are not owners within the meaning of § 9607(a)," (id. at 329), the Court concluded that Barlo "lacked most of the bundle of rights that comes with ownership of property," as evidenced by several provisions
continued
…

attempt to transform a typical commercial lease into a de facto transfer of ownership is an unwarranted and, in light of the undisputed facts and documentary evidence,[7] an unprecedented expansion of CERCLA liability.

A. Commander Oil Holds That Typical Lessees Are Not Liable As CERCLA "Owners"

In Commander Oil, the Second Circuit repeatedly affirms that "the typical lessee should not be held liable as an owner [under CERCLA],"[8] and that "in the normal course of events, [owner] liability will not attach to lessees/sublessors."[9] In setting forth that rule, the Court recognized a limited exception, where a lease conveys such expansive and enduring rights that the lessee is effectively indistinguishable from a fee owner.[10] To illustrate the exception's narrow scope, the Second Circuit provided three examples of extraordinary circumstances that "may" give rise to de facto ownership: (1) "the proverbial 99 year lease," (2) "sale-leaseback arrangements…if the lessee actually retains most rights of ownership with respect to the new record owner," and (3) leases "where a lessee/sublessor has impermissibly exploited…more rights than he originally leased, effectively expropriating from the owner the right to benefit from activity on the property."[11]

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continued…
that its lease shares with the Lessee Defendants'. Id. at 331-32 (citing restrictions on permitted site uses, requirement to keep premises clean, limitation on posting signs, and prohibition against anything that would increase the rate of fire insurance).

[7] Defendants' Cross-Motion for Partial Summary Judgment rests principally upon two documents – the Lease and the Release – and is ripe for summary judgment because the accuracy of contents of these documents is not contested and their interpretation is a matter of law (see, e.g., Pls.' Counter-56.1 ¶57 ("The Lease speaks for itself…"), ¶145 ("The settlement documents speak for themselves")).

[8] Commander Oil, 215 F.3d at 329.

[9] Id. at 330; cf. Drennan v. Am. Press Ass'n, 214 N.Y.S. 689, 691 (1st Dep't 1926) ("To hold that the lessee of an entire building can be construed to be the owner thereof is to include in the definition of the term 'owner' something which in ordinary language is never even implied. In fact, the diverse character of an owner and a lessee, even in legal terminology, is constantly recognized.").

[10] Commander Oil, 215 F.3d at 330-31; see also City of Los Angeles v. San Pedro Boatworks, 635 F.3d 440, 449 (9th Cir. 2011) ("[Commander Oil] held that lessees could be liable as owners only in the rare case where the lessee was a de facto owner…").

[11] Commander Oil, 215 F.3d at 330-31.

None of these exceptions apply to the Lessee Defendants. The Lease at issue was intended for a term of 20 years and actually lasted only half that long, because Spiegel unilaterally terminated the Lease in its tenth year. (Defs.' 56.1 ¶¶63, 135.) Lessee Defendants could neither sell nor lease back 89 Frost, as they never held title to it. (Id. ¶10.) Finally, Plaintiffs have not alleged that Lessee Defendants assumed any rights beyond those granted in the Lease. (Id. ¶58.)

As set forth below, in the thirteen-plus years since Commander Oil was decided, not one reported case has applied the Second Circuit's "de facto owner" exception to a typical, 20-year commercial net lease like the Lease at issue.[12] Nor is there any basis under Commander Oil for extending owner liability under CERCLA to the Lessee Defendants.

B. As A Typical Commercial Lease, The Lease Cannot Give Rise To Owner Liability

According to uncontradicted expert testimony, the Lease is "a typical commercial lease" of "the type…that would be found in normal leasing arrangements where the owner had a dominant or strong economic position." (O'Connor Rep. at 1; Tesler Rep. at 2 (describing the Lease as a "typical commercial lease reflecting the usual provisions").) Industrial tenants commonly lease for over 20 years due to the cost of installing industrial equipment. (Defs.' 56.1 ¶64.) The Lease's structure, whereby the lessee pays certain taxes, insurance premiums, and maintenance as "additional rent," is known as a triple-net lease, "the most common form of commercial lease."[13]

Plaintiffs' expert did not contest the typicality of the preceding provisions or of the Lease more broadly, instead opining on the ultimate legal issue of whether the Lease "cause[d the tenant] to

[12] Indeed, the *only* reported case in the Second Circuit holding that a lessee may even *potentially* be liable as a "de facto" owner under Commander Oil involved a sale-leaseback agreement that "put[] the burdens of ownership on the Lessee," and thus is wholly inapposite to the case before the Court. See Pateley Associates I LLC v. Pitney Bowes, Inc., 704 F.Supp.2d 140, 145-46 (D. Conn. 2010) (on motion to dismiss under Rule 12(b)(6)).

[13] Jennings, REAL ESTATE LAW (9th ed. 2011) at 222 ("Under this arrangement, lessee pays or directly reimburses the landlord for taxes, insurance and maintenance expenses for the property, and then pays the landlord a flat rate or fixed rent above and beyond the 'net' amount…"); see also O'Connor Rep. at 2 (triple-net lease "is typical and usual for commercial leases such as the one for 89 Frost.")

be an 'owner' for CERCLA liability purposes." (Weinstock Rep. at 2.) Weinstock also acknowledged that several Lease provisions are "frequently" found in single-tenant commercial and industrial leases. (See, e.g., Weinstock Dep. 35:15-19 ("It is frequently the case" that a single tenant will pay taxes on the leasehold).)

Likewise, Plaintiffs proffered no evidence to contradict the undisputed fact that "[t]he Lease is a typical commercial lease reflecting the usual relationship between a landlord and a single industrial tenant." (Pls.' Counter-56.1 ¶57.) Therefore, by operation of Local Rule 56.1,[14] Plaintiffs are deemed to admit that the Lease is typical.[15] This fact, standing alone, is dispositive; if "the typical lessee should not be held liable as an owner" under Commander Oil,[16] then Lessee Defendants' undisputed status as typical lessees warrants summary judgment in Defendants' favor.

Instead of contesting the Lease's typicality, Plaintiffs assert that "[t]he characterization of the Lease as 'typical' or 'usual' [is] of no import" under Commander Oil. (Pls.' Counter-56.1 ¶¶57, 64, 69, 101.) This claim is belied by both the spirit and the plain text of Commander Oil, which rejected earlier cases that applied "owner liability" to lessees based upon common lease conditions like "site control."[17] In limiting lessees' CERCLA liability, the Court noted that "strict liability is a narrowly tailored tool,"[18] and stressed that "the typical lessee should not be held liable as an owner."[19] Application of owner liability to a typical lessee such as the Lessee

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[14] "Each numbered paragraph in the statement of material facts…*will be deemed to be admitted for purposes of the motion unless specifically controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party*.…Each statement by the movant or opponent pursuant to Rule 56.1 …, *including each statement controverting any statement of material fact*, must be followed by citation to evidence which would be admissible…." Local R. Civ. Pro. 56.1(c), (d) (emphasis added).

[15] Local R. Civ. Pro. 56.1(c); Larsen v. JBC Legal Group, 533 F.Supp.2d 290, 295 (E.D.N.Y. 2008) (deeming admitted those statements in Local Rule 56.1 Statement not controverted by citation to specific evidence) (citing, inter alia, Titan Indent. Co. v. Triborough B. & T. Auth., 135 F.3d 831, 835 (2d Cir. 1998)).

[16] 215 F.3d at 329.

[17] Id. at 328-29.

[18] Id. at 320.

[19] Id. at 329.

Defendants would thus transform a narrow exception into a sweeping expansion of CERCLA liability far beyond the statute and the limits set by Commander Oil.[20]

C. The Lease Maintained Spiegel's Priority Of Rights And Claims Over Lessee Defendants

Commander Oil considered ownership in the context of the traditional bundle of rights. *All* leases endow lessees with certain rights vis-à-vis the public and the owner, including the right to possession; the central thrust of Commander Oil is that a tenant's possession of those rights cannot give rise to owner liability.[21] In reaching its holding that the typical lessee/sublessor cannot be transformed into a CERCLA owner, the Second Circuit explained that "[o]wnership exists vis-à-vis someone else; it represents a priority of rights and claims" with respect to the "bundle of rights" associated with ownership.[22] The relevant inquiry under Commander Oil therefore is whether, by looking to the examples cited by the Court, a lessee assumes such greater indicia of ownership than it would have under a typical lease, that the lessee possesses the priority of rights normally associated with a record owner. Whether examined using the Court's examples or more traditional ownership criteria, the Lease demonstrates that Spiegel maintained his priority of rights and claims over the Lessee Defendants, denying them most indicia of ownership in 89 Frost. Lessee Defendants therefore may not be considered owners under CERCLA.

Spiegel's priority of rights is made plain by the Lease provision subordinating Lessee Defendants' past and future loans to their shareholders to Spiegel's ownership interest in 89 Frost

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[20] Cf. City of Los Angeles, 635 F.3d at 451 ("[I]f Congress intended to impose no-fault, no-cause liability on the holder of a mere possessory interest in real property, the least it could do is speak clearly. In establishing 'owner' liability, Congress did not say 'de facto owner,' or 'possessor', or 'person with some incidents or attributes of ownership,' as it has in other legislation.").

[21] See Commander Oil, 215 F.3d at 329 ("If control over a facility could establish ownership then operator liability in these circumstances would be just a subset of owner liability.").

[22] Id.

and to Spiegel's mortgage. (Lease ¶69.) This provision appointed Spiegel as the lessee's "attorney in fact," (id.) and restricted Lessee Defendants' ability to use *their own assets*. "The fact that loans amongst the tenant's stockholders are subordinate to the lease and mortgage makes any claim that the lessee had some sort of ownership interest ridiculous." (O'Connor Rep. at 4)

The Lease further states that Lessee Defendants' interest in 89 Frost would never constitute a lien on the property, and at all times remained subordinate to Spiegel's mortgage. (Lease ¶14.) Ordinarily, a lease holds priority in lien over a later-obtained mortgage.[23] Spiegel later obtained a $500,000 mortgage, which forced Lessee Defendants to accept further limitations on their rights or face the potential termination of the Lease. (Id. ¶46.) The mortgage provided that tenant's limited right to exercise its purchase option was subordinate to the mortgagee's superior rights (Mortgage ¶10), and eliminated tenant's right to withhold rent or charge owner with repairs if the Site was partially damaged. (Id. ¶¶12(a), (f).) A third-party's ability to interpose their subsequent lien as a superior interest to the Lease and limit Lessee Defendants' rights with respect to 89 Frost is not only inconsistent with any conception of ownership; it is, according to expert testimony, "not even consistent [with]…the rights that tenants usually have." (Tesler Dep. 81:3-83:6.)

The Lease is replete with other provisions protecting Spiegel's property (see pp. 4-5, supra), while giving Spiegel broad authority to enforce those obligations by entering the Site and declaring a default or performing them himself at tenant's expense (see pp. 5-6 supra). For example, the Lease required tenants to "keep the grass trimmed and maintain the grounds in presentable condition" (id. ¶61); Spiegel could therefore unilaterally terminate the Lease through summary proceedings if the groundskeeping was not to his satisfaction. Spiegel reserved the right (with or without notice, depending on the reason) to enter the Premises "upon any major or

[23] See generally Dominion Fin. Corp. v. 275 Wash. St. Corp., 64 Misc.2d 1004 (Sup. Ct. Westchester Cty. 1970).

even minor default by the Tenant" (Defs.' 56.1 ¶¶85-86; Tesler Rep. at 3), or to show the Site to prospective purchasers or inspect it for Lease compliance (Lease ¶¶6, 7, 13.) Spiegel's numerous rights to enter 89 Frost denied Lessee Defendants "one of the most essential sticks in the bundle of rights that are commonly characterized as property – the right to exclude others."[24]

Spiegel also could sell the Site without notifying his tenants (id. ¶63, Defs.' 56.1 ¶ 73), and reserved for himself any condemnation award (Lease ¶47). Both rights are clear indications of Spiegel's ownership priority given the fact that the "right to transfer [an] interest in land is a defining characteristic of the fee simple estate"[25] and the "general rule of [] eminent domain that any award goes to the owner at the time of the taking."[26]

The Lessee Defendants also were required to secure and pay for insurance policies that named Spiegel as a beneficiary and ensured that Spiegel would reap any insurance proceeds.[27] (Id. ¶¶30, 35; Lease Addendum ¶1; Lease Rider.) The tenants also were required to pay for Spiegel's fire insurance but were prohibited from doing anything to increase the cost of such premiums, and Spiegel reserved the award from such insurance for himself. (Lease ¶¶ 19, 35; Lease Rider.) Spiegel also retained the unilateral right to determine whether to rebuild or to terminate the lease (as he chose to do here) if the building was destroyed by fire (Lease ¶¶5).[28]

Considered together, these Lease terms reflect not an extraordinary transfer of ownership rights to the Lessee Defendants, but rather a standard – and owner-friendly – commercial lease.

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[24] Kaiser Aetna v. United States, 444 U.S. 164, 176 (1979).
[25] Palazzolo v. Rhode Island, 533 U.S. 606, 628 (2001) 628 (citing Ellickson, *Property in Land*, 102 Yale L.J. 1315, 1368-69 (1993)).
[26] Id. at 628 (citing 2 J. Sackman, NICHOLS ON EMINENT DOMAIN (rev. 3d ed. 2000), at § 5.01[5][3][i] (brackets in original)).
[27] Cf. Colleges of the Senecas v. City of Geneva, 94 N.Y.2d 713, 717-718 (2000) (Wesley, J.) (right to receive insurance proceeds is "indication of ownership" of a leased building).
[28] Cf. id. at 718 (right to decide whether to rebuild in case of damage an "indication of ownership" of leased building).

D. The Application Of Commander Oil's Five Enumerated Factors Does Not Transform The Lessee Defendants Into De Facto Owners

Commander Oil sets forth a "non-exclusive" list of factors that "could be important" to the de facto ownership analysis:

> (1) whether the lease is for an extensive term and admits of no rights in the owner/lessor to determine how the property is used; (2) whether the lease cannot be terminated by the owner before it expires by its terms; (3) whether the lessee has the right to sublet all or some of the property without notifying the owner; (4) whether the lessee is responsible for payment of all taxes, assessments, insurance, and operation and maintenance costs; and (5) whether the lessee is responsible for making all structural and other repairs.[29]

The Court did not "define with specificity those factors that might transform a lessee into an owner," or suggest that any of the aforementioned factors is dispositive in such an analysis. The five relevant considerations are instead intended to "reinforce the point that the critical question is whether the lessee's status is that of a de facto owner"[30] – that is, whether it holds "a priority of rights and claims"[31] – "and not whether it exercises control over the facility."[32] This analysis must also be guided by the Court's repeated instruction that "the typical lessee should not be held liable as an owner."[33] As discussed below, applying those considerations to the Lease, at least four of the five factors enumerated by the Second Circuit militate against the extraordinary conversion of the Lessee Defendants into de facto owners.

i. The Lease Was Not For an "Extensive Term" and Did Not Deprive Spiegel of All Rights to Determine How the Property Was Used

The first factor in the Second Circuit's list of de facto ownership considerations is two-fold: whether the lease is (a) is for an "extensive term" and (b) "admits of no rights in the owner/lessor to

[29] Commander Oil, 215 F.3d at 330.
[30] Id. at 330.
[31] Id. at 329.
[32] Id. at 330.
[33] Id. at 329.

determine how the property is used."[34] The phrase "extensive term" should be read in the context of the Court's references to "extremely long term leases" such as the "the proverbial 99-year lease."[35]

The Lease at issue was for a single 20-year term, with no renewal options or holdover rights. (Lease p.1 & ¶59; see also Pls.' Counter-56.1 ¶56, 63.) Plaintiffs concede that such a term was "not unusual" for an industrial tenant. (See Pls.' Counter-56.1 ¶64.) Indeed, Spiegel regularly entered into similar lease terms at other sites, including two 15-year leases and one 20-year lease with Pufahl Realty.[36] (Defs.' 56.1 ¶65.) Plaintiffs' current lease at 89 Frost and 770 Main is for a 21-year initial term with four 10-year renewal options, for a total term of 61 years. (Id. ¶155.)

Defendants are aware of no case in which a 20-year lease has given rise to owner liability under CERCLA. Rather, in the few cases where the lease term was cited as indicative of ownership, the term of the lease was far longer.[37] Moreover, because the length of the Lease was cut in half due to Spiegel's unilateral termination, the actual Lease term was similar to the 5-year term (with an option to renew) that Commander Oil held did not give rise to owner liability.[38]

Nor did the 89 Frost Lease "admit[] of no rights in the owner/lessor to determine how the property is used."[39] Instead, the Lease expressly limited the tenant's use of the leasehold to "lamination and coating of papers, textiles and fabrics and for general manufacturing purposes not in violation of the building zone ordinance...." (Lease Addendum ¶15.) This was a significant use restriction prohibiting the tenant from, for example, also conducting a retail operation at the Site.

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[34] Id. at 330.
[35] Id. at 330-331.
[36] One such lease, for the nearby 710 Summa Avenue property, was virtually identical to the 89 Frost Lease. (See Defs.' 56.1 ¶99.)
[37] See City of Waukegan, Ill. v. National Gypsum Co., 587 F.Supp.2d 997, 1003-04 (N.D. Ill. 2008) (70 years); Servco Pacific Inc. v. Dods, 193 F.Supp.2d 1183, 1196 (D. Haw. 2002) (50 years); cf. Stratford Holding, LLC v. Foot Locker Retail, Inc., 2013 WL 5550461, at *1, *6 (W.D. Okla., Oct. 8, 2013) (45 years, including three optional 5-year extensions).
[38] Commander Oil, 215 F.3d at 331.
[39] Id. at 330.

(Tesler Rep. at 3; Tesler Dep. at 32:9-34:23.) The Lessee Defendants also were not allowed to do anything that would increase the cost of fire insurance (Lease ¶19), which was one basis for the Second Circuit's holding that the Commander Oil tenant was not a de facto owner.[40]

The Lessee Defendants also bore a range of significant restrictions on their use of 89 Frost (see Point I.C supra), many of which are similar to or more burdensome than the limitations cited as evidence that the tenant in Commander Oil was not a de facto owner.[41]

ii. The Lease Could Be, and Was, Terminated by the Owner Before its Term Expired

The second factor in the Commander Oil de facto ownership analysis is "whether the lease cannot be terminated by the owner before it expires before its terms."[42] Normally, leases are for a fixed term. (Tesler Dep. at 38:8-12.) Spiegel, however, possessed broad ability to terminate the Lease before its 20-year term expired, including in the event he did not obtain a mortgage (Lease ¶72), the building were destroyed by fire (id. ¶ 5), or if Tenant defaulted on any Lease obligation (id. ¶8). Even a minor default authorized Spiegel to institute summary proceedings to terminate the Lease, and Tenant was contractually obligated to waive its right to notice. (Id.)

After Spiegel terminated the Lease midway through its term (Defs.' 56.1 ¶135), the Lessee Defendants desired to restore and use the Site's building for the remainder of their Lease. Spiegel's unilateral decision to terminate the Lease rather than rebuild following the fire prevented Tenant's continued use of the 89 Frost, which further demonstrates Lessee Defendants' lack of ownership rights.[43]

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[40] Id. at 331.
[41] Compare, e.g., 215 F.3d at 331 (tenant required to obtain owner's written permission to display any sign and required to keep the property "clean and in order"), with Lease ¶¶11, 32, 58, 61 (same).
[42] Commander Oil. 215 F.3d at 330.
[43] Cf. Colleges of the Senecas, 94 N.Y.2d at 718 (possession of the "right to determine whether or not to rebuild the [property] in the event of substantial damage to it" described as an "indication of ownership" of a leased building).

iii. Lessee Defendants Were Allowed To Sublet the Property or Assign Their Lease Only if They Remained Fully Liable to the Owner Under the Original Lease

The third Commander Oil consideration is "whether the lessee has the right to sublet all or some of the property without notifying the owner."[44] The Lessee Defendants could only assign or sublet the Site if (1) they remained liable under the Lease, (2) the assignee assumed all Lease conditions, (3) the assignment was recordable, and (4) the assignment or sublease did not increase the cost of fire insurance. (Lease ¶¶19, 34.) These restrictions provide greater protections for the owner than mere notice, as the Lease preserved all of Spiegel's rights in the event of a sublease or assignment and allowed Spiegel to enforce such rights, through summary proceedings, directly against the Lessee Defendants. (Id. ¶¶8, 13, 34, 60, 66) In contrast to the foregoing limitations, Spiegel could freely assign his Lease interests or mortgage or assign the underlying property, due to his ownership of the fee simple interest.[45] (Defs.' 56.1 ¶73.)

iv. The Lessee Defendants Held a Triple-Net Lease

The fourth Commander Oil consideration is "whether the lessee is responsible for payment of all taxes, assessments, insurance and operation and maintenance costs."[46] The Lessee Defendants were not response for all taxes associated with ownership of 89 Frost; instead, the Lease provides: "Nothing herein contained shall be construed as requiring the tenant to pay any so-called inheritance, succession or transfer taxes or corporate franchise taxes charged against the landlord…." (Lease p.5; see Defs.' 56.1 ¶100.) Spiegel, as owner, retained the sole right to convey or transfer 89 Frost, and thus remained responsible for any taxes associated therewith.

The Lessee Defendants did pay certain taxes, assessments, utilities and insurance costs as "additional rent" under the Lease. (Lease ¶¶28, 30, 35; see Defs.' 56.1 ¶99.) The Commander Oil

[44] 215 F.3d 330-31.
[45] See footnote 25, supra, and accompanying text.
[46] 215 F.3d at 331 (emphasis added).

tenant similarly assumed responsibility for all insurance costs, assessments, and tax increases without incurring de facto owner liability.[47] This rental arrangement, known as a triple-net lease, is "the most common form of commercial lease."[48] Plaintiffs do not contest the fact that a triple-net arrangement "was both typical and common for a lease with a single industrial tenant." (See Pls.' Counter-56.1 ¶101.) A triple-net lease therefore cannot give rise to owner liability.[49]

Moreover, the structure of the Lease requirement that the tenant pay insurance costs indicates that this factor should cut *against* construing the tenant as an owner. The Lease requires the tenant, at its own cost, to maintain liability and other insurance *for the protection of the landlord*. (Lease ¶¶30, 35, Lease Addendum ¶1, Lease Rider.) Tenant was required to include, at Spiegel's demand and for Spiegel's benefit, several terms that favored Spiegel to the insurance required by the Lease. (See Lease Rider.) It is the *landlord's* interest that is protected by this tenant obligation; it therefore cannot be an indicia of ownership for the *tenant*.[50]

v. Lessee Defendants Were Not Responsible for Any, Let Alone All, Structural Repairs

The fifth Commander Oil factor is "whether the lessee is responsible for making all structural and other repairs."[51] The Commander Oil lessee assumed responsibility for "all nonstructural repairs, including 'all repairs to heating, plumbing and lighting fixtures and equipment; cesspool maintenance, repair and replacement," but still was not a de facto owner.[52] In contrast, the Lessee Defendants were not responsible for *any* structural repairs as defined by the Lease, or any other repairs in the first two years, aside from those they caused. (Lease ¶39; Lease Addendum ¶4.)

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[47] 215 F.3d at 332.
[48] Jennings, REAL ESTATE LAW (9th ed. 2011) at 222; cf. Tesler Dep.at 58:18-60:21.
[49] See Commander Oil, 215 F.3d at 329 ("the typical lessee should not be held liable as an owner").
[50] Cf. Colleges of the Senecas, 94 N.Y.2d at 717-718 (right to insurance proceeds described as an "indication of ownership" of a leased building).
[51] 215 F.3d at 331 (emphasis added).
[52] Id. at 332.

POINT II

SPEIGEL RELEASED DEFENDANTS FROM ALL LIABILITY, INCLUDING CERCLA LIABILITY, ARISING FROM THE LEASE

As discussed in Point I, Plaintiffs argue that the Lease converted the Lessee Defendants into the de facto owners of 89 Frost Street, rendering them liable as former owners under CERCLA. Under this theory, Lessee Defendants' liability arises from the Lease, as Plaintiffs' own expert witness concedes. (Weinstock Dep. 38:12-39:9.) Plaintiffs' claims are therefore precluded, because in 1977 Spiegel released Defendants from all past and future liability "arising out of and in connection with" the Lease.[53]

NSR Co. sued Spiegel after he unilaterally terminated the Lease following the 1976 fire at the Site. As part of the 1977 settlement of that dispute, Spiegel released Defendants from:

> [A]ll actions, causes of actions…suits…claims, and demands whatsoever, in law, admiralty or equity, which against [Defendants] the Releasor, the Releasor's heirs, executors, administrators, successors, or assigns ever had, [n]ow have, or hereafter can, shall or may have for, upon, or by reason of any cause, matter or thing whatsoever…arising out of and in connection with [the Lease]…including but not limited to a certain option granted to the tenant to purchase said property … and with respect to [Northern State Realty Co. v. Jerry Spiegel].

(Release pp. 1-2 (emphasis added); see also Defs.' 56.1 ¶147.) Plaintiffs acknowledge that they are successors-in-interest to Spiegel (Defs.' 56.1 ¶7), so his obligations under the Release run to them. Plaintiffs' claims against Defendants are accordingly limited by the release of all claims "arising out of and in connection with" the Lease.

Under New York law,[54] a release as broadly worded as the Release encompasses all claims, regardless of whether those claims were specifically bargained for or even known at the

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[53] The Release should also exclude any operator Liability arising from Lincoln's occupation of 89 Frost Street. However, the Court need not reach that issue on the instant motions.

[54] State law governs the interpretation of contractual allocations of CERCLA liability. Commander Oil v. Advance Food Serv. Equip., 991 F.2d 49, 51 (2d Cir. 1993).

time of the release's execution.[55] The Second Circuit has thus held that contractual allocations of liability may cover CERCLA claims even if the contract was "entered into before CERCLA was enacted and do[es] not contain a specific reference to environmental liabilities."[56]

In Olin, a pre-CERCLA site purchase agreement provided that the purchaser released "all claims of any nature which [the purchaser] now has or hereafter could have against [the seller] under or arising out of the Purchase Agreement."[57] The court reasoned that the agreement's broad language "evinces the parties' 'clear and unmistakable intent' that [the purchaser] indemnify [the seller] for all liabilities related to the…site, even future unknown [CERCLA] liabilities."[58] Therefore, "a pre-CERCLA release or indemnification agreement may be effective to shift CERCLA liability if it is either specific enough to include such liabilities or general enough to encompass any and all environmental liabilities."[59]

Provisions virtually identical to the Spiegel Release have been held to encompass CERCLA liabilities. The Purolator court ruled that a pre-CERCLA assumption and indemnification of "liabilities arising out of or connected with" a site covered subsequent CERCLA liability.[60] Rodenbeck involved another release with terms strikingly similar to the Release, which were held to discharge CERCLA liabilities:

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[55] See also Centro Empresarial Cempresa S.A. v. Am. Movil, S.A.B. de C.V. ("Centro"), 17 N.Y.3d 269, 277 (2011) (holding that "a release may encompass unknown claims"); Langhorne v. Amchem Prod., Inc., 23 A.D.3d 208, 209 (1st Dept. 2005) (holding that a release of "any and all claims" that the releasor "may ever have" or "which may arise" from an event unambiguously "embraced all possible matters arising between the parties in connection with the underlying subject matter").

[56] Olin Corp. v. Consolidated Aluminum Corp., 5 F.3d 10, 15-16 (2d Cir. 1993).

[57] Id. at 15 (emphasis added).

[58] Id. at 16.

[59] N.Y. State Elec. & Gas Corp. v. FirstEnergy Corp., 808 F.Supp.2d 417, 503 (W.D.N.Y. 2011) (emphasis added). Every other Court of Appeals that has addressed this issue has reached the same conclusion. See E.I. Du Pont de Nemours & Co., Inc. v. United States, 365 F.3d 1367, 1372 (Fed. Cir. 2004); White Consol. Indus., Inc. v. Westinghouse Elec. Corp., 179 F.3d 403, 409–10 (6th Cir. 1999); Dent v. Beazer Materials & Servs., Inc., 156 F.3d 523, 526, 534 (4th Cir. 1998); SmithKline Beecham Corp. v. Rohm & Haas Co., 89 F.3d 154, 159 (3d Cir. 1996); Kerr-McGee Chem. Corp. v. Lefton Iron & Metal Co., 14 F.3d 321, 327 (7th Cir. 1994); Joslyn Mfg. Co. v. Koppers Co., Inc., 40 F.3d 750, 754–55 (5th Cir. 1994).

[60] Purolator Products Corp. v. Allied-Signal, Inc., 772 F.Supp. 124, 131 (W.D.N.Y. 1991).

> The plain language of the Releases states that each party "releases the other from all claims and obligations of any character or nature whatsoever arising out of or in connection with said [lease] agreements." … [T]he Releases bar all claims whether sounding in tort or contract or whether based on a statute such as CERCLA.[61]

The Release's materially-identical wording likewise covered future CERCLA claims.

It is irrelevant that the parties did not specifically contemplate CERCLA liability when they entered the release, as noted in Plaintiffs' Rule 56.1 Counter-Statement. (Pls.' Counter-56.1 ¶17.) Indeed, it would be surprising if the parties had contemplated CERCLA, which was not enacted until three years later. (Miller Dep. 113:25-114:5) (explaining that the parties could not have specifically contemplated CERCLA liability, as CERCLA "was [not] in existence then".)[62] The issue is not whether the parties foresaw future legislation, but whether the scope of the intended release is broad enough to cover such liabilities without a specific reference.[63]

By its terms, the Release applies not only to those claims at issue in the 1976 litigation, but to all actions that Spiegel or his successors "ever had, [n]ow have, *or hereafter can, shall or may have*," related to "any matter, cause or thing whatsoever…arising out of and in connection with" the Lease. (Release pp. 1-2 (emphasis added).) The New York Court of Appeals has interpreted the release of "all manners of action" arising out of a real property interest, including prospective claims, to "indicate[] an intent to release defendants from…claims, like this one, unknown at the

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[61] Rodenbeck v. Marathon Petr. Co., 742 F.Supp. 1448, 1457 (N.D. Ind. 1990). See also Horsehead Indus., Inc. v. Paramount Commc'ns, Inc., 258 F.3d 132, 143 (3d Cir. 2001) ("CERCLA claims are subsumed within broad contractual indemnification provisions."); Hatco Corp. v. W.R. Grace & Co. Conn., 59 F.3d 400, 407 (3d Cir. 1995); Mardan Corp. v. C.G.C. Music, Ltd., 804 F.2d 1454, 1462 (9th Cir. 1986). Indeed, the only situations in which courts applying New York law have determined that contractual indemnifications or releases do not apply to CERCLA liabilities are where the provisions are explicitly limited so as to exclude such liabilities. See Georgia-Pac. Cons. Prods., LP v. Int'l Paper Co., 566 F.Supp.2d 246, 251 (S.D.N.Y. 2008) (interpreting pre-CERCLA agreement limited to "liabilities [existing] on the Closing Date"); Buffalo Color Corp. v. AlliedSignal, Inc., 139 F.Supp.2d 409, 419 (W.D.N.Y. 2001) (interpreting an agreement that limited indemnification to two classes of non-environmental liabilities); FirstEnergy, 808 F.Supp.2d at 503 (interpreting an agreement limiting its scope to "very specific potential claims against the bankruptcy estates" of two parties). The Spiegel Release contains no such limitation.

[62] See also Pub. L. 96–510 (Dec. 11, 1980) (enacting CERCLA).

[63] Centro, 113 N.Y.3d at 276.

time of contract."[64] Parol evidence affirms that the Defendants interpreted the Release as extinguishing "any and all obligations" connected to the Site Lease, including future environmental liabilities.[65] (J. Pufahl Dep. 148:10-24, 150:6-151:25.)

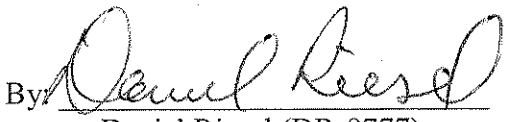
Just as the Olin claims were liabilities "arising out of" a purchase agreement, Plaintiffs' claims that the Lease makes Lessee Defendants liable as former de facto owners under CERCLA is a claim "arising out of and in connection with" that Lease. Plaintiffs' claim is that, under Commander Oil, the Lease transformed the Lessee Defendants into the Site's de facto owners. (3d Am. Compl. ¶51 ("Pursuant to the terms of the Lease…, Defendants have sufficient indicia of ownership to be de facto owners under CERCLA…." (emphasis added).) This claim is barred by the Release because it necessarily "aris[es] out of and in connection with" the Lease.

CONCLUSION

Defendants respectfully request that their partial summary judgment motion be granted.

Dated: New York, New York
January 28, 2014

SIVE, PAGET & RIESEL, P.C.
Attorneys for Defendants

By: 

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Of Counsel:
Dan Chorost
Edward K. Roggenkamp, IV

[64] Id. at 277.

[65] Moreover, the wording of Defendants' limited release of Spiegel (releasing claims for "damages sustained to building premises 89 Frost" from the fire "and with respect to [the litigation]…and with respect to [the Lease]." (Defs.' 56.1 ¶148) (emphasis added), confirms that the parties knew the difference between a limited release and the general Release granted by Spiegel in favor of Defendants.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

NEXT MILLENNIUM REALTY, L.L.C., and 101 FROST STREET ASSOCIATES,

Plaintiffs,

- against -

ADCHEM CORP., LINCOLN PROCESSING CORP., NORTHERN STATE REALTY CORP., NORTHERN STATE REALTY CO., and PUFAHL REALTY CORP.,

Defendants;

----------X

ADCHEM CORP., LINCOLN PROCESSING CORP., NORTHERN STATE REALTY CORP., NORTHERN STATE REALTY CO., and PUFAHL REALTY CORP.,

Third-Party Plaintiffs,

- against -

THE ESTATE OF JERRY SPIEGEL, and ALAN EIDLER, PAMELA SPIEGEL SANDERS, and LISE SPIEGEL WILKS, AS EXECUTORS OF THE ESTATE OF JERRY SPIEGEL,

Third-Party Defendants.

----------X

Case No. CV-03-5985 (ARL)

AFFIRMATION OF DANIEL RIESEL IN SUPPORT OF DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT DISMISSING PLAINTIFFS' CLAIMS FOR RELIEF BASED ON THE 89 FROST STREET LEASE

ORAL ARGUMENT REQUESTED

I, Daniel Riesel, an attorney admitted to practice before this Court, and the Courts of the State of New York, hereby affirm under penalty of perjury as follows:

1. I am a member of Sive, Paget and Riesel, 460 Park Avenue, New York, New York, 10022, and am counsel to the Defendants in the above-captioned matter.
2. Exhibits A-K below are cited in Defendants' Memorandum of Law in Support of Their Motion for Partial Summary Judgment Dismissing Plaintiffs' Claims for Relief Based on the 89 Frost Street Lease, dated January 28, 2014 ("Defendants' Memorandum of Law").
3. Plaintiffs have alleged that certain statements of fact cited in Defendants' Local Rule 56.1 Statement of Undisputed Facts are disputed; Exhibits L-T are cited as evidence in support of those paragraphs of Defendants' Local Rule 56.1 Statement, for which Plaintiffs' Rule 56.1 Counter-Statement of Facts is cited in Defendants' Memorandum of Law.
4. The document annexed hereto as Exhibit A is a true and correct copy of the lease ("Lease"), addendum ("Lease Addendum"), rider ("Lease Rider"), and guarantee ("Guarantee") from Jerry Spiegel, Plaintiffs' predecessor-in-interest, to defendant Pufahl Realty for 89 Frost Street ("89 Frost"), Westbury, New York, 11590, dated April 1, 1966.
5. The document annexed hereto as Exhibit B is a true and correct copy of the mortgage ("Mortgage") agreement between Jerry Spiegel, Pufahl Realty Corp., and the Prudential Insurance Co, for 89 Frost, dated May 24, 1966.
6. The document annexed hereto as Exhibit C is a true and correct copy of the expert report of David Tesler ("Tesler Rep."), dated May 5, 2013, excluding the Lease, Lease Addendum, Lease Rider, and Guarantee, which are included in Exhibit A.
7. The document annexed hereto as Exhibit D is a true and correct copy of the relevant pages of the transcript of the deposition of David Tesler ("Tesler Dep."), dated October 3, 2013.

8. The document annexed hereto as Exhibit E is a true and correct copy of the expert report of Jack O'Connor ("O'Connor Rep."), dated May 15, 2013, excluding the Lease, Lease Addendum, Lease Rider, and Guarantee, which are included in Exhibit A.
9. The document annexed hereto as Exhibit F is a true and correct copy of the relevant pages of the transcript of the deposition of Benjamin Weinstock ("Weinstock Dep."), dated October 17, 2013.
10. The document annexed hereto as Exhibit G is a true and correct copy of the expert report of Benjamin Weinstock ("Weinstock Rep."), dated August 29, 2013.
11. The document annexed hereto as Exhibit H is a true and correct copy of the release of the Defendants by Jerry Spiegel ("Release"), dated May 18, 1977.
12. The document annexed hereto as Exhibit I is a true and correct copy of the limited release of Jerry Spiegel by Defendants ("Release to Spiegel"), dated May 18, 1977.
13. The document annexed hereto as Exhibit J is a true and correct copy of the relevant pages of the transcript of the deposition of John Pufahl ("J. Pufahl Dep."), dated April 8, 2013 and April 16, 2013.
14. The document annexed hereto as Exhibit K is a true and correct copy of the relevant pages of the transcript of the deposition of Elliot Miller ("Miller Dep."), dated October 15, 2013.
15. The document annexed hereto as Exhibit L is a true and correct copy of the response of David Tesler to the expert report of Benjamin Weinstock ("Tesler Rebuttal Report"), dated September 8, 2013.
16. The document annexed hereto as Exhibit M is a true and correct copy of the expert report of B. Tod Delaney ("Delaney Rep."), dated October 2013.

17. The document annexed hereto as Exhibit N is a true and correct copy of the relevant pages of the transcript of the deposition of Dieter Kannapin ("Kannapin Dep."), dated October 8, 2013.

18. The document annexed hereto as Exhibit O is a true and correct copy of the relevant pages of the transcript of the deposition of Fred Margolin ("Margolin Dep."), dated September 16, 2013.

19. The document annexed hereto as Exhibit P is a true and correct copy of the lease for 710 Summa Avenue, Westbury, New York, 11590 ("710 Summa Lease"), dated January 10, 1966.

20. The document annexed hereto as Exhibit Q is a true and correct copy of the relevant pages of the transcript of the deposition of Alan Eidler ("Eidler Dep."), dated April 5, 2013.

21. The document annexed hereto as Exhibit R is a true and correct copy of the relevant pages of the transcript of the deposition of Jerry Spiegel ("Spiegel Dep."), dated August 16, 1976.

22. The document annexed hereto as Exhibit S is a true and correct copy of the relevant pages of the transcript of the deposition of Arthur Sanders ("Sanders Dep."), dated November 28-29, 2012.

23. The document annexed hereto as Exhibit T is a true and correct copy of the Transcript of Stipulation on the Record, *Northern State Realty Co. v. Jerry Spiegel, et al.* (N.Y. Sup. Ct. Nassau Cty.) ("1977 Settlement Transcript"), dated April 20, 1977.

Dated: New York, New York
January 28, 2014

SIVE, PAGET & RIESEL, P.C.
Attorneys for Defendants

By: _____

Daniel Riesel (DR-9777)
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New York, NY 10022
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(212) 421-1891 (fax)
driesel@sprlaw.com

Exhibit A

Revised, Unrevised, Improved Gilsey Form Lease

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE, AT BROADWAY, NEW YORK

PLF/DEF
EXHIBIT 15
DATE 11/21 RPTR
Jineen Pavesi, RPR, RMR, CRR

This Agreement

BETWEEN JERRY SPIEGEL of 270 North Broadway, Hicksville, New York

as Landlord

PUFAHL REALTY CORP., a domestic corporation, having its principal office and place of business at 625 Main Street, New York, New York
New Castel.

as Tenant

Witnesseth: The Landlord hereby leases to the Tenant the following premises: the premises hereinafter described in Schedule A annexed hereto.

for the term of twenty (20) years to commence as hereinafter set forth and to end twenty (20) years from the date of such commencement.

to commence from the day of 19 and to end on the day of 19 to be used and occupied only for

(See Addendum to Lease)

upon the conditions and covenants following:

1st. That the Tenant shall pay the annual rent ~~xxx~~ computed as hereinafter set forth in #38 hereof, and to commence as provided for in Paragraph 36.

said rent to be paid in equal monthly payments in advance on the 1st day of each and every month during the term aforesaid, as follows: as hereinafter set forth during the lease term.

2nd. That the Tenant shall take good care of the premises and shall, at the Tenant's own cost and expense make all repairs of whatever kind and nature, ordinary and extraordinary, interior and exterior, structural and nonstructural, including glass and necessary maintenance of plumbing, electrical and other equipment and painting and repair of entire premises including exterior doors & windows & sanitary system, and at the end or other expiration of the term, shall deliver up the demised premises in good order or condition, damages by the elements excepted, and reasonable wear and tear excepted. (See par. #39)

3rd. That the Tenant shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and City Government and of, any, and all their Departments and Bureaus applicable to said premises, for the correction, prevention, and abatement of nuisances or other grievances, in, upon, or connected with said premises during said term; and shall also promptly comply with and execute all rules, orders and regulations of the New York Board of Fire Underwriters, or any other similar body, at the Tenant's own cost and expense.

4th. That the Tenant, successors, heirs, executors or administrators shall not assign this agreement, or underlet or underlease the premises, or any part thereof, or make any alterations on the premises, without the Landlord's consent in writing; or occupy, or permit or suffer the same to be occupied for any business or purpose deemed disreputable or extra-hazardous on account of fire, under the penalty of damages and forfeiture, and in the event of a breach thereof, the term herein shall immediately cease and determine at the option of the Landlord as if it were the expiration of the original term.. (See #34)

5th. In case of damage, by fire or other cause, to the building in which the leased premises are located, without the fault of the Tenant or of Tenant's agents or employees, if the damage is so extensive as to amount practically to the total destruction of the leased premises or of the building, or if the Landlord shall within a reasonable time decide not to rebuild, this lease shall cease and come to an end, and the rent shall be apportioned to the time of the damage. In all other cases where the leased premises are damaged by fire without the fault of the Tenant or of Tenant's agents or employees the Landlord shall repair the damage with reasonable dispatch after notice of damage, and if the damage has rendered the premises untenantable, in whole or in part, there shall be an apportionment of the rent until the damage has been repaired. In determining what constitutes reasonable dispatch consideration shall be given to delays caused by strikes, adjustment of insurance and other causes beyond the Landlord's control.

6th. The said Tenant agrees that the said Landlord and the Landlord's agents and other representatives shall have the right to enter into and upon said premises, or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs or alterations therein as may be necessary for the safety and preservation thereof.

7th. The Tenant also agrees to permit the Landlord or the Landlord's agents to show the premises to persons wishing to hire or purchase the same; and the Tenant further agrees that on and after the ~~xxxxxxxx~~ nine months in advance next preceding the expiration of the term hereby granted, the Landlord or the Landlord's agents shall have the right to place notices on the front of said premises, or any part thereof, offering the premises "To Let" or "For Sale", and the Tenant hereby agrees to permit the same to remain thereon without hindrance or molestation.

8th. That if the said premises, or any part thereof shall be deserted or become vacant during said term, or if any default made in the payment of the said rent or any part thereof, or if any default be made in the performance of any of the co nants herein contained, the Landlord or representatives may re-enter the said premises by force, summary proceedings otherwise, and remove all persons therefrom, without being liable to prosecution therefor, and the Tenant hereby expres waives the service of any notice in writing of intention to re-enter, and the Tenant shall pay at the same time as the r becomes payable under the terms hereof a sum equivalent to the rent reserved herein, and the Landlord may rent the premi on behalf of the Tenant, reserving the right to rent the premises for a longer period of time than fixed in the original le without releasing the original Tenant from any liability, applying any moneys collected, first to the expense of resuming obtaining possession, second to restoring the premises to a rentable condition, and then to the payment of the rent and other charges due and to grow due to the Landlord, ~~XXXXXXXXXXXXXXXXXX~~ the Tenant, ~~XXX~~ shall remain liable for deficiency.

9th. Landlord may replace, at the expense of Tenant, any and all broken glass in and about the demised premises. Landl may insure, and keep insured, all plate glass in the demised premises for and in the name of Landlord. Bills, for the premiu therefor shall be rendered by Landlord to Tenant at such times as Landlord may elect, and shall be due from, and payable Tenant when rendered, and the amount thereof shall be deemed to be, and be paid as, additional rental. Damage and injury the said premises, caused by the carelessness, negligence or improper conduct on the part of the said Tenant or the Tena agents or employees shall be repaired as speedily as possible by the Tenant at the Tenant's own cost and expense.

10th. That the Tenant shall neither encumber nor obstruct the sidewalk in front of, entrance to, or halls and stairs of s premises, nor allow the same to be obstructed or encumbered in any manner.

11th. The Tenant shall neither place, or cause or allow to be placed, any sign or signs of any kind whatsoever at, in or ab the entrance to said premises or any other part of same, except in or at such place or places as may be indicated by the La lord and consented to by the Landlord in writing. And in case the Landlord or the Landlord's representatives shall deem necessary to remove any such sign or signs in order to paint the said premises or the building wherein same is situated make any other repairs, alterations or improvements in or upon said premises or building or any part thereof, the Landl shall have the right to do so, providing the same be removed and replaced at the Landlord's expense, whenever the s repairs, alterations or improvements shall be completed. (See #32)

12th. That the Landlord is exempt from any and all liability for any damage or injury to person or property caused by resulting from steam, electricity, gas, water, rain, ice or snow, or any leak or flow from or into any part of said building from any damage or injury resulting or arising from any other cause or happening whatsoever unless said damage or inj be caused by or be due to the negligence of the Landlord.

13th. That if default be made in any of the covenants herein contained, then it shall be lawful for the said Landlord to enter the said premises, and the same to have again, re-possess and enjoy. The said Tenant hereby expressly waives the serv of any notice in writing of intention to re-enter.

14th. That this instrument shall not be a lien against said premises in respect to any mortgages that are now on or that he after may be placed against said premises, and that the recording of such mortgage or mortgages shall have preference a precedence and be superior and prior in lien of this lease, irrespective of the date of recording and the Tenant agrees to ecute any such instrument without cost, which may be deemed necessary or desirable to further effect the subordination of t lease to any such mortgage or mortgages, and a refusal to execute such instrument shall entitle the Landlord, or the La lord's assigns and legal representatives to the option of cancelling this lease without incurring any expense or damage a the term hereby granted is expressly limited accordingly.

15th. The Tenant has this day deposited with the Landlord the sum of $. as security for the full and faith performance by the Tenant of all the terms, covenants and conditions of this lease upon the Tenant's part to be perform which said sum shall be returned to the Tenant after the time fixed as the expiration of the term herein, provided the Ten has fully and faithfully carried out all of said terms, covenants and conditions on Tenant's part to be performed. In the ev of a bona fide sale, subject to this lease, the Landlord shall have the right to transfer the security to the vendee for benefit of the Tenant and the Landlord shall be considered released by the Tenant from all liability for the return of su security; and the Tenant agrees to look to the new Landlord solely for the return of the said security, and it is agreed t this shall apply to every transfer or assignment made of the security to a new Landlord. (See #52)

16th. That the security deposited under this lease shall not be mortgaged, assigned or encumbered by the Tenant with the written consent of the Landlord.

17th. It is expressly understood and agreed that in case the demised premises shall be deserted or vacated, or if default made in the payment of the rent or any part thereof as herein specified, or if, without the consent of the Landlord, the Ten shall sell, assign, or mortgage this lease or if default be made in the performance of any of the covenants and agreements this lease contained on the part of the Tenant to be kept and performed, or if the Tenant shall fail to comply with any of statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and City Government or of any and their Departments and Bureaus, applicable to said premises, or if the Tenant shall file or there be filed against Tenan petition in bankruptcy or arrangement, or Tenant be adjudicated a bankrupt or make an assignment for the benefit of credit or take advantage of any insolvency act, the Landlord may, if the Landlord so elects, at any time thereafter terminate t lease and the term hereof, on giving to the Tenant five days' notice in writing of the Landlord's intention so to do, and t lease and the term hereof shall expire and come to an end on the date fixed in such notice as if the said date were the d originally fixed in this lease for the expiration hereof. Such notice may be given by mail to the Tenant addressed to demised premises.

18th. Tenant shall pay to Landlord the rent or charge, which may, during the demised term, be assessed or imposed for water used or consumed in or on the said premises, whether determined by meter or otherwise, as soon as and when the sa may be assessed or imposed, and will also pay the expenses for the setting of a water meter in the said premises should latter be required. Tenant shall pay Tenant's proportionate part of the sewer rent or charge imposed upon the building. such rents or charges or expenses shall be paid as additional rent and shall be added to the next month's rent thereafter become due.

19th. That the Tenant will not nor will the Tenant permit undertenants or other persons to do anything in said premises, bring anything into said premises, or permit anything to be brought into said premises or to be kept therein, which will in a way increase the rate of fire insurance on said demised premises, nor use the demised premises or any part thereof, nor suf or permit their use for any business or purpose which would cause an increase in the rate of fire insurance on said buildi and the Tenant agrees to pay on demand any such increase.

20th. The failure of the Landlord or Tenant to insist upon a strict performance of any of the terms, conditions and covenants here shall not be deemed a waiver of any rights or remedies that ~~XXXXXXXX~~ Tenant may have, and shall not be deemed a waiver of a subsequent breach or default in the terms, conditions and covenants herein contained. This instrument may not be chang modified, discharged or terminated orally.

21st. If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public quasi public use or purpose, then and in that event, the term of this lease shall cease and terminate from the date of ti vesting in such proceeding and Tenant shall have no claim against Landlord for the value of any unexpired term of said lea No part of any award shall belong to the Tenant.

22nd. If after default in payme . of rent or violation of any other provision this lease, or upon the expiration of t lease, the Tenant moves out or is dispossessed and fails to remove any trade fix.ures or other property prior to such s default, removal, expiration of lease, or prior to the issuance of the final order or execution of the warrant, then and in t. event, the said fixtures and property shall be deemed abandoned by the said Tenant and shall become the property of Landlord.

23rd. In the event that the relation of the Landlord and Tenant may cease or terminate by reason of the re-entry of Landlord under the terms and covenants contained in this lease or by the ejectment of the Tenant by summary proceedings otherwise, or after the abandonment of the premises by the Tenant, it is hereby agreed that the Tenant shall remain lia and shall pay in monthly payments the rent which accrues subsequent to the re-entry by the Landlord, and the Tenant expres agrees to pay as damages for the breach of the covenants herein contained, the difference between the rent reserved and rent collected and received, if any, by the Landlord during the remainder of the unexpired term, such difference or deficien between the rent herein reserved and the rent collected if any, shall become due and payable in monthly payments during t remainder of the unexpired term, as the amounts of such difference or deficiency shall from time to time be ascertained; a it is mutually agreed between Landlord and Tenant that the respective parties hereto shall and hereby do waive trial by ju in any action, proceeding or counterclaim brought by either of the parties against the other on any matters whatsoever arisi out of or in any way connected with this lease, the Tenant's use or occupancy of said premises, and/or any claim of inju or damage.

24th. The Tenant waives all rights to redeem under any law of the State of New York.

25th. This lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agre ments hereunder on part of Tenant to be performed shall in nowise be affected, impaired or excused because Landlord unable to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or delayed in making any repairs, additions, alterations or decorations or is unable to supply or is delayed in supplying a equipment or fixtures if Landlord is prevented or delayed from so doing by reason of governmental preemption in conne tion with a National Emergency or in connection with any rule, order or regulation of any department or subdivision there of any governmental agency or by reason of the condition of supply and demand which have been or are affected by war other emergency.

26th. No diminution or abatement of rent, or other compensation, shall be claimed or allowed for inconvenience or discon fort arising from the making of repairs or improvements to the building or to its appliances, nor for any space taken to compl with any law, ordinance or order of a governmental authority. In respect to the various "services," if any, herein expressl or impliedly agreed to be furnished by the Landlord to the Tenant, it is agreed that there shall be no diminution or abatemen of the rent, or any other compensation, for interruption or curtailment of such "service" when such interruption or curtailmen shall be due to accident, alterations or repairs desirable or necessary to be made or to inability or difficulty in securing supplie or labor for the maintenance of such "service" or to some other cause, not gross negligence on the part of the Landlord. N such interruption or curtailment of any such "service" shall be deemed a constructive eviction. The Landlord shall not b required to furnish, and the Tenant shall not be entitled to receive, any of such "services" during any period wherein th Tenant shall be in default in respect to the payment of rent. Neither shall there be any abatement or diminution of rent becaus of making of repairs, improvements or decorations to the demised premises after the date above fixed for the commencement o the term, it being understood that rent shall, in any event, commence to run at such date so above fixed.

27th. Landlord shall not be liable for failure to give possession of the premises upon commencement date by reason of th fact that premises are not ready for occupancy or because a prior Tenant or any other person is wrongfully holding over o is in wrongful possession, or for any other reason. The rent shall not commence until possession is given or is available, bu the term herein shall not be extended.

28th. TENANT'S CONSUMPTION OF UTILITIES. The Tenant shall pay for its c consumption of fuel, gas, electricity and water.

29th. DEFAULT BY TENANT - LEGAL FEES. If Tenant shall at any time be in fault hereunder, and if Landlord shall institute an action or summary pro ceeding against Tenant based upon such default, Tenant will reimburse Lan lord for the expense of attorney's fees and disbursements thereby incurre by Landlord not to exceed the sum of 5% of the amount recovered by Landlo in said action or proceeding. In the event that Tenant shall pay said ar rears to Landlord prior to a trial in any such action or proceeding, and to exceed the sum of 10% of the amount recovered in the event that Landlor shall obtain judgment after trial, and the Landlord shall have the right collect the same as additional rent.

30th. FINANCIAL STATEMENT OF TENANT. It is understood & agreed between parties hereto that in the event Landlord makes application to a bank, in surance company or lending institution for a mortgage loan, and a financi statement prepared by a C.P.A. is requested from a Tenant, then in that e Tenant hereby agrees to furnish same within a reasonable time. Said stat ment to be furnished by Landlord solely to lending institution, and shall disclosed to no other party.

(SEE RIDER FOR ADDITIONAL PARAGRAPHS)

And the said Landlord doth covenant that the said Tenant on paying the said yearly rent, and performing the covenants aforesaid, shall and may peacefully and quietly have, hold and enjoy the said demised premises for the term aforesaid, provided however, that this covenant shall be conditioned upon the retention of title to the premises by the Landlord.

And it is mutually understood and agreed that the covenants and agreements contained in the within lease shall be binding upon the parties hereto and upon their respective successors, heirs, executors and administrators.

In Witness Whereof, the parties have interchangeably set their hands and seals (or caused these presents to be signed by their proper corporate officers and caused their proper corporate seal to be hereto affixed) this 15 day of ~~March~~ April, 1966

Signed, sealed and delivered in the presence of

JERRY SPIEGEL

By _____ L. S.
Landlord

PUFAHL REALTY CORP. _____ L. S.

By _____ L. S.
Tenant

#30. LIABILITY AND PROPERTY DAMAGE INSURANCE: The Tenant agrees to take out and maintain throughout the entire term of this lease, what is commonly known as Public Liability Insurance and Boiler Insurance, protecting the Landlord, in the amount of $500,000.00 for a single person, and $1,000,000.00 for any occurrence for personal injury, plus $50,000. for Property Damage, said policy to cover the entire premises demised herein. If a boiler is required, the Tenant will supply such policy in the name of the Landlord in the limit of $250,000.00 per accident. Ten days before the expiration of said policy, Tenant shall deliver to the Landlord a renewal of such policy. In the event the Tenant fails to do so, the Landlord may order such policy and pay the premium therefor and add the same to the following month's rent, as additional rent after three days' written notice. All such policies shall be issued by companies licensed to do business in the State of New York. Tenant shall give written notice to Landlord of any proposed changes, cancellations or amendments in said policies, and copies of all such shall be promptly furnished to Landlord.

#31. IMPROVEMENTS TO PREMISES. The Tenant shall have the right and privilege to remove any and all improvements to the premises at or prior to termination of the lease term, however, it being expressly understood and agreed by the parties that prior to the removal of any such improvements by the Tenant, which the Tenant shall have made in the premises, the Tenant shall advise the Landlord in writing by certified or registered mail, return receipt requested, of the Tenant's intention so to remove any of same at a date not less than 30 days from the date of said notice, and in the event that the estimated cost by the Landlord of any necessary restoration of the premises occasioned by the removal of any said improvements shall exceed the security deposit by the Tenant pursuant to paragraphs 15 and 52 hereof, prior to the removal of any such improvements the Tenant shall first deposit with the Landlord the differnece between the amount of such security deposit

and the estimated cost of restoration and repair of the premises which may have been occasioned as aforesaid. This shall in no way release the Tenant from its obligation and liability for restoration and repair of the premises which shall be necessary by reason of the removal of any such improvements.

#32. SIGNS. Notwithstanding the provisions of par. #11, Landlord consents to placing of one or more dignified signs on the demised premises for the business of the Tenant, provided such sign or signs shall comply with the Ordinances of the Town of North Hempstead and other governmental authorities.

#33. CONSTRUCTION. The Landlord does hereby agree to construct and erect upon the demised premises a building containing approximately 55,000 sq.ft. substantially in accordance with the plot plan and specifications annexed hereto and identified by the signatures of the parties to this agreement of lease.

#34. ASSIGNMENT AND SUB-LETTING. Anything to the contrary notwithstanding in par. #4 of this lease, the parties hereto agree that the Tenant herein, its successors or assigns, shall have the right to assign this agreement, or sub-let the premises in whole or in part, on condition, however, that the assignee assume the terms of this lease agreement on a standard form of lease assignment in recordable form, and on further condition that the Tenant remain liable under the terms of this agreement for the entire lease term.

#35. FIRE INSURANCE. With regard to Fire Insurance to be maintained upon the premises during the term of this lease agreement, the Tenant does hereby agree to reimburse the Landlord for all premiums for such insurance, which insurance shall be in an amount as may be required by the bank or lending institution which may grant a mortgage upon the improved premises or in the event that there shall be no such lending institution then in an amount not less than co-insurable minimum requirements of the premises to be erected based upon full insurable value thereof. Such premiums shall be due and payable from the Tenant to the Landlord as addi-

tional rent on the rent date next following the giving of notice to the Tenant by the Landlord of the amount due for such premium. The parties shall apportion such premiums at the commencement and termination of the lease term.

Each party hereto, does to the extent of collectible insurance in force in favor of either or both parties hereto, hereby waive any and all causes of action, claims or demands against the other party hereto which may hereafter arise or exist by reason of or resulting from any loss, destruction or damage to the premises herein described or the contents thereof caused by or resulting from any fire, or any peril included in extended coverage as defined in the standard New York State Fire Insurance Policy occurring during the time this lease is in full force and effect.

Said policy of fire insurance shall include the Tenant as an assured or in lieu thereof a waiver of subrogation if obtainable for the sole purpose of barring the assertion by the insurance companies of subrogation claims against the Tenant.'

It is understood and agreed by the parties that the procurement of the foregoing fire insurance by the Landlord in behalf of the Tenant from an agent or broker designated by the Landlord shall be conditioned upon the procurement of such insurance at the lowest available rates to the Landlord and Tenant for such type of insurance by a company licensed to do business in the State of New York.

Fire Insurance coverage shall include coverage for fire, extended coverage, vandalism, malicious mischief and sprinkler leakage.

#36. LEASE TERM. The lease term shall commence upon the date that the Landlord delivers to the Tenant a Certificate of Occupancy (temporary or permanent) for the premises to be erected hereunder, or upon the taking of possession of the premises by

all taxes and assessments for improving any streets, alleys, sidewalks, sidewalk vaults and alley vaults, as well as any rent or charge which the Town of North Hempstead or any other authority may at any time during the term of this lease, levy, spread or charge for inspection fees of governmental authorities only or for the use of any specs on or under any sidewalks or on or under or above any alley or street adjacent to the premises or any building at any time during the term of this lease located thereon.

Nothing herein contained shall be construed as requiring the Tenant to pay any so-called inheritance, succession or transfer taxes or corporate franchise taxes charged against the Landlord or the estate or interest of the Landlord in the demised premises or upon the right of any person to succeed in the same or any part thereof by inheritance, succession or transfer.

The Tenant is hereby expressly given the right to contest any such charge, lien, assessment, or other imposition with the appropriate governmental department or in a court having jurisdiction, thereof. The cost of any such contest or proceeding shall be borne solely by the Tenant.

The foregoing taxes and charges shall be paid by the Tenant in the following manner:

a) During the first full tax year - The Landlord shall disburse in behalf of the Tenant all of the taxes, charges and impositions heretofore set forth herein as the same shall become due and payable to the respective governmental authorities or other companies or agencies and the Tenant shall reimburse the Landlord for such payments on the rent date next following the payment by the Landlord of such items and the rendering of a statement by the Landlord to the Tenant of the payment thereof, and all of said items shall be due and payable from the Tenant to the Landlord as additional rental hereunder.

b) After the first full tax year - The Landlord shall pay all of the foregoing taxes, charges and impositions as heretofore set forth herein as the same shall become due and payable as set forth in subdivision (a) hereof, and the Tenant shall reimburse the Landlord for the same by paying to the Landlord concurrently and together with the monthly installments of rent a sum equal to 1/12 of the foregoing taxes, charges and impositions for the preceding tax year, each of which additional installments shall be due and payable from the Tenant to the Landlord as additional rental. At the end of each tax year there shall be an adjustment between the Landlord and the Tenant taking into account the amount paid by the Tenant to the Landlord during the preceding tax year and the actual amount disbursed by the Landlord for said items and any excess of payment by the Tenant shall be credited to the Tenant for the next tax year, and any deficit which may be due from the Tenant to the Landlord for taxes actually paid by the Landlord during the preceding tax ;year shall be due and payable from the Tenant to the Landlord on the rent date next following the giving of notice by the Landlord to the Tenant of the amount due therefor.

c) At such time, during the first full tax year, as the Landlord shall receive a tax bill which shall reflect or be based upon the full assessed valuation of the land as fully improved together with the assessed valuation of the improvements thereon, the Tenant shall on the first day of the month next following the receipt by Landlord of the bill and presentation thereof to Tenant, pay to the Landlord concurrently and together with the monthly installments of rent a sum equal to 1/3 of the amount of said bill then due & payable and a like sum on the first day of the next succeeding month together with the monthly installment of rent, until said amount is repaid. The aforesaid deposits by the Tenant so paid to Landlord for taxes shall be included in the adjustment between the Landlord and Tenant at the end of the following tax year as herein above provided in sub-paragraph (b).

The term "tax year" as used herein shall be construed to include all those taxes, charges and impositions which shall become a lien upon the premises and/or due and payable from January 1st to December 31st..

Taxes shall be apportioned at commencement and termination of lease term.

#38. RENT, COMPUTATION OF. The parties do hereby expressly agree that the annual rental for each year of the lease term shall be an amount equal to the sum resulting from the multiplication of the actual total square foot area of the exterior of the completed building by the sum of $1.00 and the monthly rental which shall be due and payable in advance on the first day of each month of the lease term shall be 1/12 of said amount. The parties agree to accept the certification of the licensed land surveyor whose survey shall be guaranteed to the lending institution and the title company used in connection with the mortgage financing at the inception of the lease term as to building area.

#39. GUARANTEE OF LABOR & MATERIALS. The Landlord does hereby expressly agree and does hereby guarantee for a period of ~~One (1)~~ Two (2) years after the delivery of possession of the premises to the Tenant pursuant to the terms hereof, that all of the labor and materials which shall have been furnished and performed upon the demised premises by the Landlord shall have been performed in a

good and workmanlike manner and were of a good and proper quality in accordance with the terms of the specifications signed by the parties pursuant to this lease agreement. The Landlord does hereby agree that he shall make all repairs in and to the building hereby leased to the Tenant during the first Two years of the lease term, except those repairs which may have been occasioned by act or neglect of the Tenant. It being expressly understood and agreed by the parties that after the expiration of the foregoing ~~one (1)~~ Two (2) year period, the Tenant shall be obligated to make all repairs in and to the demised premises of each and every kind and nature. Upon the failure of the Tenant to make necessary repairs and maintenance during the term of the lease agreement, the Landlord shall have the right to either make such repairs and charge the cost thereof including charge for supervision, to the Tenant as additional rent, and said charge shall be due and payable from the Tenant on the rent date next following the completion of such repair and the rendering of a statement therefore by the Landlord to the Tenant or to declare a default by the Tenant under the terms of this lease agreement for the Tenant's failure to make such repairs and/or maintenance upon the giving of notice as is hereinbefore set forth herein.

#40. PARKING. The Tenant shall have available to it for its use and that of its employees, agents, servants, and/or invitees, for parking of automobiles, the area indicated on the plot plan annexed hereto and made a part hereof.

#41. BROKER. The Tenant does hereby represent to the Landlord that no broker or other person who might be entitled to the payment of a commission, has in any way negotiated or brought about the making of this lease agreement, the Landlord relying upon this representation in entering into this agreement.

#42. MEMORANDUM OF LEASE. Landlord and Tenant will upon the written request of the other at any time join in the execution and recording of a memorandum of lease in proper form for recording in the proper office or offices wherein the property is situated, setting forth the existence and term of this lease. Said instrument shall contain the following statement:

> "It is distinctly understood and agreed that the Landlord or the premises shall not be liable or responsible for the payment of any labor or materials performed or furnished at the instance of the Tenant, and that no contractor, sub-contractor, laborer or materialman employed by or through the Tenant shall have the right to file a mechanic's lien or other lien against the premises or to make the Landlord or the premises liable or responsible for the payment of such labor or materials. Every contractor, sub-contractor, laborer and materialman supplying labor or materials at the instance of the Tenant shall and will rely strictly upon the financial responsibility of the Tenant for the cost of such work and materials."

Said instrument shall also give notice with respect to the subordination of this lease to mortgages, and that the lease requires Tenant to pay taxes and assessments, as hereinbefore provided.

#43. NOTICES. Any notice required or permitted to be made, given or served under this lease shall be deemed to be made, given and served, as the case may be, when delivered personally to Landlord or Tenant or when deposited in the United States mail, registered mail, or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to Landlord: 270 North Broadway
Hicksville, L.I., N.Y.

If to Tenant: 625 Main Street
New Cassel, N. Y.

or at such other address as either of the parties hereto may from time to time advise the other party in writing.

#44A. SEWER LINES. It is understood and agreed that in the event that sewer lines are installed or brought to the demised premises, the Landlord shall have no obligation to connect the demised premises to such sewer lines, however, the Tenant may at its option and at its own cost and expense connect to such sewer lines.

#44 6. JURY TRIAL. The Tenant and Landlord do hereby expressly waive any and all right to trial by jury in any action or special proceeding for non-payment of rent or additional rent which may be brought under and by virtue of the terms of the terms of the within lease agreement, and the Tenant does hereby further expressly agree that in any such action or proceeding for rent or for recovery of possession of the premises, it shall not interpose in any such action or proceeding any defense by way of offset or counter-claim. This shall not be construed, however, as a waiver of any rights or claims which the Tenant may have against the Landlord, but shall merely act as a bar to the interposition of such claim against the Landlord in any action or proceeding for rent or for the recovery of possession of the premises.

#45. ESTOPPEL CERTIFICATE. The Tenant does hereby agree that it will at any time and from time to time upon ten (10) days' notice by the Landlord execute, acknowledge and deliver to the Landlord a statement in writing certifying that the lease or the lease as modified, as the case may be, represents the entire agreement between the parties, further certifying that no rent has been paid in advance; and further whether there are any existing defenses or off-sets which the Tenant has against the enforcement of the lease by the Landlord. The failure of the Tenant to so comply with the foregoing shall be construed as authorizing the Landlord as attorney in fact for the Tenant to execute such agreement.

#46. MORTGAGEE'S REQUEST FOR CHANGES. If an institution furnishing a mortgage on the demised premises shall require a change or changes in this lease as a condition of such financing and if the Tenant should refuse to agree thereto, the Landlord may terminate this lease at any time, provided such changes shall not substantially alter the obligations of the parties each to the other or to impose on the Tenant any condition more burdensome than as otherwise exists hereunder.

#47. CONDEMNATION. With regard to condemnation or acquisition for public or other purpose as heretofore set forth in par. 21st herein (including conveyance in lieu of condemnation) the parties do hereby expressly agree that in any such proceeding or conveyance which shall not affect the building upon the demised premises, this lease shall in no way be affected thereby and any and all such reward that shall be made in such proceeding shall belong to the Landlord. In the event that such proceeding or conveyance shall affect the demised building herein but shall not substantially affect the use by the Tenant of its equipment and machinery in the demised building the lease term shall not be affected and the rent shall abate proportionately in relation to the number of square feet so condemned or conveyed. In the event that such conveyance or condemnation shall substantially affect the use by the Tenant of its equipment and machinery, then and in that event either party hereto shall have the right and privilege to terminate this lease agreement upon written notice to the other by registered or certified mail as heretofore provided herein, and which notice must be given not later than thirty (30) days after the vesting of title of such portion of the premises in the public authority. Failure to give such notice shall be deemed a waiver by both parties of the right and privilege to terminate the lease by reason of ;such taking or conveyance. No part of any such award shall belong to the Tenant.

#48. SURVEY. The Landlord shall deliver to the Tenant upon the completion of the building to be erected hereunder a survey prepared by a licensed surveyor guaranteed to the title company being used by the Landlord in connection with the mortgage financing.

#49. INVALIDITY OF PORTIONS OF LEASE. The invalidity or unenforceability of any portion of the within lease agreement shall in no way affect the validity or enforceability of any other provision hereof.

50. DESCRIPTION OF DEMISED PREMISES. Upon the procurement of a guaranteed survey of the demised premises the metes and bounds description which shall be prepared by the title insurance company insuring the mortgage to be procured by the Landlord shall be annexed to the within lease agreement and deemed a part hereof with the same force and effect as if included herein in the first instance.

51. INDEX AND PARAGRAPH CAPTIONS. The annexed index and paragraph captions are included only for convenience, and are in no way to be construed as a part of this lease or as a limitation of the scope of the particular paragraphs to which they refer.

52. SECURITY DEPOSIT. With regard to the amount of the security deposit referred to in Par. #15 of the lease agreement, The Tenant does hereby expressly agree that the amount of security deposit to be given to the Landlord hereunder shall be a sum equal to three (3) months rent of the demised premises based upon the annual rent which shall have been computed by the multiplication of the total square foot area of the exterior of the demised building multiplied by the sum of $1.00 per sq. ft. At the execution of this Lease agreement, the Tenant shall deposit with the Landlord the sum of $13,750.00 as security which sum shall be adjusted at the time of the certification of the total square footage if required so that the security shall equal exactly three months rent. The Landlord shall deposit said security in an interest bearing account and the interest earned on said account shall belong to the Tenant, it being understood, however, that said interest shall not be withdrawn but shall be retained in the said account as additional security.

53. MECHANIC's LIENS. The Landlord does hereby agree that it shall promptly undertake the removal and discharge of any mechanic's liens which may be filed against the premises relating to construction and improvements at the premises performed by the Landlord, which discharge shall either be by demand, bonding or other appropriate proceeding pursuant to the Lien Law.

#54. LANDLORD DEFAULT - CURING OF BY TENANT. In the event that the Landlord shall be in default of any of its obligations under the terms and conditions of this lease agreement, which default may be cured by payment of a sum of money such as payment of interest or amortization on any mortgage or any discharge of any taxes or similar charges, the Tenant may after fifteen (15) days' notice to the Landlord as heretofore provided herein, make payment of such item so as to cure the default and the amount of such payment by the Tenant shall be deducted from rent to become due to the Landlord from the Tenant. However, the tenants right to cure mortgage defaults shall be limited only to a first mortgage and any renewals, extensions or consolidations thereof in the event that the Landlord in fact executes and delivers a first mortgage unto an [redacted] mortgagee) and only from and after the date of closing of said mortgage loan and the execution and delivery of said mortgage as aforesaid and only while said mortgage, (and and renewals, extensions or consolidations thereof) shall remain unpaid and outstanding in whole or in part.

#55. INTEREST ON PAYMENTS. In the event that either the Landlord or the Tenant shall disburse money in behalf of the other pursuant to the terms hereof and the party from whom said payment is due shall fail to make payment to the other party for same, interest at the rate of 6% shall accrue thereon from the date of payment in the first instance.

#56. REPAIRS BY TENANT IN BEHALF OF LANDLORD. In the event that the Landlord shall fail to make any repairs which it is obligated to make under the terms and conditions hereof, the Tenant may after fifteen (15) days' notice to the Landlord in writing as heretofore provided for, during which period of fifteen (15) days the Landlord shall have failed to commence to make such repairs, the Tenant is hereby authorized to make said necessary repairs in behalf of the Landlord and to deduct the actual cost from rent payments to become due to the Landlord from the Tenant. Tenants right to deduct from rent payment only those actual costs expended

by the Tenant only to the extent that same shall not exceed the rent required to be paid by the Tenant to the Landlord pursuant to the lease.

#57. ASSIGNMENT OF SECURITY. In the event of an assignment of the within lease agreement pursuant to the terms heretofore set forth herein, the Landlord does hereby consent that the Tenant may assign to the assignee any and all security deposits which may have been made by the Tenant pursuant to the terms of this lease agreement.

#58. RUBBISH. Tenant agrees to keep, at its own cost and expense, the demised premises free and clear of all cuttings, rubbish, waste paper and other waste material in conformity with the requirements of any insurance carrier of Landlord and/or governmental authority.

#59. EXTENSION OF LEASE: In the event Tenant shall remain in possession of the demised premises after the expiration of the term of this lease, then after the expiration of the term, without having executed a written lease with Landlord, such holding over shall not constitute a renewal or extension of the term but such holding over shall be construed as a tenancy from month to month, subject to all the terms and conditions of this lease, except as to the duration thereof, and in that event Tenant shall pay rent monthly in advance at the rate provided for herein, and real estate taxes and assessments shall be pro-rated for such period of holding over.

#60. TENANT CONTROL. Tenant is and shall be in exclusive control and possession of the demised premises as provided herein, and Landlord shall not be liable in any event whatsoever for any injury or damage to any property or to any person happening on or about the demised premises, nor for any injury or damage to any property of Tenant, or of any other person contained therein. The provisions hereof permitting Landlord to enter and inspect the demised premises are made for the purpose of enabling Landlord to be informed as to whether Tenant is complying with the agreements terms, covenants and conditions hereof, and to do such acts as Tenant shall fail to do.

#61. The Tenant shall not commit a waste or injury to the demised premises, should keep the grass trimmed and maintain the grounds in a presentable condition and shall keep the sidewalks and entrance ways unobstructed and clean and free of rubbish, ice and snow.

#62. MECHANIC'S LIEN: Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien upon the reversion of Landlord, the premises herein demised or the building ot improvement of which said premises are a part. If any mechanics or other lien or order for the payment of money or any notice of intention to file a lien shall be filed against the demised premises, or the building or improvement of which said premises form a part, by reason of or arising out of any labor or material furnished to or for the demised premises or any occupant thereof, or for or by reason of any change, alteration or addition or the cost or expense thereof, or any contract relating thereto, or against the interest of Landlord, Tenant shall cause the same to be cancelled and discharged of record by bond or otherwise as allowed by law at the expense of Tenant within five (5) days after notice of the filing thereof; and Tenant shall also defend on behalf of Landlord, at Tenant's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the endorsement of such lien, liens or orders, and Tenant will pay any damages and satisfy and discharge any judgment entered thereon and save harmless Landlord from any claim or damage resulting therefrom.

Nothing herein contained shall be construed as a consent on the part of the Landlord to subject the estate of the Landlord to liability under the Lien Law of the State of New York or any other law, it being expressly understood that the Landlord's estate shall not be subject to such liability.

#63. LANDLORD CAN ASSIGN RENT. The Landlord shall have the right without selling its fee interest in the demised premises or assigning its interest in this lease, to assign from time to time the whole of the rent at any time payable hereunder to any person, firm, corporation, trust or other entity designated by Landlord in a written notice to the Tenant and in any such case, the Tenant shall pay the rent, subject to the terms of this lease, to the Landlord's said designee at the address mentioned in any such notice for the period covered by such assignment.

#64. DEPOSIT FOR FIRST MONTH's RENT. The Landlord hereby acknowledges payment from Tenant of the sum of $4583.33 which said sum shall be applied to the first month's rent of the lease term heretofore set forth herein. The said sum of $4583.33 is an estimate and upon the ascertainment of the exact monthly rental, the first month's rent shall be adjusted accordingly.

#65. OPTION TO PURCHASE. Provided that the Tenant shall have fully and completely performed all of the terms and conditions of this lease agreement on its part to be performed, the Tenant shall have the right and privilege to purchase the demised premises during the 12th year of the lease term and at no other time. The terms of the Contract of Sale for the premises are more particularly set forth in the contract annexed hereto and made a part hereof.

A. In the event that the Tenant elects to exercise said option during the 12th year, it shall give notice thereof to the Landlord in writing in the manner hereinafter set forth during the 12th year of the lease term. In the event that the option is exercised during the 12th year of the lease term, the total price to be paid by the Tenant to the Landlord for such purchase shall be the sum of $490,000.00, which said sum shall be paid by the Tenant to the Landlord in the following manner:

(1) $49,000.00 to be paid concurrently with the notice of the exercise of the option.

(2) Subject to the then principal balance of the then existing first mortgage, if any, held by a bank, insurance company or other licensed lending institution.

(3) The balance representing the difference between the purchase price of $490,000.00 and the total of (1) and (2) hereof shall be paid in cash or certified check, payable to the order of the Landlord, at the time of the closing of title and delivery of the Deed.

[illegible]
option during the 11th year of the lease term, it shall give notice thereof to the Landlord in writing in the manner hereinafter set forth during the 11th year of the lease term. The total price to be paid by the Tenant to the Landlord for such purchase price during the 11th year of the lease term shall be the sum of $125,000.00, which said sum shall be paid by the Tenant to the Landlord in the following manner:

(1) $12,500.00 to be paid concurrently with notice of exercise of the option.

(2) Subject to the then principal balance of the then existing first mortgage, if any held by a bank, insurance company or other licensed lending institution.

(3) The balance representing the difference between the purchase price of $125,000.00 and the totals of (1) and (2) hereof shall be paid in cash or certified check payable to the order of the Landlord at the time
[illegible]

Title to said premises shall close not later than ninety (90) days after the giving of notice by the Tenant of the exercise of the option as aforesaid. The Tenant shall continue to pay rent to the Landlord pursuant to the terms of this lease agreement until the date of the payment of the balance of the purchase price and delivery of the Deed. The Tenant shall notify

the Landlord of the date of closing of title, which date shall not be later than ninety (90) days after the giving of notice by Tenant of the exercise of the option.

In the event that the Tenant shall exercise said option to purchase ~~either~~ in the 12th year ~~xxxxxxxxxxxxxxxxxxxx~~ but shall thereafter fail to close title to said premises pursuant to the terms hereof without good cause, the payment made under "A (1)" ~~xxxxxxxxxxxxxxxxxxx~~ shall be retained by the Landlord as liquidated damages and the relationship of the parties shall continue as Landlord and Tenant for the balance of the lease term under the other terms and conditions hereof.

12th

~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxx heretofore set forth after having given notice of the exercise of its option xxxxxx hereunder during the 8th year of the lease term, then and in that event, the Tenant xxxxxx shall not be deemed to have waived any and all further rights to any option for the xxxxxxx purchase of the demised premises in the 11th year. In the event that the Tenant shall have xxx exercised its option during the 11th year of the lease term, and shall have failed to xxxxxx close title as heretofore set forth then and in that event tenant shall also be deemed to have xxxxxxx waived all rights to xxxxxxx any option to purchase the demised premises.xxxxxxxxxxxxxxxxxxxx~~

The Deed of Conveyance shall contain the following language:

"It is the express intention of the parties hereto that a certain indenture of lease, dated the 1st day of April 1966, between Jerry Spiegel as Landlord and Pufahl Realty Corp. as Tenant, shall not be merged herewith but shall survive the execution and delivery of this Deed."

In the event that the Tenant shall elect to refinance the then existing mortgage, and there shall be any fees, charges or expenses in connection with the satisfaction of the then existing mortgage, which the Landlord shall be obligated to pay, the amount thereof shall be paid by the Tenant to the Landlord at the time of closing of Title and delivery of the Deed.

#66. FAILURE OF TENANT TO COMPLY. In the event Tenant shall fail to comply with and perform any of the covenants, conditions or agreements herein contained on the Tenant's part to be performed, [redacted], the Landlord shall have the right (but not be obligated) to perform any such covenants, conditions or agreements and the Tenant agrees to pay to the Landlord on demand as additional rent hereunder, a sum equal to the amount expended by the Landlord in the performance of such covenants, conditions or agreements. In the event Landlord shall perform any such covenants, conditions or agreements, Tenants agree that the Landlord, its agents or employees, may enter the premises and that such entry and such performance shall not constitute an eviction of Tenant, in whole or in part, nor relieve Tenant from the continued performance of all covenants, conditions and agreements of this lease, and further agrees that Landlord shall not be liable for any claim for loss or damage to Tenant or any one claiming through or under Tenant.

#67. NON-LIABILITY OF LANDLORD. Neither the rights or privileges reserved by Landlord under this lease nor the exercise thereof by Landlord nor any reference in this lease to repairs by the Landlord shall impose any liability or obligation upon the Landlord for maintenance or repair of heating, plumbing or sprinkler systems or sanitary systems or to make any other repairs, decorations or alterations or to furnish heat, hot water, gas, electricity or any other utility or service except as may be herein specifically provided; nor shall the exercise by Landlord of any of its said rights or privileges be considered as an assumption of dominion or control over the demised premises or any portion thereof.

~~#68. LANDLORD CAN ASSIGN RENT. The Landlord shall have the right~~ without selling its fee interest in the demised premises or assigning its interest in this lease, to assign from time to time the whole of the rent at any time payable hereunder to any person, firm, corporation, trust or other entity designated by Landlord in a ~~written notice to the Tenant and in any such case, the Tenant~~

~~shall pay the rent, subject to the terms of this lease, to the~~ Landlord's said designee at the address mentioned in any such ~~notice for the period~~ covered by ~~such assignment.~~

#69. The Tenant agrees that any and all loans of any and all kind and nature heretofore or hereafter made by the Tenant from any one or more of the stockholders, officers and/or directors of the said Tenant, shall be subordinate to this lease and to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which the demised premises form a part, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgagee. In confirmation of such subordination Tenant shall execute promptly any Certificate that Landlord may request. Tenant hereby constitutes and appoints Landlord Tenant's Attorney in Fact to execute any such Certificate or Certificates for and on behalf of the Tenant.

#70. Tenant at own cost and expense shall provide rent insurance (extended coverage) in an amount equal to the annual minimum rental hereunder plus the amount of annual real estate taxes, said policies shall name the Landlord and Tenant as insured as their respective interests may appear but shall be deposited with the Landlord.

#71. ~~The Landlord shall have the right, without selling its fee~~ interest to demised premises or assigning its interest in the lease, to assign from time to time the whole or any part of the rent, at any time payable hereunder to any person, firm, corporation, trust or other entity designated by Landlord in written notice to the Tenant and in any such case, Tenant shall pay the rent subject to the terms of this lease to the Landlord's designee at the address mentioned in such notice for the period covered by ~~such assignment.~~

#72. MORTGAGE. The within lease agreement is hereby made subject to the procurement by the Landlord from a banking institution, life insurance company or other type of bonafide lending institution within six (6) weeks of the date hereof, of a first mortgage loan commitment for the sum of not less than $520,000.00 to be amortized over a period of twenty (20) years and to bear interest at the rate of 5/ 3/4% per annum. In the event that the Landlord shall be unable to procure a commitment for said mortgage for any reason other than his own bad faith, then and in that event the Landlord shall give the Tenant written notice thereof that Landlord has failed to procur said commitment and elects to cancel the lease and upon such giving of notice this lease agreement shall be deemed nul and void and of no further force and effect and the Landlord shall forthwith refund to the Tenant any and all sums of money which may have been deposited by the Tenant with the Landlord hereunder. This provision is for the sole benefit of the Landlord.

1x (6)

520,000

#73. The Landlord herein is the owner in fee of the premises immediately adjacent on the East to the demised premises herein. It is agreed that the Landlord shall have the right to utilize the easterly wall of the building on the demised premises as the party wall and the Landlord is hereby licensed and authorized to enter upon the demised premises and do whatever is necessary for the purpose of utilizing said wall as a party wall for any building to be constructed on the said adjacent property. The Landlord may use the party wall for the position of beams or otherwise. If it shall become necessary to repair or rebuild the wall or any portion of the wall as constructed the cost of such repairing and/or rebuilding as to such portion of the wall at the time used by both the tenant herein and the owner or tenant of the adjacent premises, shall be borne equally by both parties. As to the remaining portions of the wall which shall not be used by both parties such repairing and/or rebuilding shall be wholly at the expense of the party who shall ex-

Sally

exclusively use that portion. If and when the said wall is rebuilt, it shall stand upon the same place and be of the same ~~kind~~ or similar materials of the same proportions as the existing wall. The cost of maintenance of the party wall shall be borne equally between the tenant herein and the owner or tenant of the adjoining premises to the extent that they share the wall in common. Upon the exercise of the option to purchase the demised premises herein, the tenant herein shall execute a party wall agreement in recordable form for the purpose of establishing a party wall agreement which shall then run with the land.

#74. Notwithstanding anything to the contrary, which may be contained in this lease, it is understood and agreed that the Tenant shall, as required by the Lending Institution granting the mortgage on the demised premises, provide separate financial statements (be certified if required) for the tenants herein and the guarantor or guarantors of the lease, and where required by said Lending Institution, to have said lease guaranteed by such other subsidiary and/or affiliated companies to the extent necessary to procure said mortgage as provided for in this lease.

ADDENDUM TO LEASE
dated the ~~13th~~ 1st day of ~~January~~ Apr, 1968
between
JERRY SPIEGEL, Landlord
and
PUFAHL REALTY CORP., Tenant

1._ Addendum to Para. #35 of Lease: It is understood and agreed that in the event the Landlord procure the Fire Insurance provided for in Paragraph 35, that the Tenant shall be obligated to pay only such premium as the Tenant would have paid if the Tenant had procured the said insurance on its own account and provided that such insurance which Tenant could have procured shall be of the same coverage and provisions as provided for in the policy, which Landlord obtains.

2._ Addendum to Para. #36: It is understood and agreed that nothing contained in paragraph 36 shall be deemed to require the Tenant to take possession of the premises prior to the date of issuance of the Certificate of Occupancy.

3._ Addendum to Para. #38: The parties agree that the Tenant shall have the right to engage its own Surveyor or Engineer to compute the square footage of the exterior completed building to verify the computation of the Landlord's surveyor. In the event of disagreement between the surveyor or engineer of Tenant and the surveyor of the Landlord, both parties shall select an independant engineer or surveyor to compute the square footage and said independant surveyor or engineer's computation shall be deemed conclusive by both parties.

4._ Addendum to Para. #3 and #39: Notwithstanding anything to the contrary contained in paragraph 3 and 39 of the lease, it is understood and agreed that during the term of the lease, the Landlord shall make all structural repairs to the demised premises except such structural repairs as may have been occassioned by any act or neglect of the Tenant. Structural repairs for the purpose of this lease are defined as follows:

Those repairs required to be made to the exterior and interior bearing walls, foundation, floor slab, roof deck and structural steel.

5._ Addendum to Para. #44B: It is understood and agreed that Tenant shall have the right in any dispossess proceedings for nonpayment of rent or for recovery of the possession of the premises to interpose the defense of eviction, constructive, actual or partial.

6._ Addendum to Para. #21 and #47:_ Nothing contained in Paragraph 21 and 47 shall be deemed to prohibit the Tenant from recovering in condemnation proceedings for the taking of any or all of its trade fixtures. It is understood, however, that the Tenant shall not in any way in such proceedings for the recovery of an award for the taking of its trade fixtures interfere with the Landlord's proceedings for the recovery or an award for the taking of any portion of the demised premises.

7._ Addendum to Para. #63:_ The Tenant shall have the right to make payment of the rent to the Landlord's assignee until such time as the assignee, together with the Landlord, shall notify the Tenant in writing that the rent thereafter shall be paid to the Landlord, at which time, the Tenant shall then commence to pay the rent to the Landlord.

8._ Addendum to Para. #65:_ Notwithstanding that title to the premises shall close not later than ninety (90) days after the giving of notice by Tenant of the exercise of the option, the Tenant shall be entitled to a reasonable adjournment of the date of closing of title beyond the date specified in the Contract.

It is understood and agreed that in the event the Tenant shall have exercised its option during the 12th year, but shall have failed to close title without good cause, after having given the Notice of exercise of its option, the down payment under the Contract shall be deemed to become the property of

the Landlord as liquidated damages ~~and no part thereof shall be~~ applied toward the purchase price ~~of the~~ demised premises in the event that the Tenant shall elect to exercise its option during ~~the third year of the lease term.~~

9. Addendum to Para. #72. In the event that the Landlord shall fail to give the Tenant notice of its failure to obtain a mortgage commitment within five (5) days after the expiration of the six (6) week period, then in that event this lease shall be in full force and effect.

10. Addendum to Para. #29: The Tenant shall not be required to provide the Landlord with a certified statement from a C.P.A. unless the Landlord shall pay the usual and customary fee of the Certified Public Accountant for preparing such certified statement; however, it is understood that if the Tenant has a Certified Statement which Landlord is willing to make use of for its lending institution, the Tenant will provide same without charge. It is understood that the Landlord shall hold any and all certified statements of the Tenant delivered to it in trust solely for the purpose of submitting same to a lending institution for the purposes of procuring a mortgage.

11. Addendum to Para. #7: Landlord agrees that it will not enter into the factory portions of the demised premises for the showing thereof to prospective purchasers and tenants except after notice to the Tenant and under the Tenant's supervision to the end that the Tenant may protect its operations and trade secrets.

12. Addendum to Para. #15 and #52: It is understood and agreed that in the event of any sale of the demised premises by the Landlord, the Landlord will adjust the purchase price of the demised premises to credit the purchaser with security deposit of the Tenant so that the purchaser shall be deemed to have received the said security deposit.

13. Addendum to Para. #8, 13 and 17: It is understood and agreed that the Landlord shall give the Tenant fifteen (15) days written notice of any default by the Tenant in the performance of any of its terms, covenants and conditions of this lease on the part of the Tenant to be performed except for the payment of rent or taxes or any other charges required to be paid hereunder, prior to the Landlord pursuing any of its remedies under the lease to enforce same, and in the event that the Tenant shall have failed to cure said fault within the said fifteen (15) day period (except where by the nature of the default, it shall be impossible to cure same within said fifteen day period, in which event the Tenant ~~shall~~ must have commenced to cure said default within said fifteen day period and proceed to expeditiously cure same), the Landlord may then proceed without further notice to Tenant to enforce any and all provisions of this lease and pursue any and all remedies granted to the Landlord pursuant to the said lease.

14. Addendum to Para. #23: It is understood and agreed that notwithstanding the termination of the lease by reason of ejectment of the Tenant by summary proceedings or otherwise, or after the abandonment of the premises by the Tenant, the Tenant shall have the right to mitigate the damages of the Landlord by offering the demised premises for lease to a third party in the manner and subject to the provisions of paragraph #24 of the lease as if the Tenant was still in occupancy and not in default under the lease and the Landlord shall not unreasonably refuse to lease the demised premises to said Tenant offered by the Tenant herein if the proposed leasing shall be for ~~the~~ at least the balance of the term and at not less than the rental provided for in the lease, and the same rental as therein provided and the proposed tenant is financially responsible, provided Landlord has not already re-rented the demised premises.

15. Use & Occupancy of Demised Premises by Tenant: The Tenant shall use and occupy the premises only for the lamination and coating of papers, textiles and fabrics and for general manufacturing purposes not in violation of the building zone ordinance

of the Town of North Hempstead. The Landlord represents that the premises are zoned Industrial B in the Town of North Hempstead and that the certificate of Occupancy will permit the foregoing use and occupancy by the Tenant.

RIDER TO LEASE
dated ~~March~~ April 1 1966
between
JERRY SPIEGEL, as Landlord
and
PUFAHL REALTY CORP., as Tenant

INSURANCE POLICY ENDORSEMENTS: All policies of insurance, fire, liability, glass, boiler and rental value and any and all other insurance policies shall carry thereon and have endorsed thereon the following endorsements:

1. It is understood and agreed that in the event of cancellation, or material change in policy affecting the owners or Landlord's interest, ten (10) days prior written notice will be given to the Insured by Certified or Registered Mail.

2. It is understood and agreed that this policy is taken out at the request of Pufahl Realty Corp., as Tenant, and is therefore responsible for all premiums on said policy.

3. It is understood and agreed that the named Insured under this policy is Jerry Spiegel and/or any affiliated or subsidiary interest now in existence or hereinafter constituted.

4. With regard to Fire Insurance Policies:
   Subrogation Clause
   Any release from liability entered into by the Insured prior to loss hereunder shall not affect this policy or the right of the Insured to recover hereunder. "The right of subrogation against affiliated, associated and/or subsidiary corporations or companies and/or any partners, officers and/or individuals connected herewith is hereby waived."

GUARANTEE

IN CONSIDERATION: - of the letting of the premises described in schedual A and next hereto and made a part hereof by JERRY SPIEGEL, as landlord to PUFAHL REALTY CORP., as tenant, and the sum of $1.00 paid to the undersigned by the said landlord JERRY SPIEGEL, receipt of which is hereby acknowledged. The undersigned do hereby covenant and agree, jointly and severly, to and with the landlord and the landlords legal representatives, after fault shall at any time be made by the said tenant PUFAHL REALTY CORP., in the payment of the rent and the performance of the covenants contained in said lease dated 1st day of April, 1966. Afore the premises described in schedual A, on the tenants part to be paid and performed, that the undersigned will well and truly pay the said rent or any arrears thereof, that may remain due unto said landlord, and shall also pay all damages that may arise in consequence of the non performance of said covenants or either of them without requiring notice of any such defaults from said landlord . The undersigned hereby waive all rights to trial by jury and any action or proceeding herein after instituted by the landlord, to which the undersigned may be a party.

IN WITNESS WHEREOF: - the undersigned has set their hands and seal this 1 day of April 1966.

LINCOLN PROCESSING CORP.

BY Herman J. Pufahl
PRES.

LAMINAR FABRICS CORP.

BY Joseph Pufahl
PRES

ADDENDUM TO LEASE
dated the [redacted]day of [redacted], 1966
between
JERRY SPIEGEL, Landlord
and
PUFAHL REALTY CORP., Tenant

1. Addendum to Para. #35 of Lease: It is understood and agreed that in the event the Landlord procurs the Fire Insurance provided for in Paragraph 35, that the Tenant shall be obligated to pay only such premium as the Tenant would have paid if the Tenant had procured the said insurance ~~with~~ on its own account and provided that such insurance which Tenant could have procured shall be of the same coverage and provisions as provided for in the policy, which Landlord obtains.

2. Addendum to Para. #36: It is understood and agreed that nothing contained in paragraph 36 shall be ~~deemed~~ to require the Tenant to take possession of the premises prior to the date of issuance of the Certificate of Occupancy.

3. Addendum to Para. #38: The parties agree that the Tenant shall have the right to engage its own Surveyor or Engineer to compute the square footage of the exterior completed building to verify the computation of the Landlord's Surveyor. In the event of disagreement between the surveyor or engineer of Tenant and the surveyor of the Landlord, both parties shall select an independant engineer or surveyor to compute the square footage and said independant surveyor or engineer's computation shall be deemed conclusive by both parties.

4. Addendum to Para. #3 and #39: Notwithstanding anything to the contrary contained in paragraph 3 and 39 of the lease, it is understood and agreed that during the term of the lease, the Landlord shall make all structural repairs to the demised premises except such structural repairs as may have been occassioned by any act or neglect of the Tenant. Structural repairs for the purpose of this lease are defined as follows:

Those repairs required to be made to the exterior and interior bearing walls, foundation, floor slab, roof deck and structural steel.

5. Addendum to Para. #[illegible]: It is understood and agreed that Tenant shall have the right in any [illegible] for abatement of rent or for recovery of the possession of the premises to interpose [illegible] defense of eviction, [illegible]

6. Addendum to Para. #31 and #37: Nothing contained in Paragraph #31 and #37 shall be deemed to prohibit the Tenant from recovering in condemnation proceedings for the taking of [illegible] all of its trade fixtures. It is understood, however, that the Tenant shall not in any way in such proceedings for the recovery of an award for the taking of its trade fixtures interfere with the Landlord's proceedings for the recovery of an award for the taking of any portion of the demised premises.

7. Addendum to Para. #43: The Tenant shall have the right to make payment of the rent to the Landlord's assignee until such time as the assignee, together with the Landlord, shall notify the Tenant in writing that the rent thereafter shall be paid to the Landlord, at which time the Tenant shall then commence to pay the rent to the Landlord.

8/ Addendum to Para. #[illegible]: Notwithstanding that title to the premises shall close not later than ninety (90) days after the giving of notice by Tenant of the exercise of the option, the tenant shall be entitled to a reasonable adjournment beyond of the date of closing of title beyond the date specified in the Contract.

It is understood and agreed that in the event the Tenant shall have exercised its option during the 12th year, but shall have failed to close title without good cause, after having given the Notice of exercise of its option, the down payment under the Contract shall be deemed and become the property of

the Landlord as liquidated damages [illegible] applied toward the purchase price of the demised premises in the event that the Tenant shall elect to exercise the option [illegible] in [illegible] herein.

9. Addendum to Para. #7. In the event that the Landlord shall fail to give the Tenant notice of his failure to obtain a mortgage commitment within five (5) days after the expiration of the four-week period, then in that event this lease shall be in full force and effect.

10. Addendum to Para. #14. The Tenant shall not be required to provide the Landlord with a certified statement from a C.P.A. unless the Landlord shall pay the usual and customary fee of the Certified Public Accountant for preparing such certified statement; however, it is understood that if the Tenant has a Certified Statement which Landlord is willing to make use of for its lending institution, the Tenant will provide same without charge. It is understood that the Landlord shall have any and all certified statements of the Tenant which it in great seeks for the purpose of submitting same to a lending institution for the purposes of procuring a mortgage.

11. Addendum to Para. #21. Landlord agrees that it will not enter into the factory portions of the demised premises for the showing thereof to prospective purchasers and tenants after notice to the Tenant and with the Tenant's supervision to the end that the Tenant may protect its operations and trade secrets.

12. Addendum to Para. #15 and #22. It is understood and agreed that in the event of any sale of the demised premises by the Landlord, the Landlord will adjust the purchase price of the demised premises to credit the purchaser with security deposit of the Tenant so that the purchaser shall be deemed to have received the said security deposit.

13. Addendum to Para. #2, #3 and #7: It is understood and agreed that the Landlord shall give the Tenant fifteen (15) days written notice of any default by the Tenant in the performance of any of its terms, covenants and conditions of this lease, or any part of the Tenant to be performed, except for the payment of rent or taxes or any other charges provided for in said lease, prior to the Landlord pursuing any of its remedies under said to enforce same, and in the event that the Tenant shall have failed to cure said default within the said fifteen (15) day period (except where by the nature of the default, it shall be impossible to cure same within said fifteen day period, in which event the Tenant shall have commenced to cure said default within said fifteen day period and proceed to expeditiously cure same), the Landlord may then proceed without further notice to take to enforce any and all provisions of this lease and pursue any and all remedies granted to the Landlord pursuant to the said lease.

14. Addendum to Para. #2: It is understood and agreed that notwithstanding the termination of the lease by reason of default of the Tenant by summary proceedings or otherwise, or by reason of the abandonment of the premises by the Tenant, the Landlord shall have the right to mitigate the damages of the Landlord by offering the demised premises for lease to a third party in the manner and subject to the provisions of paragraph #2 of the lease as if the Tenant was still in occupancy and not in default under the lease and the Landlord shall not unreasonably refuse to lease the demised premises to said Tenant offered by the Tenant herein if the proposed leasing shall be for one or more the balance of the term and at not less than the rental provided for in the lease, and the same rental as therein provided and the proposed tenant is financially responsible, [illegible]

15. Use & Occupancy of Demised Premises by Tenant: The Tenant shall use and occupy the premises only for the lamination and coating of papers, textiles and fabrics and for general manufacturing purposes not in violation of the building zone ordinance

of the Town of North Hempstead. The Landlord represents that the premises are zoned Industrial B in the Town of North Hempstead and that the certificate of Occupancy will permit the foregoing use and occupancy by the Tenant.

Standard N. Y. B. T. U. Form 8041 • 11-64-70M—Contract of Sale.

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

THIS AGREEMENT, made the day of , nineteen hundred and

BETWEEN JERRY SPIEGEL (or the then owner of the premises) of #270 North Broadway, Hicksville, New York

hereinafter described as the seller, and PUFAHL REALTY CORP., a domestic corporation, having its principal office and place of business at 625 Main Street, New Cassel, New York

hereinafter described as the purchaser,

WITNESSETH, that the seller agrees to sell and convey, and the purchaser agrees to purchase, all that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being at New Cassel, Town of North Hempstead, County of Nassau, State of New York, now described as follows:

~~BEGINNING at a point on the Southerly side of Summa Ave distant 243.97 ft. easterly from the intersection of the Easterly side of Bond Street with the southerly side of Summa Avenue, running thence from said point of beginning along the southerly side of Summa Avenue in an easterly direction, south 86 degrees, 48 minutes, 50 seconds east 124.75 ft.; running thence south 3 degrees, 11 minutes, 10 seconds west 210.02 ft.; running thence north 86 degrees, 48 minutes, 50 seconds west 124.75 ft.; running thence north 3 degrees, 11 minutes, 10 seconds east 210.02 ft. to the southerly side of Summa Avenue at the point or place of beginning.~~

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

No representations are made by the Seller with regard to physical condition of the premises at the date of the Contract nor at the date of closing of title and Purchaser agrees to take the premises in their "as-is" condition as of the date of this Contract. It is the express intent of the parties hereto that certain indenture of lease dated the 18 day of April, 1966 between Jerry Spiegel as Landlord and Pufahl Realty Corp., as Tenant, shall not be merged herewith but shall survive the execution and delivery of this Contract of Sale, and the deed shall provide that the said lease shall not merge with the Deed but shall survive the execution and delivery thereof.

[The parties agree that no broker brought about this sale.]

If there be a mortgage on the premises, the Seller agrees to deliver to the Purchaser at the time of delivery of the deed a letter from the Mortgagee stating the amount of unpaid principal and interest thereon, the date of maturity of the mortgage and the rate of interest.

The Seller will deliver to the Purchaser at the closing of title an Affidavit to the effect that at the date of closing of title, there shall be no default under the terms of the mortgage which would permit the mortgagee to commence foreclosure proceedings. The Seller also agrees to request from the mortgagee a mortgagee's estoppel certificate but in the event that the mortgagee shall refuse to provide same, the Seller shall have no obligation to deliver same to the Purchaser.

This sale includes all right, title and interest, if any, of the seller in and to any land lying in the bed of any street, road or avenue opened or proposed, in front of or adjoining said premises, to the center line thereof, and all right, title and interest of the seller in and to any award made or to be made in lieu thereof and in and to any unpaid award for damage to said premises by reason of change of grade of any street; and the seller will execute and deliver to the purchaser, on closing of title, or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of any such award.

SCHEDULE "A"
Description of Demised Premises

ALL that certain plot, piece or parcel of land with the build
thereon erected, situate, lying and being at New Cassel, Town
North Hempstead, County of Nassau and State of New York, boun
and described as follows:

BEGINNING at a point on the westerly side of Frost Street dis
372.23 feet southerly from the corner formed by the intersect
of the westerly side of Frost Street with the southerly side
Summa Avenue;

RUNNING THENCE south 7 degrees, 00 minutes, 53 seconds east 17
feet;

RUNNING THENCE south 85 degrees, 02 minutes, 00 seconds west
284.61 feet;

RUNNING THENCE south 4 degrees, 58 minutes, 00 seconds west
5.43 feet;

RUNNING THENCE south 85 degrees, 02 minutes, 00 seconds west
225.00 feet;

RUNNING THENCE north 4 degrees, 58 minutes, 00 seconds west 18
feet;

RUNNING THENCE north 35 degrees, 02 minutes, 00 seconds west
503.25 feet to the westerly side of Frost Street at the point
or place of beginning.

If the closing of the title shall occur before the tax rate is fixed, the apportionment of taxes shall be upon the basis of t tax rate for the next preceding year applied to the latest assessed valuation.

If there be a water meter on the premises, the seller shall furnish a reading to date not more than thirty days prior to the ti herein set for closing title, and the unfixed meter charge and the unfixed sewer rent, if any, based thereon for the interveni time shall be apportioned on the basis of such last reading.

The deed shall be the usual bargan and sale with covenant against grantor's acts deed in proper statutory short form for record and shall be duly executed, acknowledged, and have revenue stamps in proper amount affixed thereto by the seller, at the seller's expense, so as to convey to the purchaser the fee simple of the sa premises, free of all encumbrances, except as herein stated, and shall also contain the covenant required by subdivision 5 Section 13 of the Lien Law.

This clause should be omitted if the property is not in the City of New York.

At the closing of the title the seller shall deliver to the purchaser a certified check to the order of the City Treasurer for the amo of the Real Property Transfer Tax imposed by Title I of Chapter 46 of the Administrative Code of the City of New Y and will also deliver to the purchaser the return required by the said statute and the regulations issued pursuant to the autho thereof, duly signed and sworn to by the seller; the purchaser agrees to sign and swear to the said return and to cause the s check and the said return to be delivered to the City Register promptly after the closing of the title.

The seller shall give and the purchaser shall accept a ~~title such as~~ good and marketable title in accordance with the terms of this contract and an insurable title.

~~xx Member of the New York Board of Title Underwriters will approve xx~~

All sums paid on account of this contract, and the reasonable expenses of the examination of the title to said premises a of the survey, if any, made in connection therewith are hereby made liens thereon, but such liens shall not continue a default by the purchaser under this contract.

All fixtures and articles of personal property attached or appurtenant to or used in connection with said premises are rep sented to be owned by the seller, free from all liens and encumbrances except as herein stated, and are included in this sa without limiting the generality of the foregoing, such fixtures and articles of personal property include plumbing, heati lighting and cooking fixtures, air conditioning fixtures and units, ranges, refrigerators, radio and television aerials, bathro and kitchen cabinets, mantels, door mirrors, venetian blinds, shades, screens, awnings, storm windows, window boxes, st doors, mail boxes, weather vanes, flagpoles, pumps, shrubbery and outdoor statuary.

The amount of any unpaid taxes, assessments, water charges and sewer rents which the seller is obligated to pay and discha with the interest and penalties thereon to a date not less than two business days after the date of closing title, may at option of the seller be allowed to the purchaser out of the balance of the purchase price, provided official bills therefor interest and penalties thereon figured to said date are furnished by the seller at the closing. If at the date of closing title there be any other liens or encumbrances which the seller is obligated to pay and discharge, the seller may use any portion of balance of the purchase price to satisfy the same, provided the seller shall have delivered to the purchaser at the closing of instruments in recordable form and sufficient to satisfy such liens and encumbrances of record, together with the cost of record or filing said instruments. The purchaser, if request is made within a reasonable time prior to the date of closing of title, ag to provide at the closing separate certified checks as requested, aggregating the amount of the balance of the purchase price facilitate the satisfaction of any such liens or encumbrances. The existence of any such taxes or other liens and encumbra shall not be deemed objections to title if the seller shall comply with the foregoing requirements.

If a search of the title discloses judgments, bankruptcies or other returns against other persons having names the same a similar to that of the seller, the seller will on request deliver to the purchaser an affidavit showing that such judgments, ba ruptcies or other returns are not against the seller.

In the event that the seller is unable to convey title in accordance with the terms of this contract, the sole liability of the se will be to refund to the purchaser the amount paid on account of the purchase price and to pay the net cost of examining title, which cost is not to exceed the charges fixed by the New York Board of Title Underwriters, ~~and the net cost of surveying xx~~ and upon such refund and payment being made this cont shall be considered canceled, and lease shall otherwise continue in force & effe

The deed shall be delivered upon the receipt of said payments at the office of the seller, on the date vided for in paragraph #65 of the lease at o'clock on 19

~~The parties agree that xx brought about this sale and the seller agrees to pay the commission at the rates established or adopted by the Board of Real Estate Brokers in the locality where the property is situated.~~

It is understood and agreed that all understandings and agreements heretofore had between the parties hereto are merged in contract, which alone fully and completely expresses their agreement, and that the same is entered into after full investiga neither party relying upon any statement or representation, not embodied in this contract, made by the other. The purchaser inspected the buildings standing on said premises and is thoroughly acquainted with their condition.

This agreement may not be changed or terminated orally. The stipulations aforesaid are to apply to and bind the h executors, administrators, successors and assigns of the respective parties.

If two or more persons constitute either the seller or the purchaser, the word "seller" or the word "purchaser" shal construed as if it read "sellers" or "purchasers" whenever the sense of this agreement so requires.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties hereto.

In presence of:

JERRY SPIEGEL, Seller

PUFAHL REALTY CORP.

By________________
Purchaser.

NOTE: FIRE LOSSES. This form of contract contains no express provision as to risk of loss by fire or other ca before delivery of the deed. Unless express provision is made, the provisions of Section 240-a of the Real Pr Law will apply. This section also places risk of loss upon purchaser if title or possession is transferred prior to cl

SEP 19 2000
NYSDEC DIV. ENV. ENF.
EASTERN FIELD UNIT

GUARANTEE

IN CONSIDERATION:- of the letting of the premises described in Schedule A annexed hereto and made a part hereof by JERRY SPIEGEL, as Landlord to PUFAHL REALTY CORP., as Tenant, and the sum of One ($1.00) Dollar paid to the undersigned by the said Landlord, JERRY SPIEGEL, receipt of which is hereby acknowledged, the undersigned do hereby covenant and agree, jointly and severally, to and with the Landlord and the Landlord's legal representatives, if default shall at any time be made by the said Tenant, PUFAHL REALTY CORP., in the payment of the rent and the performance of the covenants contained in said lease dated 1st day of April, 1966, for the premises described in Schedule A, on the tenant's part to be paid and performed, that the undersigned will well and truly pay the said rent or any arrears thereof, that may remain due unto said Landlord, and shall also pay all damages that may arise in consequence of the non-performance of said covenants or either of them without requiring notice of any such defaults from said Landlord. The undersigned hereby waive all rights to trial by jury in any action or proceeding hereinaft instituted by the Landlord, to which the undersigned may be a party.

The guarantor agrees that in the event the Tenant shall become insolvent or shall be adjudicated a bankrupt, or shall fil a petition for reorganization, arrangement or similar relief unde any present or future provision of the national Bankruptcy Act, o if such a petition filed by creditors of the Tenant shall be approved by a court, or if the Tenant shall seek a judicial readjustment of the rights of its creditors under any present or future federal or state law or if a receiver of all or part of its property and assets is appointed by any state or federal court, and in any such proceeding the aforesaid lease shall be terminate or rejected, or the obligations of the Tenant thereunder shall be modified, the guarantor will immediately pay to the Landlord or its successors or assigns (a) an amount equal to all fixed and additional rent accrued to the date of such termination, rejecti or modification, plus (b) an amount equal to the then cash value of the rent and additional rent which would have been payable under said lease for the unexpired portion of the term thereby demised, less the then cash rental value of the leased premises for such unexpired portion of the term, together with interest on the amounts designated (a) and (b) above at 6 per cent per annum from the date of such termination, rejection or modification to the date of payment.

Neither the guarantor's obligation to make payment in accordance with the terms of this agreement nor any remedy for the enforcement thereof shall be impaired, modified, changed, release or limited in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of the Tenant or its estate in bankruptcy or of any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the national Bankruptcy Act, or from the decision of any court.

IN WITNESS WHEREOF: the undersigned have set their han and seals this 1st day of April 1966.

LINCOLN PROCESSING CORP.

By Herman J. Wafal (?)
President.

LAMINAR FABRICS CORP.

By Joseph Wafal Jr.
President.

WELLS 1-2040

HARVEY W. HEINE
PROFESSIONAL ENGINEER
270 NORTH BROADWAY
HICKSVILLE, NEW YORK

August 24, 1966

Jerry Spiegel
270 N. Broadway
Hicksville, N.Y.

RE: Premises:- 89 Frost Street
New Cassel, N.Y.

Gentlemen:

The undersigned hereby certifies that the square footage of the premises aforementioned, leased to Pufahl Realty Corp., measures 55,565 sq.ft. exterior dimensions.

Very truly yours,

HARVEY W. HEINE, P.E.

Harvey W. Heine

HWH:vmr

LICENSED PROFESSIONAL ENGINEER
HARVEY W. HEINE
No. 22637
UNIVERSITY OF THE STATE OF NEW YORK

SEP 19 2000
MICROFILM BY EMPIRE
FACSIMILE FILMING

AGREEMENT dated the 1 day of April, 1966, by and between JERRY SPIEGEL, 270 North Broadway, Hicksville, New York, hereinafter referred to as Landlord, and PUTAEL REALTY COR a domestic corporation having its principal office and place of business at 625 Main Street, New Cassel, New York, hereinafter referred to as Tenant.

WITNESSETH:

WHEREAS the parties hereto did on the 18th day of January, 1966, enter into a written lease whereby the Landlord leased to the Tenant certain premises located on the southerly side of Summa Avenue, New Cassel, New York, known as #710 Summa Avenue, and

WHEREAS the Tenant is now occupying said premises pursuant to said lease, and

WHEREAS parties hereto have entered into a lease executed simultaneously herewith for premises located on the weste side of Frost Street, New Cassel, New York, known as No. 89 Fro Street, upon which premises there is being constructed a buildin containing approximately 55,000 sq. ft.

NOW, THEREFORE, in consideration of the sum of One ($1.00) Dollar, each to the other in hand paid, receipt of whic is hereby acknowledged, and other good and valuable considerati it is agreed as follows:

FIRST: The Lease dated January 18, 1966, between the parties hereto shall terminate upon the commencement of the lea term provided for in the lease executed simultaneously herewith between the parties hereto for premises #89 Frost Street, New Cassel, New York.

SECOND: The Tenant shall pay rent for the premises 710 Summa Avenue, pursuant to the terms of the lease dated Jan ary 18, 1966, up to and including the date of termination of s lease or the date of vacating and surrender of possession of s premises by the Tenant, whichever date shall be the later.

THIRD: It is understood and agreed that the security deposit of $3375.00 which the Tenant deposited pursuant to the Lease dated January 18, 1966, for premises 710 Summa Avenue, New Cassel, N.Y., shall be applied by the Landlord to the security deposit for premises 89 Frost Street, New Cassel, N.Y. leased by the Landlord to the Tenant herein by written lease dated April 1, 1966.

FOURTH: Upon the termination of said lease dated January 18, 1966 as aforesaid and the payment of the rent as aforesaid and the surrender of the possession of said premises in good order and condition by the Tenant, the parties hereto shall have no further liability or claim as against the other with regard to the said lease dated January 18, 1966 for premises 710 Summa Avenue.

FIFTH: It is understood and agreed between the parties hereto that on and after October 1, 1967, Fufahl Realty Corp. shall have the right to cancel and terminate lease dated February 17, 1965 between Jerry Spiegel, Individually and as Executor of the Estate of Jacob Gellman and Bertha Spiegel as Landlord and Fufahl Realty Corp., as Tenant for the premises known as 90 Sylvester Street and 85 New York Avenue in New Cassel, N.Y. The Tenant shall give Landlord at least six months prior written notice by Registered or Certified Mail that the Tenant elects to cancel and terminate the lease dated February 17, 1965.

Upon the termination of said lease as aforesaid and the payment of rent and other charges provided for in said lease, and upon the return by the Landlord of the security deposit by the Tenant pursuant to said lease and the surrender of possession of said premises in good order and condition by the Tenant, the parties to said lease dated February 17, 1965 shall have no further liability or claim each as against the other with regard to said lease of premises 90 Sylvester Street and 85 New York Avenue.

SIXTH: In the event that the lease dated April 1, 1966 between the parties hereto for premises 59 Front Street, New Cassel, N.Y. is cancelled or terminated for any reason prior to the exercise of the option hereinbefore granted to Tenant in paragraph Fifth, then and in that event, the Tenant shall have no right to cancel and terminate the lease dated February 17, 1966.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

Jerry Spiegel.

FEWAHL REALTY CORP.

By Chas. Jafold
President.

SEP 19 2000

GUARANTEE

IN CONSIDERATION: - of the letting of the premises described in schedual A ~~and next~~ hereto and made a part hereof by JERRY SPIEGEL, as landlord to PUFAHL REALTY CORP., as tenant, and the sum of $1.00 paid to the undersigned by the said landlord JERRY SPIEGEL, receipt of which is hereby acknowledged. The undersigned do hereby covenant and agree, jointly and ~~severly,~~ severally to and with the landlord and the landlords legal representatives, ~~after fault~~ if default shall at any time be made by the said tenant PUFAHL REALTY CORP., in the payment of the rent and the performance of the covenants contained in said lease dated day of April 1966, ~~Afore~~ the premises described in schedual A, on the tenants part to be paid and performed, that the undersigned will well and truly pay the said rent or any arrears thereof, that may remain due unto said landlord, and shall also pay all damages that may arise in consequence of the non-performance of said covenants or either of them without requiring notice of any such defaults from said landlord . The undersigned hereby waive all rights to trial by jury ~~and~~ any action or proceeding herein after instituted by the landlord, to which the undersigned may be a party.

IN WITNESS WHEREOF: - the undersigned ~~has~~ have set their hands and seals this 1 day of April 1966.

LINCOLN PROCESSING CORP.

BY Herman J. Pufahl
Pres.

LAMINAR FABRICS CORP.

BY Joseph Pufahl
Pres.

NYS DIV. OF ENF. EASTERN FIELD UNIT

RIDER TO LEASE
dated ~~March~~ April, 1966
between
JERRY SPIEGEL, as Landlord
and
PUFAHL REALTY CORP., as Tenant

INSURANCE POLICY ENDORSEMENTS: All policies of insurance, fire, liability, glass, boiler and rental value and any and all other insurance policies shall carry thereon and have endorsed thereon the following endorsements:

1. It is understood and agreed that in the event of cancellation, or material change in policy affecting the owners or Landlord's interest, ten (10) days prior written notice will be given to the Insured by Certified or Registered Mail.

2. It is understood and agreed that this policy is taken out at the request of Pufahl Realty Corp., as Tenant, and is therefore responsible for all premiums on said policy.

3. It is understood and agreed that the named Insured under this policy is Jerry Spiegel and/or any affiliated or subsidiary interest now in existence or hereinafter constituted.

4. With regard to Fire Insurance Policies:
   Subrogation Clause
   Any release from liability entered into by the Insured prior to loss hereunder shall not affect this policy or the right of the Insured to recover hereunder. "The right of subrogation against affiliated, associated and/or subsidiary corporations or companies and/or any partners, officers and/or individuals connected herewith is hereby waived."

Exhibit B

PIC NO. 1 171 732

CERTIFICATE AND AGREEMENT

THIS CERTIFICATE AND AGREEMENT, made this 24th day of May, 1966, by and between JERRY SPIEGEL, residing at 10 Broadlawn Avenue, Kings Point, New York, (hereinafter called "Landlord"), PUFAHL REALTY CORP., a New York corporation having its principal place of business at 625 Main Street, New Cassel, New York (hereinafter called "Tenant") and THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation with an office at 250 Broadway, New York, New York (hereinafter called "Prudential"),

W I T N E S S E T H :

RECITALS:

Landlord is the present owner in fee simple of property situate at New Cassel, in the Town of North Hempstead, County of Nassau, State of New York, on the westerly side of Frost Street, and more particularly described in Schedule "A", attached hereto and made part hereof (which property as so described is hereinafter called the "premises"), being the same premises as described in the mortgage hereinafter referred to.

Landlord is about to improve the premises by erecting or causing to be erected thereon a building and certain other improvements.

Landlord and Tenant entered into an agreement of lease of the entire premises dated April 1, 1966, (which agreement, containing 74 numbered paragraphs and an Addendum containing 15 numbered paragraphs is hereinafter called the "lease"), whereby the entire premises was leased to Tenant for a term of 20 years. The annual rent is not less than $50,000. Tenant is also obligated to pay real estate taxes. The lease is guaranteed by Lincoln Processing Corp. and Laminar Fabrics Corp.

Prudential is about to make a loan of $500,000.00 to Landlord, and Landlord is about to execute both a note for $500,000.00, plus interest, and a mortgage in favor of Prudential on the improved premises to secure said note, which mortgage is about to be recorded. As a condition to accepting the note and mortgage, Prudential has required Landlord and Tenant, jointly and severally, to agree, among other things, to subordinate the lease to the lien of the mortgage and not to modify the lease without the prior written consent of Prudential.

PLF/DEF
EXHIBIT
DATE 11/18/ RPTR
Jineen Pavesi, RPR, RMR, CRR

015931

NOW, THEREFORE, in order to induce Prudential to make the mortgage loan to Landlord or accept an assignment of the note and mortgage and a modification thereof, or both, as the case may be, and in consideration of Prudential's making the mortgage loan to Landlord or accepting an assignment of the note and mortgage and a modification thereof, or both, as the case may be, Landlord and Tenant hereby, jointly and severally, covenant and agree with and for the benefit of Prudential as follows:

1. Landlord and Tenant, each for itself, covenants and warrants that: [redacted] (c) the lease is of the entire premises as improved or to be improved; (d) it has not executed any assignment of the lease or of the rents to accrue thereunder; (e) it has not performed any acts or executed any other instrument which might prevent Prudential from operating under any of the terms and provisions of this Agreement, or which would limit Prudential in such operation; (f) except as herein modified for the benefit of Prudential, it has not agreed to any other modification of the lease; (g) there have been no prepayments of or any offsets or claims against rents; (h) there are no defaults now existing under the lease; and (i) the lease is in full force and effect according to its original terms except as herein modified.

2. Without first obtaining the written consent of Prudential, neither Landlord nor Tenant nor both, will:

(a) Cancel, terminate or surrender the lease, except as provided therein and then only after 15 days written notice to Prudential;
(b) Grant any concession in respect thereof;
(c) Reduce the rent or prepay any rent in advance of the due date thereof;
(d) Create any offsets or claims against rents;
(e) Modify the lease in any respect;
(f) Assign in whole or in part any of the rents due under the lease or Tenant's interest in the lease, or sublet the whole or any portion of the Premises except as permitted by the lease and provided that in connection with an assignment of Tenant's interest in the lease: (i) the assignee assumes the lease and a duplicate original of the instrument of assignment and assumption, in recordable form, be delivered to Prudential and the assignee specifically assumes the obligation imposed by this

agreement by an instrument in writing, in recordable form, delivered to Prudential, (ii) conformed copies of all other papers required by the lease to be delivered to Landlord are also delivered to Prudential forthwith, and (iii) no assignment of Tenant's interest in the lease, even if permitted by the lease or consented to by the Landlord or Prudential, shall release Tenant from any liability under the lease or this Agreement.

3. The fee interest of Landlord and the leasehold interest of Tenant created by the lease shall never merge nor shall the leasehold interest otherwise be extinguished without the prior written consent of Prudential. Any deed to Tenant shall contain provisions to prohibit such merger. *

4. In the event that Prudential shall foreclose the mortgage and if Tenant, in its capacity as Tenant, shall not be a party defendant to the judgment in such foreclosure action, then Tenant shall be obligated to the purchaser at the foreclosure sale and its successors or assigns, as successor landlord under the lease, notwithstanding any cancellation, modification or assignment of the lease or merger of the leasehold and the fee interests which may have been made or suffered by Landlord or Tenant without the written consent of Prudential.

Tenant agrees that Tenant shall not be entitled to assert against Prudential (in its capacity as successor landlord on account of foreclosure or acceptance of a deed in lieu of foreclosure, should Prudential ever assume such capacity) any claim or liability based on events which have occurred or shall occur before Prudential becomes its landlord, if ever.

5. Tenant shall pay the rents pursuant to the terms of the lease and perform all its other obligations pursuant to the terms of the lease.

6. Landlord shall perform its obligations pursuant to the terms of the lease.

7. Landlord agrees that either of the following shall, at the option of Prudential, be considered a default of the mortgage:

(a) any default by Landlord in fulfilling the terms, covenants and conditions herein set forth, or

(b) any default by Tenant in fulfilling the terms, covenants, agreements and conditions herein set forth except such of tenant's defaults as Landlord shall not in good faith and with due diligence be able to cure.

8. Whenever requested by Landlord or Prudential, Tenant

* The consent of Prudential required in the circumstances set forth in Paragraphs 2 and 3 hereof shall not be unreasonably withheld by Prudential; and unless Prudential specifically fails to give its approval, together with the reasons for its disapproval, within sixty (60) days after such consent has been requested, such consent and approval shall be deemed given.

will, without charge, execute and deliver to the party making such a request a written certificate, in recordable form, to the effect that the lease is unmodified and in full force and effect (or if there have been modifications, that the lease is in full force and effect as modified and stating the modifications), and the dates to which the rent and additional rent have been paid, and stating whether or not Landlord is in default in keeping, observing or performing any of the terms contained in the lease or this Agreement and, if in default, specifying each such default, and also a statement as to whether or not Tenant has exercised its renewal option or options, if any.

9. Whenever requested by Tenant or Prudential, Landlord will, without charge, execute and deliver to the party making such request, a written certificate in recordable form, to the effect that the lease is unmodified and in full force and effect (or if there shall have been modifications that the lease is in full force and effect as modified and stating the modifications) and the dates to which the rent and additional rent have been paid, and stating whether or not to the best knowledge of Landlord, Tenant is in default in keeping, observing or performing any of the terms contained in the lease or this Agreement and, if Tenant shall be in default, specifying each such default of which Landlord may have knowledge.

10. The lease (and Tenant's purchase option, if any) is and shall continue to be subject and subordinate to the lien of the mortgage and to any advancements made thereon, and to any extensions, modifications or renewals thereof, and any other mortgage on the premises which may hereafter be held by Prudential. The lease is not, and shall not be, subject or subordinate to any lien other than the lien of the mortgage held by Prudential and to any advancements made thereon and to any extensions, modifications or renewals thereof and any other mortgage on the premises which may hereafter be held by Prudential.

11. Tenant agrees that it will not sell, convey or transfer all or substantially all of its assets or business, including without limitation a sale which is subject to the New York law on bulk sales, without assigning the lease to Tenant's purchaser or successor in business in connection with such sale or transfer. Any such assignment of the lease shall be limited by and subject to full compliance with the provisions and requirements of paragraph 2 hereof. Landlord agrees that any notice received by it pursuant to such law will forthwith be forwarded to Prudential. *

12. Landlord and Tenant agree that the lease is modified and amended as follows:

(a) Paragraph 5 of the lease is hereby amended by deleting from the 6th and 7th lines thereof the following: "and if the damage has rendered the premises untenantable, in whole or in part, there shall be an apportionment of the rent until the damage has been repaired".

(b) Notwithstanding anything to the contrary contained in paragraph 5 of the lease, a receiver in foreclosure or a purchaser at a foreclosure sale shall be obligated, in case of damage by fire, only to make the proceeds of applicable fire insurance policies available to Tenant to reimburse Tenant for restoration and repair of the premises.

(c) Paragraph 32 is hereby amended by adding the following:

"Tenant shall be liable for any damages or injuries to the structure and building occasioned by such signs or installation or removal thereof".

(d) Paragraph 37 of the lease is hereby amended by adding the following:

"The term "real estate taxes" for the purposes of this paragraph shall be deemed to include any and all taxes, assessments, charges or impositions by whatever name called which are specifically geared to, measured by or based on, in whole or in part, the demised premises or the value thereof or the rental income therefrom. **

(e) Paragraph 47 of the lease is hereby amended by inserting the words "of the building" after the words "square feet" in the 13th line thereof.

** But the same shall not include the Federal Income Tax, New York State Income Tax or any other general income tax.

* Nothing herein in paragraph 11 shall be deemed to affect any sale of assets of the corporations guaranteeing the lease, or other assets of the tenant other than those relating to the premises at 89 Frost Street.

(f) Paragraph 56 of the lease is hereby deleted in its entirety and shall be of no force or effect.

(g) Paragraph 63 of the lease is hereby amended by adding thereto the following:

"The Landlord's right to assign this lease is limited to an assignment to the holder of the first mortgage on the premises".

(h) The last course in the description of the demised premises contained in "Schedule A" attached to the Contract of Sale which is attached to the lease and referred to in paragraph 65 of the lease is hereby amended to read as follows:

"RUNNING THENCE north 85 degrees, 02 minutes, 00 seconds east 503.25 feet to the westerly side of Frost Street at the point or place of beginning".

13. All of the covenants and agreements herein contained on the part of Landlord and Tenant shall apply to, bind and enure to the benefit of the respective successors and assigns of the Landlord, Tenant, Prudential and any purchaser at a foreclosure sale.

IN WITNESS WHEREOF, this Certificate and Agreement has been executed by the Landlord and Tenant as of the day and year first above written.

WITNESS:

JERRY SPIEGEL

FUFAHL REALTY CORP.

ATTEST:

(Seal)

Secretary

By Pres.

(Seal)

APPROVED:

LINCOLN PROCESSING CORP.

ATTEST:

(Seal)

By Pres.

Secretary

LAMINAR FABRICS CORP.

ATTEST:

By Pres.

Secretary

015936

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

On the 25th day of May, 1966, before me personally came JERRY SPIEGEL, to me personally known and known to me to be the individual described in, and who executed the foregoing instrument, and duly acknowledged that he executed the same.

Philip V. Shaker

PHILIP V. SHAKER
NOTARY PUBLIC, State of New York
No. 30-3608245
Qualified in Nassau County
Commission Expires March 30, 1967

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

On the 25th day of May 1966, before me personally came Charles Pufahl to me known, who, being by me duly sworn, did depose and say that he resides at Charles Pufahl, 360 Lake Shore Drive, Massapequa Park, N.Y.; that he is the President of PUFAHL REALTY CORP., the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Philip V. Shaker

PHILIP V. SHAKER
NOTARY PUBLIC, State of New York
No. 30-3608245
Qualified in Nassau County
Commission Expires March 30, 1967

015937

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

On the 25th day of May 1966, before me personally came Herman Pinfold to me known, who, being by me duly sworn, did depose and say that he resides at 1568 Miriam Court, Elmont, L.I. N.Y. ; that he is the President of LINCOLN PROCESSING CORP., the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Philip V. Shaker

PHILIP V. SHAKER
NOTARY PUBLIC, State of New York
No. 30-3608245
Qualified in Nassau County
Commission Expires March 30, 1967

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

On the 25th day of May 1966, before me personally came ~~Charles~~ Joseph Pinfold to me known, who, being by me duly sworn, did depose and say that he resides at 81 Greendale Ave New Hyde Park N.Y. ; that he is the President of LAMINAR FABRICS CORP., the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Philip V. Shaker

PHILIP V. SHAKER
NOTARY PUBLIC, State of New York
No. 30-3608245
Qualified in Nassau County
Commission Expires March 30, 1967

015938

ALL that certain lot, piece or parcel of land with the buildings thereon erected, situate, lying and being at New Cassel in the Town of North Hempstead, County of Nassau and State of New York, bounded and described as follows:

BEGINNING at a point on the Westerly side of Frost Street distant 372.23 feet southerly from the corner formed by the intersection of the westerly side of Frost Street with the southerly side of Summa Avenue (Fulton Street)

RUNNING THENCE South 7 degrees 00 minutes 53 seconds East along the westerly side of Frost Street 177.81 feet;

THENCE South 85 degrees 02 minutes 00 seconds West 284.61 feet

THENCE South 4 degrees 58 minutes 00 seconds East 5.43 feet

THENCE South 85 degrees 02 minutes 00 seconds West 225 feet

THENCE North 4 degrees 58 minutes 00 seconds West partly along the easterly side of Main Street 183.12 feet

THENCE North 85 degrees 02 minutes 00 seconds East 503.25 feet to the westerly side of Frost Street, the point or place of beginning.

JERRY SPIEGEL,
Landlord,

And

PUFAHL REALTY CORP.,
Tenant,

With

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

CERTIFICATE AND AGREEMENT

DATED:

015940

Exhibit C

REPORT

To: Daniel Riesel, Esq.

From: David Tesler, Esq., CEO, LeaseProbe, LLC

Date: May 5, 2013

Re: Expert Opinion in Next Millennium Realty, LLC et ano v. Adchem Corp. et al.

I have been asked to review a lease between Jerry Spiegel and Pufahl Realty Corp. dated April 1, 1966, and to determine whether that lease is a typical commercial lease that would reflect the usual relationship between a landlord and tenant or whether it is unusual in the sense that it grants the Tenant sufficient rights to make that tenant the equivalent of an owner of the leased premises.

Qualifications

I am the CEO of LeaseProbe, LLC, a lease abstracting company I founded in 2004 and CEO of Real Diligence LLC, a real estate financial due diligence company I acquired in 2007. Prior to launching LeaseProbe, I served in the New York offices of Skadden Arps Slate Meager & Flom LLP and Jenkens & Gilchrist, Parker Chapin LLP. During that time, I represented clients in the acquisition and disposition of various types of commercial real estate and also represented clients (both landlords and tenants) in commercial lease transactions and real estate finance / refinance transactions. After having reviewed, summarized and drafted thousands of leases, I saw there was an underserved market for commercial lease abstracting or review services. In response, I founded LeaseProbe. LeaseProbe is devoted solely to the production of commercial lease abstracts and lease review and is the largest company in the United States offering these services with over 100 full time commercial lease analysts.

I graduated with honors from Benjamin N. Cardozo School of Law in New York City, and after graduation, clerked for now retired Chief Justice Dorit Beinisch at the Israeli Supreme Court in Jerusalem. Currently, I am on the Faculty at New York University's School of Real Estate and have taught classes on commercial leasing at Columbia University's School of Law. Real Estate

1125 Ocean Avenue • Lakewood, NJ 08701 • Phone: 732.333.2800 • 877.56.Lease Fax: 732.333.2801
www.leaseprobe.com • Email: info@leaseprobe.com

Weekly, a publication serving the real estate industry, selected me as an "Industry Leader" in 2010. Please click on the following link to view an article I published about lease review:

http://leaseprobe.com/PDFs/LeaseAbstractsTediousTimeConsumingCrucial.pdf

Operating and managing a lease abstracting company has provided me with unusual and (perhaps even unparalleled) access to tens of thousands of leases. This immense library of leases contains agreements drafted over three quarters of a century. Although a lease from the1960s would qualify as an "older" lease within our library, we have reviewed and analyzed many hundreds of leases from that time period. Additionally, unlike a law firm specializing in commercial real estate leases or even a large real estate company, our library of leases contains leases from many thousands of different Landlords, allowing us to see a wide swath of commercial real estate leases spanning different asset classes (retail, office and industrial) and geographic locations.

Expert Opinion

I have reviewed that April 1, 1966 lease from Jerry Spiegel ("Spiegel" or "Plaintiffs") and Pufahl Realty Corp.[1], the Addendum, Rider and Guarantee (together the "Lease"). The lease is attached to this report. I have also reviewed Commander Oil v. Barlo Equipment Company, 215 F.3d 321 (2nd Cir. 2000) Cert denied, 531 U.S. 979 (2000) ("Commander Oil") that discusses the various factors contained within a lease that may convert a tenant/lessee into a de facto landlord/owner.

It is my opinion that the Lease is a typical commercial lease reflecting the usual provisions setting forth the relationship between a landlord and tenant. In my analysis below, I note that the lease clauses are not unusual. Furthermore, special attention will be paid to the specific provisions of the Lease that do not allow for the conclusion that the sublessor/tenant possessed a sufficient bundle of rights to be deemed a de facto owner. I have reached my conclusions based upon my experience, which includes the review of thousands of leases. The basis of my opinion follows:

I. Length of Lease Term: (Lease, Section 36) - The Lease was for a term of twenty (20) years which is not an unusually long term for industrial leases despite industrial leases often have longer terms than those found in office and retail leases. The reason for longer industrial terms is because of the typically high cost of outfitting the premises with industrial equipment. It is not uncommon for standard industrial leases to be for terms longer than twenty (20) years. However, even many office and retail leases today have an initial term of five (5) years and allows the tenant, at the tenant's sole discretion, to renew the lease for three or four additional five (5) year terms. Taken together, this allows the tenant to create a term of 20 to 25 years that can be exercised at Tenant's sole option. The facts themselves demonstrate that the length of the term cannot demonstrate de-facto ownership because despite the twenty (20) year lease term, the Lease was terminated due to Speigel's termination after only ten (10) years.

---

[1] Pufahl Realty Corp. changed its name to Northern State Realty Corp., which subsequently assigned its interest in the Lease to Northern State Realty Co.

A good indication that a twenty year lease does not reflect a transfer of ownership interests is that New York's taxing authority has not treated such short leases as triggering a tax on transfer of a ownership interest. In part to ensure that no party escapes paying NY transfer tax upon transfer of commercial real estate, NY State taxes all leasehold interests that are substantively similar to fee ownership. Therefore, Section 575.7(a) of the Real Estate Transfer Tax Regulations provides (in part) that a conveyance of a leasehold is not taxable if the sum of the term of the lease or sublease and any options for renewal exceeds forty nine (49) years. This provides additional evidence that a twenty-year lease should not be transform a lessee interest into a lessor interest.

II. Damage – (Lease, Section 5) The Lease states that the Landlord may terminate the Lease in the event of fire or extensive damage to the building. In fact, as previously discussed, this occurred in the 10th year of the lease when Speigel terminated the lease without compensation to the sublessor/tenant or even any rights reserved. The ability to have the term of the Lease terminated against your will, is not consistent with the rights and privileges associated with an owner.

III. Right of Re-Entry – (Lease, Section 8, Addendum to Lease, Section 13) - Landlord reserved the right (with or without notice, depending on the reason) to renter the Premises upon any major or even minor default by Tenant. Upon reentry, the landlord was entitled to summary proceedings to terminate the lease. Under the lease, the Tenant was contractually required to waive its right to receive notice. This is not consistent with the rights and privileges of an owner.

IV. Subordination – (Lease, Section 10, 12) – Tenant's right to exercise its option to purchase is subordinate to the mortgagee's superior rights. The Lease also eliminates the Tenant's right to apportion rent if the building is partially damaged and the Tenant's right to make repairs and charge them to the Landlord if the Lease is terminated. This is not consistent with the rights and privileges of an owner.

V. Permitted Use – (Lease, Section 19) - Tenant was not permitted to bring in any subtenant that would in any way increase the cost of fire insurance to the Premises. This is a significant use restriction, especially for an industrial commercial real estate asset. Furthermore the Addendum restricts the Tenant's right to use the Premises by only allowing its use for "lamination and coating of papers, textiles and fabrics and general manufacturing purposes." This is not consistent with the rights and privileges of an owner that has unfettered discretion to use the property however it sees fit.

VI. Condemnation / Eminent Domain – (Lease, Section 21 and 47) - In the event of Condemnation / Eminent Domain, the Lease was to terminate and Landlord had the sole right to any and all award. The Lease explicitly stated, "No award shall belong to the Tenant". This is not consistent with the rights and privileges of an owner.

VII. Utilities and Insurance – (Lease, Section 28 and 30) - It is typical for an industrial Tenant to pay its own utility and insurance costs directly. This is the more common scenario due

to very specific requirements of each industrial tenant and the premise that the industrial tenant is better able to understand its business and mitigate its risk than can the Landlord. This should not be interpreted as an indicia of ownership. It should also be noted that the Landlord had the right to procure any insurance that the Tenant failed to purchase at Tenant's sole cost and expense. This is not consistent with the rights and privileges of an owner.

VIII. Assignment of Interest – (Lease, Section 4 and 34) - Under the Lease, the Tenant remained liable for the entire lease term, notwithstanding any sublease or assignment thereof. The lessee's right to assign the Lease was provided on the condition the assignee will "assume the terms of this lease agreement on a standard form of lease assignment in recordable form and on the further condition that the Tenant remain liable under the terms of this agreement for the entire lease term." The Landlord, on the other hand, and consistent with the rights of ownership, had unconstrained authority to assign its interests under the Lease to mortgage the underlying property, or to alienate the Premises during the Lease term.

IX. Rent – (Lease, Section 35 and 36) - The Lease is considered a "triple net lease", whereby the Tenant has obligations to pay for utilities, insurance and taxes which is entirely consistent with single tenant industrial leases. The fact that the Landlord remained liable for inheritance, succession and transfer taxes is consistent with the premise that the Landlord maintained ownership status throughout.

X. Improvement to Premises and Restoration at End of Term – (Lease, Section 31). Tenant has the obligation of notifying the Landlord at the end of the term of any improvements it wants to remove and provide additional security deposit money prior to removal. Tenant must then pay for the restoration of the Premises. This is not consistent with the rights and privileges of an owner.

XI. Mechanic's Liens – (Lease, Section 62) - The Tenant may not make any contract with may create or be the foundation for any lien on the asset. This is not consistent with the rights and privileges of an owner.

XII. Repairs – (Addendum to the Lease, Section 4) – An addendum to the Lease states that, notwithstanding anything contained to the contrary in the Lease, the Landlord is required to make all structural repairs to the demised Premises. The requirement to make structural repairs is an indicia of ownership, especially since some industrial leases put the onus of structural repairs on the Tenant.

XIII. Dominion and Control – (Lease, Section 60) – The Lease asserts that the "Tenant is and shall be in exclusive control and possession of the demised premises as provided herein, and Landlord shall not be liable in any event whatsoever for any injury or damage to any property or to any person happening on or about the demised premises, nor for any injury or damage to any property of Tenant, or of any other person contained therein. The provisions hereof permitting Landlord to enter and inspect the demised premises are made for the purpose of enabling Landlord to be informed as to whether tenant is

complying with the agreements, terms, covenants and conditions hereof, and to do such acts as Tenant shall fail to do." This provision is common to industrial leases because the landlord must attempt to distance itself from the damages and liabilities that frequently occur at industrial sites. By explicitly asserting Tenant control and distancing itself from Landlord control, the Landlord is (intelligently) limiting its potential liability. This clause should be seen as an attempt to limit liability and not as an attempt to shift ownership rights and burdens unto the Tenant. This clause attempts to avoid liability for the Tenant's actions but carefully retains the landlord's right to enter, inspect and make repairs to protect its ownership interest. Reading this lease clause in any other way would be inconsistent with the entire thrust of the lease as discussed above.

XIV. Form of Lease Utilized – This lease was drafted using a standard "Blumberg" lease form. Even with the usual amendments that accompany a "Blumburg" lease, a Landlord that intends on conferring ownership rights on a Tenant would not accomplish this by utilizing the most ubiquitous of standard Landlord/Tenant lease forms. Stated differently, a "Blumburg" lease form is inherently standard – and a standard Tenant cannot be deemed a Landlord.

The Commander Oil List

I have been instructed to discuss the elements of the Lease in connection with the non exclusive list set forth in the Commander Oil decision which provided five (5) factors that may allow for the Tenant to be deemed a de facto owner / Landlord. It is my opinion that none of the factors on this list would apply to this Lease and would create the unusual circumstances resulting in defacto ownership:

1. *Whether the Lease is for an extensive term*. The twenty year term is typical for industrial tenants, and certainly is not the proverbial 99 year lease. See the discussion in Section I above.

2. *Whether the lease cannot be terminated by the owner before it expires by its terms*. The Lease provides several grounds for the termination of the Lease prior to the end of the twenty year term. In fact, as previously discussed, the owner terminated this lease before it expired due to the fire on Premises.

3. *Whether the Tenant has the right to sublet all of some of the property without notifying the owner*. The Tenant may sublet it, but there are significant restrictions, such as (i) the tenant remains liable for the Lease's obligations (ii) the requirement of the assignee to assume the lease, (iii) that the assignment be on a standard form of lease, (iv) that it must be drafted in recordable form and that (v) the Tenant remain liable. If the tenant really had an ownership interest in 89 Frost Street it would be able to freely alienate the premises; the fact that the tenant did not indicates that the tenant did not have any ownership interests arising from the Lease. Similar assignment and sub leasing

provisions are not uncommon in commercial leasing of this nature. Furthermore, there is a limitation on how the property may be used (See Section V above).

4. *Whether the Tenant is responsible for the payment of all taxes, insurance, and operation and maintenance costs.* Triple net leases where the tenant pays taxes as part of the rent are typical. As discussed above, the fact that the Landlord remains liable for inheritance, succession and transfer taxes is consistent with the Landlord maintaining ownership status throughout.

5. *Whether the Tenant is responsible for making all structural and other repairs. The Lease provides that the landlord will make all repairs for the first two years and then all structural repairs.* See discussion in Section XII above.

Conclusion

Based upon my general and specific knowledge of commercial real estate leases, this lease is a typical single tenant industrial lease. The lease provisions were common to similar leases of that age and little has changed in the way industrial leases are drafted nearly 50 years later. Twenty years is a common term for a tenant that utilizes heavy machinery in its ordinary course of business. In fact, in my experience it would be unusual to find an industrial lease that did not allow for a term (that would include renewals that were in tenant's sole option) of at least that amount of time. Additionally, by the standards articulated in Commander Oil, the Lease is a typical lease and does not fall into any of the examples provided by the Court that describe how a non-typical lease may be considered as de facto ownership.

Previous Expert Testimony

I have not testified at trial or deposition as an expert witness during the past four years.

Compensation

I am being compensated at $500 per hour for my time.

Written and Prepared by: David I Tesler, Esq.

1125 Ocean Avenue • Lakewood, NJ 08701 • Phone: 732.333.2800 • 877.56.Lease Fax: 732.333.2801
www.leaseprobe.com • Email: info@leaseprobe.com

Exhibit D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
Case No. 2:03-CV-5985
----------x

NEXT MILLENNIUM REALTY, L.L.C.,
et al.,
Plaintiffs,
-against-
ADCHEM CORP., et al.,
Defendants.
----------x
460 Park Avenue
New York, New York

October 3, 2013
11:05 a.m.

DEPOSITION of DAVID TESLER, taken by the Plaintiffs, held at the aforementioned time and place, before Sherri Flagg, a Registered Professional Reporter, Certified LiveNote Reporter, and Notary Public.

1
2 A P P E A R A N C E S:
3
Attorneys on Behalf of Plaintiffs:
4
KEVIN MALDONADO & PARTNERS, LLC
5 5 Hickory Hill Road
Windham, New York 12496
6 BY: KEVIN E. MALDONADO, ESQ.
kevinmaldonado64@yahoo.com
7
8 Attorneys on Behalf of Defendants:
9 SIVE, PAGET & RIESEL, P.C.
460 Park Avenue
10 New York, New York 10022
BY: DANIEL RIESEL, ESQ.
11 driesel@sprlaw.com
12
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- D. TESLER -

landlord have? Which is your question?

Q. After the lease was signed and executed and the property was turned over to the Defendants, what reservations did the landlord have in terms of saying how the property could be used pursuant to the lease?

A. Okay. So let's find the use clause because that's the most direct answer to your question. Let's see if I referenced it here. Permitted Use, Section 19. I believe the words are that the tenant's use was restricted to lamination and coatings of papers, textiles and fabrics and general manufacturing purposes, which means, for example, that the tenant was not allowed to bring in a client that was not a manufacture -- bring in anybody or anything or do anything with the property that was not for manufacturing purposes, which is certainly a limitation of the tenant's use.

Q. So under the lease, the tenant could do anything that's related to manufacturing processes?

- D. TESLER -

A. I wouldn't say that completely in wholesale because there's -- anything that would, for example, if I recall correctly, increase the insurance risk at the property was also something that wasn't allowed. So it wasn't a carte blanche at all.

Q. In the process of reviewing the 10,000 leases that your company does a year, have you seen similar clauses to this where tenants are permitted to do any manufacturing?

A. Of course.

Q. Okay. Would this be construed by you to be a relatively broad use clause?

A. I would say typical of -- it would be a very typical clause in any context, industrial or retail or office. That's the way -- I would -- that's the way these use clauses are drafted. So, for example, a gap lease might say "for general retail purposes" or an office lease like this one would probably say "for general office purposes" and the same with industrial.

Q. I'm not asking you if it's typical

- D. TESLER -

or not. I'm asking you if this is a pretty broad grant of power to the tenant under the lease.

MR. RIESEL: Objection to the form of the question. You may answer it.

A. "Broad" is laden with judgment, so I would just say it's typical.

Q. I'm not asking you if it's typical. I'm asking you if it's a fairly expansive list of activities that can be conducted or a very limited number of activities.

A. That's all relative. If he wanted to put up a storefront to sell his wares, he would not be allowed to do that because then it would be retail. So it's not -- it's -- "broad" is perspective. I don't agree to your use of the word "broad." It doesn't mean anything to me.

No. I could say no, it's not broad because he can't -- he's forbidden from doing a lot of different things.

Q. So under your interpretation of the lease, what type of manufacturing

- D. TESLER -

that allow the landlord to terminate a lease prematurely?

A. I think I've stated the most common ones and even those common ones -- quote-unquote, common ones only exist in less than 1 percent of the leases. Most times when a tenant, you know, enters into a contract with a landlord, it's for them to have, you know, unfettered access and the right to exist in that space for a given period of time.

Q. Have you seen leases where the landlord reserves the right to terminate the lease upon the sale of the property?

A. I have but so rare, so rare.

Q. And that's not the case in the lease that we're talking about with respect to Jerry Spiegel and the Pufahl parties?

A. Correct.

Q. What other lease termination provisions have you seen, irrespective of whether they're rare or not, that the landlord retained rights to terminate?

A. I think I've described most of

- D. TESLER -

responsibility?

A. That would be the tenant's.

Q. Special assessments would be whose responsibility?

A. Tenant's.

Q. Is that a rare provision?

A. Not for a single-tenant industrial property.

Q. How many single-tenant industrial property leases have you reviewed in the course of your experience?

A. Hundreds.

Q. What percentage has provisions that require the tenant to pay assessments?

A. 50 to 60 -- you know what? I don't want to quantify it but way over 50 percent. I would say more than that, actually. I would say about -- I hate quantifying it because it's hard to quantify under oath when you haven't done the math. But let's just say north of 75 percent.

Q. Under the lease that we're talking about here, who pays the insurance?

A. The tenant.

- D. TESLER -

in this case talks about a 99-year lease term which is, in fact, a very long term.

The second bundle of rights is with regard to termination. You know, the lease provides several grounds for termination as we discussed. Yes, they're typical but, in fact, what actually did happen was the lease did, in fact, terminate prior to the end of the term. So it's a little bit hard to argue that that particular bundle of rights is not applicable.

We talked about the sublet issue already, but it does not meet the direct standards set under in terms of record notice.

You know, what you've been harping on right now is whether the tenant is responsible for all payments of taxes, insurance and operation and maintenance costs. And I'm sure you're aware of what's called the triple-net lease, and a triple-net lease is about as common a lease type as exists in the commercial real estate

- D. TESLER -

market.

This is a triple-net lease and the very fact that the tenant has to pay taxes, insurance and operations no more makes it -- does not make it at all a de facto landlord. And if that was the case, you would have millions of leases around the country all of a sudden, being -- the tenant being considered a landlord and owner for which is obviously an impossibility.

And one of the things that they teach you, you know, in Real Estate 101 is whoever makes structural repairs is considered the owner. And, in fact, here the landlord/owner is responsible for it.

So those are just some of the bundle of rights that the landlord has and the tenant doesn't.

Q. You keep using the terms "typical" or "normal" and I believe you try to extrapolate that into if something's typical or normal, it's not an indicia of ownership.

Is that your testimony?

A. Well, for example, to answer your

- D. TESLER -

question, if a triple-net lease is a -- you kept on asking me whether taxes, insurance and maintenance costs -- if I, in fact, see them as an indication of ownership. And one could say certainly that is an indication of ownership, but a triple-net lease which is a very, very typical standard -- typical in that there are so many leases that are -- that are triple-net.

So if there are -- if 50, 60, 70 percent of tenants also have to pay taxes, insurance and operation, then all tenants have some degree of indications of ownership to empty the term of meaning.

Q. Let's see if we can agree on something. Triple-net leases, for example --

A. Yeah.

Q. -- they're typical and normal --

A. Yes.

Q. -- right? And in Commander Oil, one of the factors that the Court has set out as an indicia of ownership is if it is a triple-net lease, it's an indicia of

- D. TESLER -

BY MR. MALDONADO (continuing):

Q. As you sit here without looking at the mortgage, what's the significance of it?

A. Well, first of all, it gives the landlord -- it allows -- first of all, the very presence of the mortgage itself, if they didn't get the mortgage, the whole lease would have been terminated, which to me is a very significant point about whether or not the landlord -- you know, the tenant can be considered a landlord when the very existence of the whole lease could have been terminated by the landlord's failure to get a mortgage on the premises, which is not exactly a very -- speaks to the lack of rights that the tenant had in this particular case.

Secondly, it's very unusual for an owner of a property to have things dictated to it by anybody else. But in this case, the mortgage dictated that they had certain rights to amend the lease obviously subject to the tenant's approval or the tenant could terminate the lease.

- D. TESLER -

But, again, the point is that no owner of commercial real estate property would have its rights adjusted by a third party.

Q. Do you know if the deal, as contemplated between Jerry Spiegel and the Pufahls, was conditioned upon Mr. Spiegel's ability to obtain financing?

A. I think that's in the lease itself.

Q. So you would expect some level of cooperation between the tenant and the landlord in that case, correct?

A. Of course I would. But let me just be very clear. What's typical in terms of cooperation is that the tenant subordinates itself to the lender, and what's also typical is that the lender then signs a non-disturbance keeping the tenant in.

This was more than not typical; this was a lender having more, a larger bundle of rights which limited the bundle of rights of a tenant. And not only does it --

- D. TESLER -

is it not consistent with the tenant as a de facto owner, but it's not even consistent in terms of the rights that tenants usually have. It's even lower than that in terms of its ability to amend the lease.

Q. Do you have firsthand knowledge as to what was typical in 1966?

A. In terms of what? Leases?

Q. Leases and mortgages.

A. Mortgages, no. Leases, yes.

Q. Were those the only documents you reviewed?

A. To the best of my knowledge, yes.

Q. Why did you review the Financial Accounting Standard Board's materials?

A. Only because Weinstock made reference to it.

Q. Do you have an understanding of what a capital lease is?

A. Not a very good one.

Q. Do you know if this is a capital lease? And when I say "this," I'm referring to the exhibit before you as Defendants' 15.

A. I'll tell you exactly -- I'd like

Exhibit E

O'CONNOR REALTY GROUP
P.O. Box 1035
Melville, New York 11747

May 15, 2013

Daniel Riesel
460 Park Avenue
New York, NY 10022

Re: Next Millenium Realty vs. Adchem Corporation

Dear Mr. Riesel:

This report contains my review of a lease between Jerry Spiegel and Pufahl Realty Corp., dated April 1, 1966. This lease consists of the main lease document, rider and addendum, and was for a building at 89 Frost Street, New Cassel, N.Y. I refer to these documents as the "Lease", and I have attached the Lease to this report. I have also attached a copy of my resume.

I have been asked to give my opinion on the effect of the Lease on the Tenant's interest. In reaching my opinion, I have drawn upon my 40 years of experience as a commercial broker familiar with leasing practices generally and also in the Long Island area. Over this time, I have brokered hundreds of commercial leases throughout New York State and particularly on Long Island. Some of those leases were for commercial property in the New Cassel area of Long Island. I understand that my task is to determine whether the Lease was a typical and usual lease or whether it contained clauses that are so unusual that it converted the lessee into some sort of an owner, which I further understand would mean that the Lease grants the lessee significant rights common to an owner as opposed to a tenant.

ASSUMPTIONS

I have relied on the Lease documents described and on the facts Lincoln Processing Corp. A subtenant of Pufahl Realty Corp leased the building for manufacturing purposes and installed extensive machinery in 89 Frost Street upon taking possession under the lease, and 89 Frost Street consisted of 55,000 square feet as provided in the Lease. I also understand that the Landlord, Spiegel, canceled the lease in its 10th year pursuant to the lease's provision.

OVERVIEW

Although the Lease is a typical commercial lease, it has some very landlord favorable clauses. It is the type of lease that would be found in normal leasing arrangements where the landlord had a dominant or strong economic position. In other words, the Lease indicates that the tenant has no ownership interests in 89 Frost Street

Central Contentions

The lease term is not extremely long. Twenty year leases were not uncommon for machine shops and other large manufacturers, since they had to move large amounts of machinery and other equipment into a facility and it became cost prohibitive to move elsewhere because of the electrical set-ups, plumbing and machinery handling charges. 20 year and longer leases have become less common recently with the diminished number of manufacturing plants on Long Island.

Moreover, the tenant has no right of renewal of the lease term, and acquired no holdover rights against the landlord (Para. 59).

I have been informed by counsel that plaintiff has argued that the lessee had an obligation to make structural repairs. That is incorrect. The Lease clearly states that the owner is responsible for all structural repairs denoting ownership in Landlord and not the tenant

All references for payment from the lessee to the lessor are in terms of "rent", which is an indication of a lessor lessee status instead of an indication of ownership by the lessee. Rent includes the payment of taxes, which is usual in commercial leases on Long Island for buildings over 10,000 square feet. The rent arrangement is often referred to as a 'triple net lease", which is typical and usual for commercial leases such as the one for 89 Frost Street.

I have also been informed that the Landlord argues that because the tenant had exclusive control and possession of the leased premises there is an indication of an ownership interest by the lessee. This argument doesn't make any sense because almost all leases grant the tenant exclusive control and dominion for the lease term. The tenant' obligation under the lease are extensive. (Paragraphs 2, 10, 11, 19, 30, 58 and 61) Paragraph 60 explains that the landlord's right to enter and inspect are made for the purposes of enabling landlord to be informed as to "whether tenant is complying with the agreements, terms, covenants an conditions "and to do such acts as tenant shall fail to do." In other words, the tenant's control and possession can be disturbed by the landlord pursuant to the Lease.

PARAGRAPH BY PARAGRAPH REVIEW OF THE LEASE

As indicated, the Lease is a typical commercial lease with no indication that some unusual ownership interest was created on the tenant's behalf. A paragraph by paragraph review of the Lease shows a very strong ownership interest in the landlord, and no unusual tenant rights that would indicate that the tenant had obtained something more than an ordinary lease-hold interest. Actually the lessee comes off with less rights than other lessees. This probably reflects the strong position of the landlord and his ability to maximize his position as the owner of the fee. I have made some comments on these provisions that illustrate these points.

Paragraph 2

This paragraph relating to repairs and turning the building back to the landlord in good order and repair has been modified by paragraph 39, which requires the landlord to make all repairs for the first two years, and paragraph 4 of the Addendum to the lease, which requires the Landlord to make all structural repairs except those caused by the tenant. This arrangement is also typical of commercial leases for a newly constructed facility.

Paragraph 5

In the event of destruction by fire, the Landlord has the option of rebuilding or cancelling the lease. This is a standard provision. After the fire in the 10th year, the landlord vacated all lease responsibilities, further clarifying that the lessee had no unusual ownership interest in 89 Frost Street. Moreover, the Tenant was paying for fire insurance but the landlord, under the lease, was able to keep the proceeds after the fire and did not rebuild for the tenant.

Similar provisions eliminate the tenant's rights to participate in any condemnation award involving the building, limiting the tenant to only recover money for its fixtures. These paragraphs clearly indicate that the tenant had no ownership interest in 89 Frost Street.

Paragraph 6

The lease contains the standard right of the landlord or his agents to enter the premises to inspect or to make repairs. This paragraph allows the landlord to protect his ownership interest, and if necessary to terminate the lease, as is provided for in other sections of the lease.

Paragraph 13

The lease contains the standard provision that upon any default under the Lease, the Landlord has the right to reenter and repossess the premises, terminating the Lease.

Paragraph 46

The lease provides that an institution furnishing the landlord a mortgage shall be able to require a change in the lease, and if the tenant refuses, the landlord may terminate the lease. This is not consistent with any theory of lessee fee ownership.

Paragraph 47

The condemnation clause in this lease is typically found in commercial leases. The clause provides, in the event of condemnation, the lessee loses all interest in the premises, without any part of the condemnation award or any compensation. The lessee also shall have no claim against the landlord for the term of the lease. As indicated, if the building was destroyed by fire, Spiegel was given the exclusive option for rebuilding or terminating the lease. Further indication, that Spiegel was the true owner and the tenant only had occupancy and not ownership.

The lease limited the lessee's use to laminates and coating of papers and fabrics and manufacturing. If ownership were indicated, tenant would be able to perform any functions zoning permitted.

Paragraph 51

This clause holds the tenant liable for any waste or injury to the premises and requires the tenant to maintain the grounds and building in a presentable and safe condition. Again, a standard provision designed to protect the landlord's interest.

Paragraph 63

The landlord shall have the right without selling its fee interest in the demised premises of assigning its interest in this lease, etc. further indicating ownership.

Paragraph 65

This paragraph states that tenant has the option to purchase only in the lease's 12th year, which indicates that fee interest for ownership only happens at the time of conveyance to the tenant after closing in the 12th year

Paragraph 69

This paragraph provides that all loans made by the any of the stockholders, officers and directors of the tenant shall be subordinate to the Lease. The fact that loans amongst the tenant's stockholders are subordinate to the lease and mortgage makes any claim that the lessee had some sort of ownership interest ridiculous. This again, clearly indicates dominance by landlord as owner over the tenant.

Paragraph 72

This paragraph indicates if the landlord cannot secure a mortgage in the amount of $520,000, landlord can cancel the lease, further indicating ownership and total control by landlord.

Paragraph 74

This paragraph provides that the Tenant shall provide financial statements to the lending institution on behalf of landlord, the owner, and where required by the Landlord's lending institution to obtain guarantees to secure the landlord's mortgage.

Paragraph 7 of the Addendum

This paragraph provides that the tenant shall have the right to make payment of the rent to the landlord assignees until such time as the assignee together with the landlord shall notify the tenant in writing that the rent thereafter shall be paid to the landlord at which time

tenant shall commence to pay the rent to the landlord. This indicates no control of ownership by the tenant.

Paragraph 8 of the Addendum

The paragraph states, not withstanding, that title to the premises shall close not later than 90 days after giving of notice by tenant of exercising the option to purchase, the tenant shall be entitled to a reasonable adjournment. This clause, again, indicates that ownership is still, in the hands of landlord.

COMPENSATION

I am being compensated for my services as an expert at a rate of $350.00 an hour.

PUBLICATIONS AND APPEARANCES

I have not published any writings in the last ten years and I haven't testified in any case during the last four years.

JACK O'CONNOR

JACK O'CONNOR

PRINCIPAL AND DIRECTOR- NATIONAL INDUSTRIAL PRACTICE GROUP

Newmark Knight Frank
290 Broadhollow Road
Suite 103E
Melville, NY 11747
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YEARS OF EXPERIENCE

35 Years

AREAS OF SPECIALIZATION

- Tenant Representation
- Landlord Representation
- Corporate Advisory Services

PROFESSIONAL BACKGROUND

Jack O'Connor joined Newmark Knight Frank to serve as Director of the National Industrial Practice Group and as a principal in the firm's Long Island office.

Mr. O'Connor is a commercial and industrial brokerage veteran with more than 35 years experience, having held executive positions with a number of national commercial brokerage companies.

Prior to joining Newmark Knight Frank, Mr. O'Connor served as Senior Managing Director at CBRE's Long Island office. He has also worked at Grubb & Ellis, as executive vice president and managing director of the Long Island office and owned his own firm, Island Realty, based in Melville.

In 2002, Mr. O'Connor was awarded the "Broker of the Year" award by the Association for a Better Long Island and the Commercial Industrial Brokers Society for his part in the disposition of Enterprise Park at Calverton's 492-acre industrial core, which included more than 800,000 square feet of commercial space in 18 buildings. He was also named as a "Long Island Power Broker" by CoStar in 2004. He received a Lifetime Achievement Award from the Long Island Business News and was honored by Touro Law School at their 2008 Golf outing. In 2010, The Commercial Industrial Brokers Society honored him with the Distinguished Leadership Award. In 2010, Newmark recognized him as the "Industrial Broker of the Year.

His professional affiliations include: Dowling College, Trustee; Advancement for Commerce, Industry & Technology, Board of Directors; Stony Brook Community Fund; Commercial Industrial Brokers Society of Long Island, Advisory Board; Long Island Association Health Alliance; Real Estate Board of New York and member of Hauppauge Industrial Association.

EDUCATION

Mr. O'Connor earned a Bachelor of Business Administration from St. John's University School of Business.

Exhibit F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
Case No. 2:03-CV-5985
----------x
NEXT MILLENNIUM REALTY, L.L.C., et al.,

Plaintiffs,

- against -

ADCHEM CORP., et al,

Defendants.
----------x
October 17, 2013
9:31 a.m.

Deposition of BENJAMIN WEINSTOCK, pursuant to Notice, held at the offices of Sive Paget & Riesel P.C., 460 Park Avenue, New York, New York, before Jineen Pavesi, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter and Notary Public of the State of New York.

A P P E A R A N C E S

KEVIN MALDONADO & PARTNERS, LLC
5 Hickory Hill Road
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Attorneys for Plaintiff
BY: KEVIN MALDONADO, ESQ.
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SIVE PAGET & RIESEL P.C.
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Pufahl Realty, Northern
Realty, Adchem and Lincoln
Processing
BY: DANIEL RIESEL, ESQ.
dreisel@sprlaw.com

B E N J A M I N W E I N S T O C K,
having first been duly sworn by a Notary
Public of the State of New York, was
examined and testified as follows:
EXAMINATION BY
MR. RIESEL: 09:31:35AM
Q. Would you state your name and 09:31:35AM
address, Mr. Weinstock. 09:31:36AM
A. Benjamin Weinstock, 1425 RXR 09:31:38AM
Plaza, Uniondale, New York 11556. 09:31:42AM
Q. You are an attorney-at-law 09:31:47AM
admitted to practice in the State of New 09:31:55AM
York, right? 09:31:57AM
A. Correct. 09:31:57AM
Q. Would you tell us what firm you 09:31:58AM
are a member of? 09:31:59AM
A. I am a member of the firm of 09:32:00AM
Ruskin Moscou Faltischek PC. 09:32:05AM
Q. Where is that located? 09:32:08AM
A. At the address I just gave you. 09:32:09AM
Q. You have been engaged in the 09:32:17AM
practice of real estate law for how long? 09:32:19AM
A. Approximately 35 years. 09:32:21AM
Q. During this time have you or 09:32:22AM

WEINSTOCK

any members of your firm ever represented 09:32:25AM
Next Millennium Realty LLC? 09:32:29AM
A. Yes. 09:32:31AM
Q. Would you tell us the extent of 09:32:32AM
that representation. 09:32:36AM
A. I handled a negotiation of a 09:32:40AM
lease for Next Millennium at a property 09:32:42AM
located on Old Country Road in Westbury, 09:32:46AM
the tenant is Century 21 and I was 09:32:49AM
involved in some post lease execution 09:32:53AM
issues that arose in connection with 09:32:57AM
construction. 09:32:59AM
And that was approximately 16, 09:33:04AM
17 years ago. 09:33:08AM
Q. Have you done any other work 09:33:09AM
for Next Millennium Realty LLC? 09:33:12AM
MR. MALDONADO: Other than this 09:33:19AM
opinion? 09:33:20AM
MR. RIESEL: Yes. 09:33:21AM
A. I don't recall. 09:33:29AM
Q. Has any member of your firm 09:33:30AM
represented Next Millennium Realty LLC, 09:33:32AM
when I say any member of your firm, I also 09:33:34AM
mean to include any employee of your firm? 09:33:36AM

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the contamination, that caused the 09:44:59AM
contamination, and that they wanted to get 09:45:05AM
my testimony as an expert on the issue of 09:45:07AM
owner liability under CERCLA as outlined 09:45:09AM
in the Commander Oil versus Barlow case. 09:45:16AM
Alan gave me a short synopsis 09:45:28AM
of the lease which I subsequently read. 09:45:30AM
Q. And that's the extent of 09:45:32AM
Mr. Eidler's information conveyed to you 09:45:34AM
that you have relied on in this matter? 09:45:40AM
A. To the best of my recollection. 09:45:45AM
Q. You had a conversation with Mr. 09:45:47AM
Sanders also? 09:45:49AM
A. Correct. 09:45:49AM
Q. What did Mr. Sanders tell you? 09:45:54AM
A. Essentially the same as Eidler; 09:45:56AM
it was corroborating, in effect. 09:45:57AM
Q. You spoke to this good-looking 09:46:06AM
gentleman, Mr. Maldonado, and you recite 09:46:17AM
that in your report. 09:46:24AM
Are there any facts or 09:46:24AM
assumptions that Mr. Maldonado conveyed to 09:46:26AM
you that you have used or relied upon in 09:46:31AM
formulating your opinion? 09:46:33AM

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Do you see expert's opinion on 09:53:08AM
page 2? 09:53:10AM
(Witness perusing document.) 09:53:11AM
Q. "I have been asked to provide 09:53:13AM
an opinion as an expert in real estate law 09:53:14AM
whether, under applicable law, the 09:53:18AM
defendants are owners for CERCLA liability 09:53:20AM
purposes." 09:53:24AM
And there is a footnote there, 09:53:26AM
that's what you wrote? 09:53:27AM
A. That's correct. 09:53:28AM
Q. What is the applicable law that 09:53:31AM
you are opining on? 09:53:34AM
A. Principally the Commander Oil 09:53:35AM
versus Barlow case decided by the Second 09:53:39AM
Circuit in 2000. 09:53:44AM
Q. Do you understand the court in 09:53:47AM
that case to have enunciated a rule of 09:53:51AM
environmental law or a rule of real estate 09:53:57AM
law? 09:53:59AM
A. A rule of environmental law 09:54:01AM
affecting the responsibility of persons 09:54:03AM
that have interests in real estate. 09:54:06AM
Q. But you are not an expert in 09:54:09AM

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environmental law, you don't hold yourself 09:54:11AM
out to be one, isn't that right? 09:54:14AM
A. That's correct. 09:54:15AM
Q. In page 3 of your opinion you 09:54:40AM
recite certain facts related to the 09:54:42AM
execution of the lease and the intent of 09:54:44AM
the tenant. 09:54:47AM
Do you see that? 09:54:48AM
A. Are you referring to the 09:54:50AM
heading "Background"? 09:54:50AM
Q. Yes, I am. 09:54:53AM
A. Yes. 09:54:54AM
Q. Are those facts set forth on 09:54:58AM
page 3 and going over to the top of page 09:55:01AM
4, are those facts integral to your 09:55:07AM
opinion? 09:55:12AM
A. Which facts are you referring 09:55:13AM
to? 09:55:14AM
Q. Well, I am referring to the 09:55:22AM
parties negotiated a build-to-suit 09:55:26AM
arrangement. 09:55:29AM
A. I understand that to be the 09:55:32AM
fact. 09:55:33AM
Q. What's the basis of your 09:55:33AM

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A. It is what the parties 10:10:05AM
negotiated in this transaction, it is not 10:10:06AM
abnormal. 10:10:09AM
There are deals in which 10:10:09AM
tenants pay the taxes and assessments and 10:10:11AM
there are deals in which tenants don't pay 10:10:13AM
the taxes and assessments. 10:10:15AM
Q. For a single tenant, that is, 10:10:17AM
one tenant in one building, isn't it 10:10:18AM
common for it to be a triple net lease? 10:10:21AM
A. There is no template; in a 10:10:23AM
triple net lease by definition the tenant 10:10:26AM
will pay the taxes and assessments. 10:10:28AM
But there is no template that 10:10:30AM
says that any time you lease a building to 10:10:32AM
a single tenant, the tenant will pay the 10:10:34AM
taxes, although that is frequently the 10:10:36AM
case. 10:10:38AM
Q. On page 57, turn to page 57. 10:10:41AM
Look at article 14 for quiet 10:10:55AM
enjoyment. 10:11:00AM
(Witness perusing document.) 10:11:04AM
Q. That's a fairly standard form 10:11:05AM
clause, isn't it? 10:11:08AM

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Q. So I am trying to use it in 10:14:06AM
what I consider a more correct form. 10:14:08AM
A. Then I am not following your 10:14:12AM
question and I want to make sure I 10:14:13AM
understand what you're asking me. 10:14:15AM
Q. What I'm saying is when I refer 10:14:18AM
to Pufahl Realty Corp., I'm referring to 10:14:24AM
the entity that signed the April 1st 10:14:27AM
lease. 10:14:30AM
A. Okay. 10:14:30AM
Q. Basically Pufahl Realty Corp.'s 10:14:32AM
liability as a de facto owner under CERCLA 10:14:35AM
arises from the April 1, 1966, lease, 10:14:40AM
isn't that right? 10:14:43AM
MR. MALDONADO: Objection. 10:14:44AM
A. Its connection to the property, 10:14:49AM
its interest in the property, is the 10:14:51AM
interest granted under the April 1966 10:14:54AM
lease. 10:14:57AM
Its liability arises from a 10:14:58AM
variety of things; the lease, applicable 10:15:00AM
law, and what it did on the property. 10:15:03AM
Q. So in part its liability arises 10:15:06AM
from the lease? 10:15:11AM

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A. That's a correct statement. 10:15:13AM
Q. And when you look at your 10:15:15AM
conclusion that Pufahl Realty Corp. is 10:15:21AM
liable, it is because you have construed 10:15:29AM
the lease as making it liable? 10:15:30AM
A. In the context of what it did 10:15:37AM
on the property and in the context of the 10:15:38AM
balancing test in Commander. 10:15:41AM
Q. The lease grants Pufahl Realty 10:15:51AM
Corp. certain powers and responsibilities, 10:15:53AM
right? 10:15:55AM
A. That's correct. 10:15:55AM
Q. Those are similar to other 10:15:58AM
leases which grant tenants certain powers 10:16:02AM
and responsibilities? 10:16:07AM
A. Certainly. 10:16:08AM
Q. For each of these 10:16:14AM
responsibilities that a tenant has, there 10:16:15AM
is a corresponding power in the landlord, 10:16:18AM
isn't that correct? 10:16:21AM
A. I don't understand your 10:16:23AM
question. 10:16:25AM
Q. For example, under this lease, 10:16:26AM
that is, the April 1, 1966, lease, Pufahl 10:16:31AM

Exhibit G

RMF
RUSKINMOSCOUFALTISCHEK P.C.
Counselors at Law

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August 29, 2013

Kevin Maldonado, Esq.
Kevin Maldonado & Partners, LLC
5 Hickory Hill Road
Windham, NY 12496

Re: Next Millennium Realty, L.L.C., et al. v. Adchem Corp., et al. (Case No. 2:03-CV-5985 in the United States District Court, Eastern District of New York)

Dear Mr. Maldonado:

You have asked me to provide an expert opinion in the above matter as to the indicia of ownership under the Lease (described below) for the 89 Frost Street, Westbury New York ("Property") during the period of occupancy of the Property by the defendants in above-referenced lawsuit ("Action"). This Expert's Report is prepared by me in response to your request.

Qualifications of the Expert

I am a shareholder of Ruskin Moscou Faltischek P.C., where I am also the co-chair of the firm's Real Estate Department. I began practicing law at the firm in 1978 and became a shareholder in 1984. As Co-chair of the firm's Real Estate Department I am responsible for the administration and supervision of the other attorneys in the Department and I am responsible for real estate matters handled by my firm.

Over the past 35 years I have acquired significant experience in all aspects of real estate law. I have handled thousands of properties, transactions and agreements. These include leaseholds, financing arrangements, business associations, condemnations, land use approvals, title insurance claims, construction financing and development, and many more.

Since 2008, I have listed as one of the New York Area's Best Lawyers in Real Estate and I have been named in the annual SuperLawyers compilation. In 2010 I was elected as a Fellow of the American College of Real Estate Lawyers (ACREL), the premier organization of American real estate lawyers, where admission is by invitation only after a rigorous screening process.

I am an active participant in many professional organizations. I am the Chairman of the Real Property Law Section of the New York State Bar Association, and I serve on the leasing and title committees of the Section and on similar committees of the American Bar Association and ACREL. I am a frequent program chair and lecturer on a wide variety of real estate topics for many continuing legal education providers.

I was an adjunct professor at Yeshiva University and at Hofstra Law School. I currently teach and advanced real estate transactions and financing course in the Real Estate LLM Program at New York Law School.

A complete copy of my *Curriculum Vitae* is attached to this Report as Exhibit A and is made a part hereof.

Expert's Opinion

I have been asked to provide an opinion as an expert in real estate law whether, under applicable law, the Defendants are "owners" for CERCLA liability purposes.[1]

I have reviewed the lease between Jerry Spiegal ("Spiegel" or "Plaintiff") and Pufahl Realty Corp. ("Pufahl"), the Addendum to Lease, Rider to Lease and Guarantee of Lease, all dated April 1, 1966 (collectively the "Lease"). I have also reviewed *Commander Oil v. Barlo Equipment Company,* 215 F.3d 321 (2nd Cir. 2000), Cert denied, 531 U.S. 979 (2000) ("Commander"). Commander articulates a balancing test to determine whether a tenant has sufficient *indicia* of ownership to cause the tenant to have liability as an "owner" under CERCLA. The criteria identified in Commander are a non exclusive list of five factors that will be discussed at length below. I have also reviewed *Pateley Associates I, LLC v. Pitney Bowes, Inc.,* 704 F. Supp. 2d 140 (D. Conn. 2010) ("Pateley"), a subsequent decision which utilizes the Commander factors in finding the defendant liable as an "owner" for CERCLA purposes. I have also had conversations with principals of Spiegel and their attorney, Kevin Moldanando, Esq., to learn the facts and circumstances of the relationship between Spiegel and Pufahl that are relied upon in this Report.

It is my opinion that the Lease grants Pufahl significant powers and responsibilities that cause it to be an "owner" for CERCLA liability purposes when the Commander balancing test is applied.

[1] It is my understanding that the lease was executed by Pufahl and later assigned to a related general partnership owned by the Charles Pufahl, Joseph Pufahl and Herman Pufahl. I am also aware that there are allegations in the complaint that all the defendants operated as a single enterprise and have joint liability.

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The Commander Oil Test

In *Commander Oil Corp. v. Barlo Equipment Corp.*, the Court of Appeals for the Second Circuit articulated a non-exclusive list of five factors that cause a lessee to be deemed an "owner" for CERCLA purposes. These factors are:

(1) Whether the lease is for an extensive term and admits of no rights in the landlord to determine how the property is used;

(2) Whether the lease can be terminated by the landlord before it expires by its terms;

(3) Whether the tenant has the right to sublet all or some of the property without notifying the landlord;

(4) Whether the tenant is responsible for payment of all taxes, assessments, insurance, and operation and maintenance costs; and

(5) Whether the tenant is responsible for making all structural and other repairs.

Background

Pufahl Realty Corp. was a tenant of Spiegel at another location. In 1966, Herman Pufahl, Charles Pufahl and Joseph Pufahl, the principals of Pufahl Realty Corp. and its affiliates, Lincoln Processing Corp and Laminar Fabrics Corp., negotiated a build-to-suit arrangement with Spiegel under which Spiegel agreed to build a manufacturing facility for Pufahl Realty Corp. and its affiliates designed to their exact needs and specifications as a fabric laminator in the textile industry. It was always the tenant's intention to own the Property. In order to finance the project, Spiegel and Pufahl signed a 20 year lease and the tenant had an option to buy the building in the twelfth year of the term for the pre-negotiated sum of $490,000.00.

The tenant regarded itself as the owner of the Property and made, removed and replaced leasehold improvements and alterations to the Property, and freely sublet the Property, all without any notice to, or consent from, its landlord, Spiegel.

The tenant unequivocally intended to exercise the purchase option and acquire the Property. However, a fire in the tenth year of the term caused the Lease to terminate and the option expired. Notwithstanding the termination of the Lease and the expiration of the option, Pufahl sued Spiegel in 1976 following the fire in an attempt to force the sale of the Property to the Defendants to consummate the purchase option. This case was

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settled in 1976 by the payment of $75,000 by Spiegel to the Defendants and the Defendants release of all rights under the Lease, including the purchase option.

Applying Commander to the Pufahl Lease Agreement

1. Long Term Lease and No Right to Determine How the Property is Used.

The Lease is for a term of 20 years and is not terminable by the landlord prior to the stated expiration date except for a default by the tenant or the destruction or condemnation of the building on the Property. Very significantly, the tenant has the absolute option to purchase the Property in the twelfth year of the term for a pre-negotiated price of $490,000.00. This combination, a long term lease with a purchase option, is the legal equivalent of ownership.

The report prepared by David Tesler, Esq. on behalf of the tenant claims that a 20 year lease is not regarded as "ownership." In support of his opinion, he states:

> "A good indication that a twenty year lease does not reflect a transfer of ownership interests is that New York's taxing authority has not treated such short leases as triggering a tax on transfer of a ownership interest. In part to ensure that no party escapes paying NY transfer tax upon transfer of commercial real estate, NY State taxes all leasehold interests that are substantively similar to fee ownership. Therefore, Section 575.7(a) of the Real Estate Transfer Tax Regulations provides (in part) that a conveyance of a leasehold is not taxable if the sum of the term of the lease or sublease and any options for renewal exceeds forty nine (49) years. This provides additional evidence that a twenty-year lease should not be transform a lessee interest into a lessor interest."

In reaching his conclusion, Mr. Tesler incorrectly ignores the tenant's purchase option. In fact, the grant of a lease of any length which contains a purchase option is treated by New York's tax laws as a transfer of ownership and is subject to the full real property transfer tax in exactly the same manner as deed conveying a fee estate.

Section 1402(a) of the New York Tax Law imposes a real estate transfer tax on every conveyance of an interest in real property. Section 1401(f) of the New York Tax Law states that an option with a right of possession under a lease is a conveyance of an interest in real property, and is taxable as such. Therefore, under New York State Tax Law, the lease constitutes a taxable transfer of an interest in real property.

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Mr. Tesler cites Section 575.7(a) of the New York State Transfer Tax Regulations in support of his incorrect conclusion. However, he fails to cite Section 575.7(c)(a) of the New York State Tax Regulations (20 NYCRR 575.7(c)(1)) which specifically states as follows:

> "(c) *Creation of a lease for less than 49 years coupled with the granting of an option to purchase.*
>
> (1) An option to purchase real property is an interest in real property. Where an option to purchase real property is coupled with the granting of the right to use and occupancy of the real property, a conveyance subject to the transfer tax has occurred. Therefore, the creation of a lease coupled with the granting of an option to purchase the real property, regardless of the term of the lease, is a conveyance subject to the transfer tax."

Accordingly, in Mr. Tesler's own words, by virtue of the taxable character of this lease, New York clearly regards this Lease as "a transfer of commercial real estate."

Moreover, 20 years is a "long term lease." It is substantially longer than the five year term of the Commander lease It gives the Tenant the sole and absolute right to occupy and posses the site to the exclusion of the owner for the full term of the Lease. Many financial dictionaries define a "long term lease" as follows:

> "A lease for longer than one, five or 10 years, depending on the specific asset being leased. For example, commercial property usually has long-term leases for five or more years, while residential property often carries long-term leases for more than one year. A long-term lease locks in the price one pays for the asset, which is usually advantageous because prices often trend upward." Farlex Financial Dictionary 2012.
>
> "In general, a lease of ten years or more." Business Dictionary.com.
>
> "A lease of ten years or longer." The American Heritage Dictionary of Business Terms.

> "Long Term Lease: In most markets, this refers to a lease whose term is at least three years from initial signing until the date of expiration or renewal option." Center For Commercial Real Estate Leasing.

As to the second part of the first factor of the Commander test (*i.e.*, restrictions on tenant's use), the Tenant had free reign to use the Property as it desired. Spiegel did not place any customary leasehold limitations on the tenant such as the hours of operation, the number of employees in the building, or the type, location and quantity of manufacturing equipment to be installed by tenant. The building was designed and constructed for tenant's specific manufacturing use which is described in the Lease as "lamination and coating of paper, textiles and fabrics and for general manufacturing purposes." The tenant was only prohibited from using the Property "for any purpose deemed ultra hazardous on account of fire." This precaution does not change the character of tenant's "owner" status. It was intended only to protect the abutting property Spiegel owned from damage by risky activity at the Property, and from excessive liability exposure.

2. Landlord Cannot Terminate the Lease Early.

The second Commander factor is whether the lease can be terminated by the landlord before it expires by its terms. As noted by the Commander Court, the landlord's inability to electively terminate the lease early is indicative of a tenant's "owner" status. In our case, Spiegel did not have any right to terminate the Lease prior to the stated expiration date. Spiegel did not have an option to end the Lease early if it elected to sell, finance or redevelop the site. The tenant had exclusive occupancy and control of the Property for the full 20 year term and the Lease would end prior to the stated maturity date only in three circumstances, all of which are beyond Spiegel's control; (a) the tenant defaults under the Lease and is evicted, (b) the tenant purchases the Property under the option, or (c) the building is destroyed by fire, even if the fire is caused by the tenant's negligence or unlawful act.

3. Tenant Right to Sublet or Assign.

One of the most zealously guarded rights of landlord in a typical lease transaction is the landlord's power to restrict assignment of the lease and subletting of the premises. In my experience, the assignment and subletting clause is one of the most heavily negotiated clauses in a lease. In this case, in recognition of the fact that the tenant was the beneficial owner of the Property, Spiegel abandoned all control over assignment or subletting. The tenant had the absolute right and power to assign the Lease or sublet the Property, in either case in whole or in part, to anyone (or more than one) person, corporation or other entity. The tenant even had the ability to assign the Lease to a

sovereign power, such as a foreign government, that would be immune from any suit brought by Spiegel, its involuntary landlord.

This is dramatically different that the situation in Commander, where the tenant was required to "obtain written approval from Commander Oil to sublet the Property, and prohibited from subletting to any entity that had 'any connection with the fuel, fuel oil or oil business.'" *Commander Oil,* 215 F.3d at 331.

This factor is of particular importance, as the Court in Commander noted that the polluting subtenant was first put into possession of Commander's property by Commander itself in its capacity as the owner of the property. It was only as a result of the subsequent restructuring of the leases on the property, that the polluter became a subtenant of Barlo. It is a very significant distinction that in our case, Spiegel never had any dealing with the alleged polluting subtenant, Marvex Corp.[2] The tenant entered in to a sublease directly with Marvex as its subtenant and put the polluter into possession of the site. It acted as an "owner" does in deciding who it leases the property to, what he subtenant may do on the propriety and how long the subtenant can remain. All the income from the sublease inured solely to the tenant's benefit and landlord had no payments from the subtenant.

4. Tenant is Responsible for All Taxes, Assessments, Insurance, and Operation and Maintenance Costs

By the terms of the Lease, the tenant was solely responsible for paying all utility costs, insurance costs for liability, casualty and boiler coverage and for rent loss insurance. Tenant was responsible to pay for all real estate taxes and assessments affecting the Property. The tenant was responsible for the removal of rubbish, snow and ice, and for landscaping. In other words, the tenant paid for everything and was solely responsible for all costs attributable to the use, operation, maintenance and repair of the Property.

5. Tenant is Responsible Repairs

The tenant is responsible for all non-structural repairs, certain structural repairs such as the roof, and for the repair of all structural damage caused by tenant. The tenant's experts point to Spiegel's lone obligation to make structural repairs. While it is

[2] Mr. Maldonado has advised me that Defendants are asserting a defense that most, if not all of the contamination originated during the occupancy of the site by their subtenant Marvex. Mr. Maldonado has also informed me that he believes that contaminating events occurred during the earlier use and occupancy of the property by the Defendants in addition to any contamination occurring during the occupancy of the Property by the subtenant.

correct that Spiegel assumed this obligation, it is really in the nature of an extended guaranty of the structure that Spiegel custom built for the tenant. In context, one clearly sees that this is not a typical lease obligation. Instead Spiegel, as the developer of the Property, is assuring the tenant (as the future record owner of the Property), that the major structural components of the building (foundation, walls, floor slab, steel and roof deck) are sound. In fact, the clause in the Lease which places this burden on the landlord has a very enlightening heading. Instead of being labeled "Repairs and Maintenance" as expected, the clause bears the revealing title "Guarantee of Labor & Materials."

It is significant to note that the tenant is responsible to comply, at its sole cost and expense, with all statutes, ordinances, rules order, regulation and requirements of all governmental bodies, even to the point of making structural changes and alterations to the building and the land if applicable.

Other Indicative Factors

The Commander Court stressed that the list of factors it enumerated was not intended to be exclusive of other relevant *indicia*. *Id.* at 331, and emphasized that its analysis "is meant to reinforce the point that the critical question is whether the lessee's status is that of a *de facto* owner…." In addition, the Court declared that:

> "Our statutory interpretation is guided by CERCLA's few well-established principles. 'Because it is a remedial statute, CERCLA must be construed liberally to effectuate its two primary goals: (1) enabling the EPA to respond efficiently and expeditiously to toxic spills, and (2) holding those parties [potentially] responsible for the releases liable for the costs of the cleanup.' *B.F. Goodrich,* 958 F.2d at 1198." *Id.* at 327.

Guided by this expression of principle and intent, I have examined the entire Lease to see whether the document, as a whole established *de facto* ownership in the tenant for CERCLA purposes. In my opinion, the balance of the Lease underscores that the tenant must be treated as an owner for CERCLA liability. The relevant factors are discussed seriatim below.

(a) Risk of Loss. One expects that the risk of loss is to be borne by an owner. In this case, the tenant assumed the risk of loss. The tenant was not entitled to any compensation for the destruction of its Lease by fire or condemnation. It bore all the risk of these losses.

(b) Net Lease. In a typical industrial lease, the obligation to pay rent abates during any period when the premises are uninhabitable due to fire or other casualty. To the contrary, the Lease provides that rent does not abate following a fire or other casualty. This clause dramatically evidences that the tenant enjoys all beneficial ownership rights and it must bear the risk that the Property will be uninhabitable. To that end, the Tenant was required to maintain 12 months' of rent interruption insurance coverage so that there would be sufficient funds to maintain the flow of rent following a fire.

(c) Exclusive Possession. Unlike Commander, Spiegel had no right to use any portion of the Property. It had only limited right to inspect the Property to ensure that its tenant was complying with the terms of the Lease, and even then, the Lease provided that the landlord may not enter the factory portion of the Property without notice to, and supervision by, the tenant.

Spiegel was, at the time the Lease was made, the owner of an adjacent Property. Therefore the Lease included a clause permitting Spiegel to use the easterly wall of the building on the Property as a party wall for enclosure and support to benefit Spiegel's adjoining property. In a typical space lease, where the tenant has no "ownership" interest in the property, the tenant would not object to this clause. However, because the tenant regarded itself as the beneficial owner of the Property from the outset, it objected to this clause and it was deleted from the Lease. (See paragraph 73 of the Lease.)

(d) Option to Purchase. One of the strongest indicia of ownership is an option to purchase at a discounted price.

The Financial Accounting Standards Board ("FASB")[3] classifies a lease that contains a discounted purchase option as a "Capital Lease." This designation is extremely important because, for accounting purposes, a Capital Lease is the equivalent of "ownership." It transfers all the risks and benefits of ownership to the lessee.

---

[3] Since 1973, the Financial Accounting Standards Board (FASB) has been the designated organization in the private sector for establishing standards of financial accounting that govern the preparation of financial reports by nongovernmental entities. Those standards are officially recognized as authoritative by the Securities and Exchange Commission (SEC) (Financial Reporting Release No. 1, Section 101, and reaffirmed in its April 2003 Policy Statement) and the American Institute of Certified Public Accountants (Rule 203, Rules of Professional Conduct, as amended May 1973 and May 1979).

The Complaint filed in the Tenant's 1976 lawsuit seeking to exercise the purchase option is very enlightening. In it, Tenant alleges that the replacement cost of the building (excluding land and foundations) on the Property was up to $820,000. Despite this, Tenant's purchase option, if it would have survived the termination of the Lease, would have allowed the Tenant to buy the building, together with the land and foundations, for the deeply discounted price of $490,000, an amount equal to approximately 50% of the value of the Property. Certainly this "bargain purchase option" leads to the inescapable conclusions that (i) the Lease was a Capital Lease, and therefore, (ii) Tenant was the "owner" of the Property under the universally controlling FASB standards.

Expert's Compensation

My firm will be paid at my standard hourly rate for services provided in studying the file and rendering this Report, attending depositions and testifying at trial. The Plaintiff will also compensate my firm for disbursements ordinarily incurred in connection with the matter, such as Federal Express charges, long distance telephone calls, messenger fees and the like.

Benjamin Weinstock, Esq.

Exhibit H

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, KNOW THAT JERRY SPIEGEL of 270 North Broadway, Hicksville, New York, as Releasor, in consideration of the sum of One and 00/100 Dollar ($1.00) received from PUFAHL REALTY CORP., a dissolved corporation; JOSEPH PUFAHL, CHARLES PUFAHL and HERMAN PUFAHL, partners, doing business as NORTHERN STATE REALTY CO.; NORTHERN STATE REALTY CORP., a dissolved corporation; LINCOLN PROCESSING CORP., a corporation; and ADCHEM CORP., a corporation, as Releasees, receipt whereof is hereby acknowledged, releases and discharges said PUFAHL REALTY CORP., a dissolved corporation; JOSEPH PUFAHL, CHARLES PUFAHL and HERMAN PUFAHL, partners, doing business as NORTHERN STATE REALTY CO.; NORTHERN STATE REALTY CORP., a dissolved corporation; LINCOLN PROCESSING CORP., a corporation; and ADCHEM CORP., a corporation, the Releasees, Releasees' respective heirs, executors, administrators, successors and assigns from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, which against the Releasees, the Releasor, Releasor's heirs, executors, administrators, successors and assigns ever had, how have or hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this Release, arising out of and in connection with a certain lease dated April 1, 1966 made between JERRY

PLF/DEF 25
EXHIBIT
DATE 11/29/12 RPTR 4
Jineen Pavesi, RPR, RMR, CRR

SPIEGEL as landlord and PUFAHL REALTY CORP. as tenant covering the premises described in Schedule A annexed to said lease and known as and by number 89 Frost Street, New Cassel, Town of North Hempstead, County of Nassau, State of New York, including but not limited to a certain option granted to the tenant to purchase said property as more fully provided in paragraph 65 of said lease and any and all other terms, covenants, conditions and obligations contained in said lease and with respect to a certain action commenced in the Supreme Court, Nassau County, by NORTHERN STATE REALTY CO., plaintiff, against JERRY SPIEGEL, Allendale Mutual Insurance Company and Factory Mutual Insurance Company, defendants, bearing index number 10154/76, which action was settled on April 20, 1977 before Mr. Justice William J. Sullivan, presiding in Special Term Part V-B of said Court, pursuant to a stipulation of settlement entered into and consented to by all parties to the aforementioned action in open Court before said Justice Sullivan.

This Release may not be changed orally.

IN WITNESS WHEREOF, the Releasor has hereunto set his hand and seal on the 18th day of May, 1977.

JERRY SPIEGEL

A00002

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

On MAY 18, 1977 before me personally came JERRY SPIEGEL, to me known, and known to me to be the individual described in, and who executed the foregoing Release, and duly acknowledged to me that he executed the same.

UDELE B. GOODMAN
Notary Public, State of New York
No. 31-1506075
Qualified in New York County
Commission Expires March 30, 1979

Notary Public

SCHEDULE "A"
Description of Demised Premises

ALL that certain plot, piece or parcel of land with the buildings thereon erected, situate, lying and being at New Cassel, Town of North Hempstead, County of Nassau and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of Frost Street distant 372.23 feet southerly from the corner formed by the intersection of the westerly side of Frost Street with the southerly side of Summa Avenue;

RUNNING THENCE south 7 degrees, 00 minutes, 53 seconds east 177.8 feet;

RUNNING THENCE south 85 degrees, 02 minutes, 00 seconds west 284.61 feet;

RUNNING THENCE south 4 degrees, 58 minutes, 00 seconds west 5.43 feet;

RUNNING THENCE south 85 degrees, 02 minutes, 00 seconds west 225.00 feet;

RUNNING THENCE north 4 degrees, 58 minutes, 00 seconds west 183.4 feet;

RUNNING THENCE north 35 degrees, 02 minutes, 00 seconds west 503.25 feet to the westerly side of Frost Street at the point or place of beginning.

Exhibit I

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, KNOW THAT PUFAHL REALTY CORP., a dissolved corporation formerly organized under the laws of the State of New York, formerly of 625 Main Street, Westbury N.Y. ; JOSEPH PUFAHL, CHARLES PUFAHL and HERMAN PUFAHL, partners, doing business as NORTHERN STATE REALTY CO., of Westbury, N.Y. ; NORTHERN STATE REALTY CORP., a dissolved corporation formerly organized under the laws of the State of New York, formerly of 625 Main Street, Westbury N.Y. ; LINCOLN PROCESSING CORP., a corporation organized under the laws of the State of New York, of 141 E. Suffolk Ave., Central Islip N.Y. ; and ADCHEM CORP., a corporation organized under the laws of the State of New York, of 625 Main Street, Westbury N.Y. ; as Releasors, in consideration of a stipulation of settlement entered into on April 20, 1977 in connection with an action commenced in the Supreme Court, Nassau County by NORTHERN STATE REALTY CO., plaintiff, against JERRY SPIEGEL, Allendale Mutual Insurance Company and Factory Mutual Insurance Company, defendants, bearing index number 10154/76 before Mr. Justice William J. Sullivan, presiding in Special Term Part V-B of said Court, by Burns, Jackson, Miller, Summit & Jacoby, attorneys for plaintiff, NORTHERN STATE REALTY CO., by Elliot I. Miller of that firm, Konheim, Halpern, Bleiwas & Greenberg, attorneys for defendant JERRY SPIEGEL, by Samuel Halpern of that firm, and Rein, Mound & Cotton, attorneys for defendants Allendale Mutual Insurance Company and Factory Mutual Insurance Company, by Arthur N. Brook of that firm, and in consideration of the sum of SEVENTY-FIVE

THOUSAND AND 00/100 DOLLARS ($75,000.00) received from JERRY SPIEGEL, receipt whereof is hereby acknowledged by NORTHERN STATE REALTY CO., releases and discharges JERRY SPIEGEL, individually and as Executor of the Last Will and Testament of Jacob Gellman, deceased, BERTHA SPIEGEL and HAUPPAUGE BUILDING CORP., as Releasees, Releasees' respective heirs, executors, administrators, successors and assigns from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever in law, admiralty or equity, which against the Releasees, the Releasors, Releasors' heirs, executors, administrators, successors and assigns ever had, now have or hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this Release.

This Release is limited to any and all claims for damages sustained to building premises 89 Frost Street, New Cassel, New York, resulting from a fire which occurred at said premises on May 30, 1976 and insured under a certain policy of insurance numbered 85865 issued by Allendale Mutual Insurance Company in which, among others, said JERRY SPIEGEL, individually and as Executor of the Last Will and Testament of Jacob Gellman, deceased, BERTHA SPIEGEL and HAUPPAUGE BUILDING CORP. are named as insureds, and with respect to the aforementioned action

commenced in the Supreme Court, Nassau County, by NORTHERN STATE REALTY CO., plaintiff, against JERRY SPIEGEL, Allendale Mutual Insurance Company and Factory Mutual Insurance Company, defendants, bearing index number 10154/76, which action was settled on April 20, 1977 before Mr. Justice William J. Sullivan, presiding in Special Term Part V-B of said Court, pursuant to a stipulation of settlement entered into and consented to by all parties to the aforementioned action in open Court before said Justice Sullivan, and with respect to a certain lease dated April 1, 1966 made between JERRY SPIEGEL as landlord and PUFAHL REALTY CORP. as tenant covering the premises described in Schedule A annexed to said lease and known as and by number 89 Frost Street, New Cassel, Town of North Hempstead, County of Nassau, State of New York, including but not limited to a certain option granted to the tenant to purchase said property as more fully provided in paragraph 65 of said lease and any and all other terms, covenants, conditions and obligations contained in said lease.

This Release may not be changed orally.

IN WITNESS WHEREOF, the respective Releasors have hereunto set their hands and seals and caused this Release to be executed by its duly authorized officers and its corporate seals to be hereunto affixed on May 18, 1977.

PUFAHL REALTY CORP.

BY: Joseph Pufahl VP

NORTHERN STATE REALTY CO.

BY: Joseph Pufahl
A Partner

BY: Herman Pufahl by Joseph Pufahl
A Partner

BY: Charles Pufahl by Joseph Pufahl
A Partner

NORTHERN STATE REALTY CORP.

BY: Joseph Pufahl VP

LINCOLN PROCESSING CORP.

BY: Joseph Pufahl VP

ADCHEM CORP.

BY: Joseph Pufahl Pres

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

On MAY 18, 1977 before me personally came JOSEPH PUFAHL to me known, who, by me duly sworn, did depose and say that deponent resides at 10 BEAR LANE, LATTINGTOWN, N.Y. that deponent is the Vice President of PUFAHL REALTY CORP., the corporation described in, and which executed the foregoing Release that deponent knows the seal of the corporation, that the seal affixed to the Release is the corporate seal, that it was affixed by order of the board of directors of the corporation; and that deponent signed deponent's name by like order.

UDELE B. GOODMAN
Notary Public, State of New York
No. 31-1506075
Qualified in New York County
Commission Expires March 30, 1979

Udele B. Goodman
Notary Public

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

On MAY 18, 1977 before me personally came JOSEPH PUFAHL, ~~CHARLES PUFAHL and HERMAN PUFAHL~~, to me known, and known to me to be the individual~~s~~ described in, and who executed the foregoing Release, and duly acknowledged to me that ~~they~~ executed the same.

Udele B. Goodman
Notary Public

UDELE B. GOODMAN
Notary Public, State of New York
No. 31-1506075
Qualified in New York County
Commission Expires March 30, 1979

A00007

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

On MAY 18, 1977 before me personally came JOSEPH RUFAHL to me known, who, by me duly sworn, did depose and say that deponent resides at 10 BEAR LANE LATTINGTOWN, N.Y. that deponent is the Vice Pres of NORTHERN STATE REALTY CORP., the corporation described in, and which executed the foregoing Release, that deponent knows the seal of the corporation, that the seal affixed to the Release is the corporate seal, that it was affixed by order of the board of directors of the corporation; and that deponent signed deponent's name by like order.

UDELE B. GOODMAN
Notary Public, State of New York
No. 31 1506075
Qualified in New York County
Commission Expires March 30, 1979

Udele B. Goodman
Notary Public

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

On MAY 18, 1977 before me personally came JOSEPH RUFAHL to me known, who, by me duly sworn, did depose and say that deponent resides at 10 BEAR LANE LATTINGTOWN, N.Y. that deponent is the Vice Pres. of LINCOLN PROCESSING CORP., the corporation described in, and which executed the foregoing Release, that deponent knows the seal of the corporation, that the seal affixed to the Release is the corporate seal, that it was affixed by order of the board of directors of the corporation; and that deponent signed deponent's name by like order.

UDELE B. GOODMAN
Notary Public, State of New York
No. 31-1506075
Qualified in New York County
Commission Expires March 30, 1979

Udele B. Goodman
Notary Public

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

On MAY 18, 1977 before me personally came JOSEPH RUFAHL to me known, who, by me duly sworn, did depose and say that deponent resides at 10 BEAR LANE LATTINGTOWN, N.Y. that deponent is the Pres. of ADCHEM CORP., the corporation described in, and which executed the foregoing Release, that deponent knows the seal of the corporation, that the seal affixed to the Release is the corporate seal, that it was affixed by order of the board of directors of the corporation; and that deponent signed deponent's name by like order.

Udele B. Goodman
Notary Public

UDELE B. GOODMAN
Notary Public, State of New York
No. 31-1506075
Qualified in New York County
Commission Expires March 30, 1979

A00008

Exhibit J

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
Case No. 2:03-CV-5985
----------x
NEXT MILLENNIUM REALTY, L.L.C., et al.,

Plaintiffs,

- against -

ADCHEM CORP., et al,

Defendants.
----------x
April 8, 2013
10:10 a.m.

Deposition of JOHN PUFAHL, pursuant to Notice, held at the offices of Sive Paget & Riesel P.C., 460 Park Avenue, New York, New York, before Jineen Pavesi, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter and Notary Public of the State of New York.

A P P E A R A N C E S

KEVIN MALDONADO & PARTNERS, LLC
5 Hickory Hill Road
Windham, New York 12496
Attorneys for Plaintiffs
BY: KEVIN MALDONADO, ESQ.
kevinmaldonado64@yahoo.com

SIVE PAGET & RIESEL P.C.
460 Park Avenue
New York, New York 10022
Attorneys for Defendants
Pufahl Realty, Northern
Realty, Adchem and Lincoln
Processing
BY: DANIEL RIESEL, ESQ.
driesel@sprlaw.com
ED ROGGENKAMP, ESQ.
eroggenkamp@sprlaw.com

J. PUFAHL

lamination equipment? 01:36:41PM
A. I don't think so. 01:36:42PM
Q. Do you know if he bought the 01:36:45PM
scouring machine? 01:36:46PM
A. I don't think so. 01:36:48PM
Q. Do you know if the oven that he 01:36:54PM
purchased, that Marvex purchased, was 01:36:56PM
utilized in their operation post 1973? 01:36:58PM
A. Whether Marvex used it, I 01:37:02PM
believe so. 01:37:04PM
Q. Do you know if Marvex had any 01:37:11PM
other type of manufacturing they did at 01:37:14PM
the facility post 1973, 89 Frost Street? 01:37:16PM
MR. RIESEL: Had any other, 01:37:21PM
other than what? 01:37:23PM
MR. MALDONADO: The one he has 01:37:24PM
described already, the laminating. 01:37:25PM
A. No, I didn't say he bought the 01:37:27PM
laminator. 01:37:29PM
Q. The oven. 01:37:30PM
A. All he bought was the oven. 01:37:32PM
Q. Do you know what processes 01:37:37PM
Marvex conducted at 89 Frost Street post 01:37:38PM
1973? 01:37:42PM

J. PUFAHL

A. I did; whether I remember, he 01:37:44PM
did some knitting and he had, I don't even 01:37:51PM
know how to describe this machine, it was 01:37:59PM
a continuous -- essentially a continuous 01:38:02PM
dry cleaner. 01:38:07PM
Q. What did he use the continuous 01:38:12PM
dry cleaner for? 01:38:13PM
A. To get -- for his knits, to 01:38:15PM
get the oils out of them. 01:38:18PM
Q. Why did he need to get the oils 01:38:24PM
out of the knits? 01:38:26PM
A. If you have ever seen a piece 01:38:27PM
of knit goods, they have to lubricate the 01:38:28PM
arm to go through all the needles and 01:38:36PM
things that they do to make a piece of 01:38:37PM
knit goods, it is just saturated with 01:38:42PM
oils, you had to do something to it. 01:38:49PM
Q. What did the machine look like 01:38:51PM
that he utilized to clean the oil from the 01:38:52PM
knits? 01:38:54PM
A. I remember it was blue; it was 01:38:58PM
a fairly large machine. 01:39:02PM
Q. Do you remember the name of the 01:39:06PM
manufacturer of it? 01:39:08PM

J. PUFAHL

Q. Did there come a point in time 01:48:18PM
when the Marvex tenancy came to an end? 01:48:20PM
A. Yes. 01:48:25PM
Q. What happened? 01:48:26PM
A. There was a major fire, 01:48:28PM
basically took down the whole building, 01:48:33PM
most of the building. 01:48:35PM
Q. Do you know the cause of the 01:48:39PM
fire? 01:48:41PM
A. How it started, no. 01:48:44PM
Q. Are you aware that it was an 01:48:47PM
arson? 01:48:49PM
A. Yes. 01:48:50PM
Q. Do you know what happened to 01:48:59PM
the PERC that was inside the building 01:49:00PM
during the course of the fire? 01:49:02PM
A. No. 01:49:04PM
Q. Do you know what happened to 01:49:05PM
the machine that contained the PERC during 01:49:08PM
the course of the fire? 01:49:10PM
A. That I remember seeing kind of 01:49:12PM
exploded. 01:49:15PM
Q. What did you see? 01:49:22PM
A. Just all twisted metal all over 01:49:25PM

J. PUFAHL

the place. 01:49:27PM
Q. So you went back in the 01:49:31PM
building after the fire obviously? 01:49:33PM
A. Yes, it was days after, but, 01:49:35PM
yes. 01:49:37PM
Q. What was the purpose of your 01:49:40PM
visit to the building after the fire? 01:49:42PM
A. It was a tenant, Northern State 01:49:48PM
Realty was the lessor, what's the term. 01:49:54PM
MR. RIESEL: Lessee and 01:50:04PM
sublessor: 01:50:05PM
A. Why wouldn't you, it is right 01:50:11PM
down the block from where we are. 01:50:12PM
I would go into it if I didn't 01:50:15PM
know anybody at the firm or anywhere else, 01:50:17PM
I would be looking at what happened with 01:50:21PM
the fire. 01:50:23PM
Q. During the course of the post 01:50:24PM
fire visit, did you observe any drums? 01:50:25PM
A. No. 01:50:31PM
Q. Do you know if Marvex stored 01:50:34PM
drums on the 89 Frost Street property? 01:50:35PM
A. I do not know. 01:50:37PM
Q. When is the last time you had a 01:50:53PM

J. PUFAHL

Q. Are you aware whether or not 01:55:43PM
the settlement agreement talks about 01:55:44PM
extension of any leases? 01:55:46PM
A. I don't remember. 01:55:47PM
Q. I think I am going to come back 01:56:46PM
to this, I have it marked in here. 01:56:47PM
MR. RIESEL: Take whatever time 01:56:51PM
you need. 01:56:52PM
It is not going to make a 01:56:55PM
difference I don't think; however you want 01:56:57PM
to do it. 01:56:59PM
MR. MALDONADO: I will be 01:57:03PM
better organized if I come back later. 01:57:03PM
Q. Do you know if you executed any 01:57:21PM
of the settlement documentation? 01:57:22PM
A. Yes, I was a signature for the 01:57:25PM
insurance company's settlement because 01:57:39PM
Adchem was a listed insured under the big 01:57:48PM
broad policy. 01:57:51PM
And we also signed a, what do 01:57:59PM
you call it, a -- not a waiver, I forget 01:58:12PM
the name of the document. 01:58:25PM
Q. You don't recall? 01:58:35PM
A. The name of the document? 01:58:36PM

J. PUFAHL

A. This is the bailiwick of you 03:44:17PM
attorneys, language and things like that, 03:44:19PM
this is not what I do. 03:44:22PM
Q. You have testified that you are 03:44:26PM
of the belief that the CERCLA claim arises 03:44:29PM
under the terms of the lease. 03:44:31PM
I am asking you how did you 03:44:33PM
reach that determination. 03:44:34PM
A. That if there is the 03:44:42PM
contamination under CERCLA, that we would 03:44:44PM
be released from any and all involvement 03:44:50PM
in that based on those releases that were 03:44:56PM
signed. 03:44:58PM
Q. Does the release say that? 03:44:59PM
MR. RIESEL: The release speaks 03:45:02PM
for itself. 03:45:04PM
Q. Is it your understanding that 03:45:05PM
the release says that? 03:45:07PM
A. That was what I figured we were 03:45:08PM
signing when we signed the release; we 03:45:10PM
were releasing any and all obligations -- 03:45:13PM
we were being released from any and all 03:45:16PM
obligations we had. 03:45:18PM
Q. Under the lease. 03:45:20PM

J. PUFAHL

A. From anything. 03:45:22PM

Q. Does the release say that? 03:45:23PM

MR. RIESEL: The release speaks 03:45:25PM
for itself; if you're asking him to recite 03:45:27PM
the terms of the lease on the release, we 03:45:29PM
have been over that. 03:45:32PM

MR. MALDONADO: I am asking him 03:45:34PM
if he believes that the release says that 03:45:35PM
any and all liability, including CERCLA 03:45:39PM
liability, is discharged. 03:45:42PM

Q. Is that your understanding? 03:45:44PM

MR. RIESEL: I don't mean to 03:45:46PM
disrupt you, but if you're asking whether 03:45:47PM
he recalls that the release in hoc verba 03:45:51PM
says that, that's one thing. 03:45:56PM

If you're asking him if that's 03:45:58PM
his interpretation of the document, that's 03:46:01PM
another. 03:46:03PM

We're willing to stipulate that 03:46:05PM
the word CERCLA is not in the release. 03:46:08PM

Q. I put before you what's been 03:48:27PM
marked Defendants' Exhibit 25. 03:48:28PM

We have looked at this already 03:48:30PM
today; beginning at page 00004 through 7 03:48:32PM

J. PUFAHL

is the general release provided by the 03:48:50PM
defendants to Spiegel, at 00001 through 3 03:48:52PM
is the general release provided by Jerry 03:49:00PM
Spiegel to the defendants. 03:49:02PM
I would ask you specifically to 03:49:04PM
take a look at the first two pages of that 03:49:06PM
document -- 03:49:07PM
MR. RIESEL: 001? 03:49:09PM
MR. MALDONADO: 001. 03:49:10PM
Q. -- and indicate for me which 03:49:12PM
specific language you believe supports a 03:49:17PM
contention that CERCLA claims would be 03:49:20PM
released pursuant to the terms of that 03:49:24PM
release. 03:49:26PM
(Witness perusing document.) 03:49:29PM
MR. RIESEL: Objection to the 03:49:30PM
form of the question, but you may answer. 03:49:31PM
A. I can read verbatim here, it 03:49:54PM
talks about "release involving causes of 03:50:17PM
action, suits, debts, dues, sums of money, 03:50:19PM
accounts, reckonings, bonds, bills, 03:50:25PM
specialties, covenants, contracts, 03:50:30PM
controversies, agreements, promises, 03:50:33PM
variances, trespasses, damages, judgments, 03:50:39PM

J. PUFAHL

extentss, executions, claims and 03:50:45PM
demands" -- 03:50:48PM
Q. Keep reading. 03:50:49PM
A. -- "whatsoever, in law, 03:50:50PM
admiralty or equity, which against the 03:50:53PM
releasees, the releasor, releasor's heirs, 03:50:57PM
executors, administrators, successors and 03:51:00PM
assigns ever had, now have or hereafter 03:51:04PM
can, shall, or may, have for, upon, or by 03:51:10PM
reason of any matter, cause or thing 03:51:14PM
whatsoever from the beginning of the world 03:51:19PM
to the day of the date of the release, 03:51:21PM
arising out of and in connection with a 03:51:25PM
certain release"... 03:51:25PM
Q. So is it your contention that 03:51:33PM
the CERCLA claim arises out of the lease, 03:51:34PM
sir? 03:51:37PM
A. You can ask me the question six 03:51:39PM
times, it isn't going to make any 03:51:41PM
difference. 03:51:43PM
CERCLA claim, CERCLA did not 03:51:43PM
exist at this point in time. 03:51:46PM
It says releases from 03:51:49PM
everything, that's the way I read it. 03:51:51PM

Exhibit K

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NEXT MILLENNIUM REALTY, LLC, AND
101 FROST STREET ASSOCIATES,

Plaintiffs,

-against-

CASE NO. CV-03-5985
(ARL)

ADCHEM CORP., LINCOLN PROCESSING
CORP., NORTHERN STATE REALTY CORP.,
NORTHERN STATE REALTY CO., and
PUFAHL REALTY CORP.,

Defendants.

ADCHEM CORP., LINCOLN PROCESSING
CORP., NORTHERN STATE REALTY CORP.,
NORTHERN STATE REALTY CO., and
PUFAHL REALTY CORP.,

Third-Party Plaintiffs,

-against-

THE ESTATE OF JERRY SPIEGEL and
ALAN EIDLER, PAMELA SPIEGEL SANDERS
and LISE SPIEGEL WILKS, AS EXECUTORS
OF THE ESTATE OF JERRY SPIEGEL,

Third-Party Defendants.

VIDEOTAPED DEPOSITION OF ELLIOT MILLER

DATE TAKEN: October 15, 2013
TIME: 1:00 p.m.
PLACE: Gregory Court Reporting
Naples, Florida

Elizabeth M. Brooks, RPR, FPR
Gregory Court Reporting Service, Inc.
2650 Airport Road South
Naples, FL 34112

APPEARANCES

For the Plaintiff(s): KEVIN MALDONADO, ESQ.
5 Hickory Hill Road
Windham, NY 12496

For the Defendant(s): EDWARD K. ROGGENKAMP, IV, ESQ.
Third-Party Plaintiff Sive Paget & Riesel, PC
460 Park Avenue
New York, NY

Also in Attendance: Gene Howell, Videographer

* * * * * * *

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* * * * * * *

handwriting, and I believe, on the second page, the date is in my handwriting. Not in the acknowledgment but In Witness Whereof.

Q Did you prepare this document?

A I do not believe I did.

Q Do you know who did prepare this document?

A I assume it was prepared by counsel. I shouldn't -- no, I do not know.

Q As you sit here today, are you familiar with the terms of the document before you?

A Just to the extent I've read them.

Q Okay. Do you know whether or not this release released CERCLA liability?

MR. ROGGENKAMP: Objection.

THE WITNESS: What kind of liability?

BY MR. MALDONADO:

Q CERCLA, environmental liability.

A Oh, CERCLA. Are you asking for my legal opinion?

Q I'm asking, based upon your understanding of what this release released, whether CERCLA claims would be included in that relays?

MR. ROGGENKAMP: Objection. It speaks for itself.

THE WITNESS: I don't even believe CERCLA was

in existence then.

BY MR. MALDONADO:

Q You are right.

A That certainly was not contemplated by this release.

Q Thank you. That's all.

A That's all about this or that's all, period?

Q No. That's all for that.

MR. ROGGENKAMP: Thought you were getting off easy for a second.

MR. MALDONADO: He is.

THE WITNESS: I have no horse in this race, one way or another. So, apart from the joys of reliving my youth, I'm entirely disinterested.

(Exhibit Miller F marked for identification.)

BY MR. ROGGENKAMP:

Q I'm going to mark as Miller F a five page document bearing the Bates stamps number A00004 through A00008, and ask the witness to identify that document, if possible.

MR. ROGGENKAMP: For the record, these are the pages that were removed from the document previously marked as Defendant's Exhibit 25.

THE WITNESS: I read it.

BY MR. MALDONADO:

Q Can you identify the document before you, sir?
A Yes. Again, I believe this -- the handwriting on the first page is my handwriting, although I did not prepare this document. And this appears to be a release by the parties described as the releasors of the parties designated as the lessees. And it's a limited release, limited to the claims described on Pages 2 and 3.
Q And those claims are related to 89 Frost Street?
A Yes.
Q Who was this release given by?
A It was given by the Pufahls and the corporations, in which they were shareholders as releasors.
Q Including Adchem Corp.?
A Yes.
Q I'm done with that, sir.
You testified previously, sir, that, following the litigation that's been covered by these documents, a check was received by the Pufahls as part of the settlement.
A If I said that, I said that.
Q Okay. Do you recall how the negotiations resulted in determining how much the check was going to be for?

A No. I assume we tried to get as much as we could, and Jerry Spiegel tried to pay as little as he could. And the number that was arrived at was the number resulting from those two amounts.

Q And what were the Pufahls defendants being paid for by that payment?

MR. ROGGENKAMP: Object. The check specifically says one entity.

THE WITNESS: The check was paid to Northern State Realty Company, and it was being paid for, essentially for the claims in the litigation. And the claims in the litigation referred to the declaration of Northern State Realty's rights to exercise the option to purchase 89 Frost Street.

BY MR. MALDONADO:

Q Were they being paid for the value of that option?

A No. They were being paid to settle a lawsuit.

Q Okay. Concerning the value of that option?

A No. Concerning the right of Northern State Realty, Co. to exercise the option.

Q Do you know if the option had value at the time the lawsuit was settled?

MR. ROGGENKAMP: Objection, asked and answered.

THE WITNESS: No, I do not know. As I said before, I didn't know the value of the real estate then and I don't know it now. I do not ever purport to be a real estate appraiser, so I don't know if the option had value or not.

BY MR. MALDONADO:

Q At some point in time the property at 89 Frost Street was subleased to a company called Marvex?

A Right.

Q Were you involved with the preparation of any documents or negotiations concerning that sublease?

A I was asked that by Mr. Roggenkamp and I believe I took -- said I didn't remember.

Q At one point in time during the direct examination you had an answer regarding allocation of rents between the various companies.

Do you recall that?

A I do.

Q What specifically do you know about allocation of rents between the various Pufahl companies?

A Nothing. Just that. I believe I testified that my belief was that Phil Garfield or his partners, or whoever prepared the financial statements, allocated rent among any commonly occupied building. More than one corporation occupied the building. The rent was

Exhibit L

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To: Daniel Riesel, Esq.

From: David Tesler, Esq., LeaseProbe LLC

Date: September 8, 2013

Re: Response to Benjamin Weinstock's Expert Opinion Dated August 29, 2013

I submitted an expert opinion in Next Millennium Realty, LLC et ano v. Adchem Corp. et.al ("Tesler Opinion"). I had reviewed that April 1, 1966 lease from Jerry Spiegel ("Spiegel" or "Plaintiffs") and Pufahl Realty Corp., the Addendum, Rider and Guarantee (together the "Lease"). I also reviewed Commander Oil v. Barlo Equipment Company, 215 F.3d 321 (2nd Cir. 2000) Cert denied, 531 U.S. 979 (2000) ("Commander Oil") that discusses the various factors contained within a lease that may convert a tenant/lessee into a de facto landlord/owner. I concluded that the Lease is a typical commercial lease reflecting the usual provisions setting forth the relationship between a landlord and tenant.

I recently received an expert opinion submitted by Benjamin Weinstock, Esq. ("The Weinstock Opinion") that argues contrary to my conclusions and raises issues not discussed in my earlier report. The following is intended as a formal response to many of the arguments and conclusions of the Weinstock Opinion.

Weinstock writes:

1. ***"It was always the tenant's intention to own the Property".*** It is difficult to understand how Weinstock could divine the tenant's motives. An option to purchase is just that – an option. One the Tenant could either have exercised or elected to forego. What makes this assertion particularly problematic is the many instances in the Lease that contemplates the purchase option not being exercised and the lease expiring naturally. To list only a few of many examples: (i) Section 7 of the Lease together with Section 11 of the Addendum discusses the Landlord bringing in prospective tenants to take over the space after the end of the term, (ii) Section 31 of the Lease discusses what happens to the leasehold improvements "at or prior to the termination of the Lease", and (iii) Section 59 is a "holdover" provision that contemplates

what occurs if the Tenant remains in place at the expiration of the 20 year term.

2. ***"The tenant regarded itself as the owner of the Property and made, removed and replaced leasehold improvements and alterations to the Property and freely sublet the Property, all without any notice to, or consent from, its landlord"*** – Most industrial (and retail) tenants have the right to make, remove and replace leasehold improvements. This does not make them de facto owners/landlords of the property. Weinstock also failed to mention that Section 22 of the Lease states that in the event of a tenant default or the Tenant's failure to remove any improvements upon the expiration of the term, those very fixtures become the property of the Landlord. This is inconsistent with the theory that the Tenant is considered a de facto owner. Remarkably, Weinstock also errs in his above statement by failing to mention that Section 31 of the Lease does in fact require the Tenant to advise the Landlord in writing by certified or registered mail of the Tenant's intention to remove leasehold improvements at a date not less than 30 days from the date of said notice. Additionally, the Tenant was required to post additional security deposits with the Landlord prior to the removal of the Leasehold improvements. This is not consistent with the rights and privileges of ownership. Weinstock also claims that the Tenant was also unable to freely sublet the property. As I wrote in the Tesler Opinion, there are in fact restrictions with regard to subletting, such as the (i) Tenant remaining liable under the lease, (ii) the requirement that the assignee assume the lease, (iii) the nature of the document that was to be used for the assignment and (iv) lease must be recorded.

3. ***"The tenant unequivocally intended to exercise the purchase option and acquire the Property. However, a fire in the tenth year of the term caused the Lease to terminate and the option expired."*** This claim is conjecture and unsupported by the evidence Weinstock cites. Additionally, the fact that the lease was terminated and the option expired due to the fire demonstrates that an option to purchase cannot provide ownership until exercised. According to Weinstock's logic, the tenant was a de facto owner/landlord, until the fire wrested the "ownership" away from the tenant and gave it back to the landlord. Such reasoning empties the meaning of the concept of an

"option" and the meaning of the word "owner".

4. ***"The Lease is for a term of 20 years and is not terminable by the landlord prior to the stated expiration date except for a default by the tenant or the destruction or condemnation of the building on the Property. Very significantly, the tenant has the absolute option to purchase the Property in the twelfth year of the term for a pre- negotiated price of $490,000.00. This combination, a long term lease with a purchase option, is the legal equivalent of ownership."*** There are three claims here that Weinstock attempts to use to buttress his argument. All three are incorrect. 20 Years is a standard term for an industrial lease and certainly nothing unusual or out of the ordinary. It is important to note that there were no renewal terms. Most 20-year terms also include renewal options of an additional 10-20 years. Even leases of 10 years are regularly accompanied by renwal options of an additional 10-20 years. The fact that the lease is not terminable by the Landlord except for certain conditions makes it no different than 99% of the many thousands of leases I have personally reviewed. Weinstock then notes that "very significantly" the tenant has the right to purchase in the 12th year of the lease. According to Weinstock's logic all leases with purchase options should be considered as if the tenant is a de facto Landlord – or at the very least all 20-year leases with purchase options should confer the tenant with de facto ownership. If the former is true, than a landlord / tenant relationship can never be achieved if the lease has a purchase option. If the latter, than a standard industrial lease can never be achieved if the lease contains a purchase option. Either way, Weinstock is arguing for a reinterpretation of the explicit language of the lease entered into freely between the parties.

5. ***"In reaching his conclusion, Mr. Tesler incorrectly ignores the tenant's purchase option."***. Weinstock is correct that my report did not refer to the regulation that a lease with an option is a taxable transfer. However, the point is that a lease of less than 49 years is not a taxable interest in real estate, and that a lease with an option to purchase is only a taxable interest in real estate and not a transfer of an ownership interest. This is clear from the fact that the tax law taxes interests that are not fee or ownership interests. Moreover, the Weinstock argument ignores the other substantial reasons why the April 1, 1966 lease was not a transfer of an ownership

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interest.

6. ***"Moreover, 20 years is a "long term lease.""*** In support of this proposition Weinstock begins quoting from various financial and legal dictionaries. Weinstock misses two important points. First, most real estate leases are drafted in the office, retail and residential contexts. Industrial leases more often contain longer terms than other commercial real estate leases. Additionally, Weinstock fails to account for the age of this Lease. Older leases, especially older industrial leases such as those drafted in the 1950s and 1960s were for longer terms than are typically used now. Weinstock's quoting of stock definitions of "long term leases" also gets him in trouble. His quote from the "Center for Commercial Real Estate Leasing" states a long term lease is three years. I have never seen an industrial lease for three years or less. According to this definition, every industrial lease I have ever seen (and I have seen many hundreds) if coupled with a purchase option, would be considered a long term lease and would endow the tenant with ownership status.

7. ***"As to the second part of the first factor of the Commander test (i.e., restrictions on tenant's use), the Tenant had free reign to use the Property as it desired, Spiegel did not place any customary leasehold limitations on the tenant such as the hours of operation, the number of employees in the building, or the type, location and quantity of manufacturing equipment to be installed by tenant."*** This is true of nearly every industrial single tenant lease I have ever reviewed. If there is more than one tenant, the Landlord must be concerned with how the actions of one tenant may affect the other. But an industrial tenant in a single tenant building has the free reign to use the Property so long as they comply with the permitted use stipulated in the lease and all applicable local, state and federal laws. There would be no use or obvious purpose served for the Landlord to impose any significant leasehold limitations on the tenant. It is disingenuous for Weinstock to claim that the Landlord did not place any customary leasehold limitations on the tenant, when it is precisely customary for the Landlord *not* to place leasehold limitations on an industrial tenant who does not share the building with another tenant. For example, why would the Landlord be concerned with the Tenant's hours of operation (a limitation almost always placed on retail tenants not office or industrial

tenants) so long as they were complying with city ordinances? In fact, this is exactly what Section 15 of the Addendum of the Lease imposes on the Tenant. Nonetheless, contrary to Weinstock's claim, there are some fairly innocuous and customary leasehold limitations that the Landlord did impose on the tenant, such as a "no obstruction" clause in Section 10 of the Lease and a limitation on signage in Section 11.

8. ***"The building was designed and constructed for tenant's specific manufacturing use which is described in the Lease as "lamination and coating of paper, textiles and fabrics and for general manufacturing purposes."*** Landlords often build a building to match a tenant's required specifications. This is even true in the office and retail contexts. These Landlords understand that the next tenant may or may not need the same specifications, but make a business decision to proceed nonetheless because it is worthwhile for them to have secured a tenant and they often have the hope that a future Tenant could make much of the same use of the premises. It is also worth mentioning that unlike the privilege of being an owner, the Tenant was limited in its use of the property to the "lamination and coating of paper, textiles and fabrics and for general manufacturing purposes". Should the Tenant have wanted to use the Premises for purposes other than manufacturing, the Landlord could have notified the Tenant of its default under the Lease and terminated the Lease if the Tenant did not desist from using the Premises for any other purpose other than as stipulated within the Lease. This is not consistent with the rights and privileges of ownership.

9. ***"As noted by the Commander Court, the landlord's inability to electively terminate the lease early is indicative of a tenant's "owner" status. In our case, Spiegel did not have any right to terminate the Lease prior to the stated expiration date."*** Significantly, Weinstock adds the word "electively" to the Commander Oil decision. The words of the opinion state "whether the lease cannot be terminated by the owner before it expires by its terms". In our case, the Landlord did in fact terminate the lease before it expired on its terms.

10. ***"One of the most zealously guarded rights of landlord in a typical lease transaction is the landlord's power to restrict assignment of the lease and subletting of the premises. In my experience, the assignment and***

subletting clause is one of the most heavily negotiated clauses in a lease. In this case, in recognition of the fact that the tenant was the beneficial owner of the Property, Spiegel abandoned all control over assignment or subletting." Weinstock is correct that today the assignment clause is one of the most zealously guarded rights of the landlord. Unfortunately, he is incorrect that this was the case in 1966. I have shown in many classrooms that the assignment and subletting clauses of the 50s, 60s, 70s and early 80s is rarely longer than a few sentences. The past 30 years has witnessed a sea change in how the assignment clause is drafted and it has grown from 2-4 sentences to as much as 2-4 pages. Secondly, as noted above in #2, Spiegel did attach some conditions to the assignment and therefore it is inaccurate to state that Spiegel abandoned all control over assignment and subletting.

11. ***"By the terms of the Lease, the tenant was solely responsible for paying all utility costs, insurance costs for liability, casualty and boiler coverage and for rent loss insurance. Tenant was responsible to pay for all real estate taxes and assessments affecting the Property. The tenant was responsible for the removal of rubbish, snow and ice, and for landscaping. In other words, the tenant paid for everything and was solely responsible for all costs attributable to the use, operation, maintenance and repair of the Property."*** These are all standard obligations for a single tenant even in a non industrial property. These obligations perfectly define a triple net tenant, which is a common type of lease in single tenant industrial, office and retail scenario. All this proves is that the Tenant has a triple net lease. No expert would argue that a triple net lease should treat the tenant as a de facto owner, even with the presence of a purchase option.

12. ***"The tenant is responsible for all non-structural repairs, certain structural repairs such as the roof, and for the repair of all structural damage caused by tenant. The tenant's experts point to Spiegel's lone obligation to make structural repairs. While it is correct that Spiegel assumed this obligation, it is really in the nature of an extended guaranty of the structure that Spiegel custom built for the tenant."*** Weinstock makes the best of a losing argument here. Landlords are nearly always responsible for structural repair because it is their building, not the tenants. In this Lease, the Landlord is responsible for structural repairs because it is

Spiegel's building and therefore it is Spiegel's responsibility. Weinstock tries to label this as a "guaranty", but one could say that is true of all leases. Call it by whatever term one prefers, but the Landlord must guaranty that the building it builds and leases to the tenant is structurally sound and therefore is required to make all structural repairs. Weinstock also incorrectly claims that the Tenant is responsible for certain structural repairs such as the roof. This is contrary to the plain reading of the Lease. Section 4 of the Addendum specifically includes the "roof deck" which is the roofing layer between the primary structural components such as the trusses and the joists and the insulation (which is not structural). In other words, the "roof deck" is exactly the structural element of the roof! Weinstock also claims that the Tenant has to repair structural damage that the Tenant caused. This is obvious and is the case with all leases. That is no different than saying that the Landlord would have to pay for non structural damage to the Premises that it caused and then claiming that the Landlord should be considered a de facto tenant because it is responsible for non structural repairs.

"In fact, the clause in the Lease which places this burden on the landlord has a very enlightening heading. Instead of being labeled "Repairs and Maintenance" as expected, the clause bears the revealing title "Guarantee of Labor & Materials." This is a very misleading claim by Weinstock. In fact, the clause that provides the Landlord with the obligation to make structural repairs is in Section 4 of the Addendum, which amends paragraph 3 and 39 of the Lease. Section 39 of the lease is titled "Guarantee of Labor & Materials" but the Addendum does not have that title and replaces more than that section. Additionally, the Addendum clearly overturns the entire thrust of Section 39 and therefore its content and the title of the section is not only irrelevant but would prove the opposite of what Weinstock argues because it was explicitly rejected and turned on its head.

"It is significant to note that the tenant is responsible to comply, at its sole cost and expense, with all statutes, ordinances, rules order, regulation and requirements of all governmental bodies, even to the point of making structural changes and alterations to the building and the land if applicable"

I could not find a source for Weinstock's claim about the structural repairs.

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In fact, Section 4 of the Addendum could not be more explicit about Landlord's responsibility for structural repairs and Section 3 (which was amended by Section 4 of the Addendum) makes no mention of structural changes at all.

13. ***"One expects that the risk of loss is to be borne by an owner. In this case, the tenant assumed the risk of loss. The tenant was not entitled to any compensation for the destruction of its Lease by fire or condemnation. It bore all the risk of these losses."*** I do not understand the point Weinstock is making. Landlords typically carry insurance to protect themselves in the event of a fire. Tenants are rarely compensated with Landlord's insurance and are free to procure their own insurance to protect the economic interest in their tenancy.

14. ***"In a typical industrial lease, the obligation to pay rent abates during any period when the premises are uninhabitable due to fire or other casualty. To the contrary, the Lease provides that rent does not abate following a fire or other casualty."*** In the event of a fire in an industrial single tenant setting, it would be unusual for rent to abate, because the likelihood is that the Tenant caused their own fire and the Landlord had no role in the fire, and no way to prevent it. In a retail context, rent abatement is common in the event of a fire. However, in an industrial context, it is not unusual for the rent not to abate and it is prudent for the Landlord to require the Tenant to procure rent interruption insurance to protect its interests. Weinstock also fails to mention that rent does in fact abate if the Tenant's use of the Premises is interrupted by the gross negligence of the Landlord (Section 26). This provision is consistent with Spiegel maintaining ownership of the Premises throughout the Lease.

15. ***"Unlike Commander, Spiegel had no right to use any portion of the Property. It had only limited right to inspect the Property to ensure that its tenant was complying with the terms of the Lease, and even then, the Lease provided that the landlord may not enter the factory portion of the Property without notice to, and supervision by, the tenant."*** Again, this is standard protocol for nearly every commercial real estate lease – be it office, retail or industrial. It is highly unusual for a Landlord to enter the Premises

without reasonable cause and specifically only after notifying Tenant. In fact, the original lease states that the Landlord shall have the right to enter the premises at reasonable hours. Section 11 of the Addendum adds that a notice requirement be given for the explicit purpose of tenant protecting "its operations and trade secrets". Weinstock also uses the term "limited rights". Section 60 of the Lease states "The provisions hereof permitting Landlord to enter and inspect the demised premises are made for the purpose of enabling Landlord to be informed as to whether Tenant is complying with the agreements, terms, covenants and conditions hereof, and to do such acts as Tenant shall fail to do." Those rights, even limited by the requirement to provide notice because of the fear of protecting the Tenant's trade secrets, is as robust of a "right to inspect" the property as I have seen in any commercial real estate lease.

16. ***"Spiegel was, at the time the Lease was made, the owner of an adjacent Property. Therefore the Lease included a clause permitting Spiegel to use the easterly wall of the building on the Property as a party wall for enclosure and support to benefit Spiegel's adjoining property. In a typical space lease, where the tenant has no "ownership" interest in the property, the tenant would not object to this clause. However, because the tenant regarded itself as the beneficial owner of the Property from the outset, it objected to this clause and it was deleted from the Lease. (See paragraph 73 of the Lease.")*** Weinstock once again assumes he understands the motivations of the tenant as they existed in 1966. Additionally, Weinstock fails to consider the numerous sound reasons, outside of ownership considerations, why the tenant would not want Spiegel to use a portion of the Premises for which it is paying good money for its exclusive use.

17. ***"The Financial Accounting Standards Board ("FASB")3 classifies a lease that contains a discounted purchase option as a "Capital Lease." This designation is extremely important because, for accounting purposes, a Capital Lease is the equivalent of "ownership.""*** I am not an expert on FASB, but after reading the FASB provision in question, Weinstock is making an unsubstantiated interpretation and the Lease may not even be labeled as a Capital Lease. One of the definitions of a Capital Lease is that it contains a Bargain Purchase Option as defined in paragraph 5D. Weinstock likely assumed that the purchase option contained in the Lease qualified in this

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instance as a Bargain Purchase Option and therefore could be considered a "Capital Lease". However, according to the FASB standards, a Bargain Purchase Option is defined as "a provision allowing the lessee, at his option, to purchase the leased property for a price which is sufficiently lower than the expected fair value of the property at the date the option becomes exercisable that exercise of the option appears, at the inception of the lease, to be reasonably assured[1]". Weinstock does not stipulate that the purchase price is sufficiently lower than expected fair value of the property. My understanding is that there is no indication that the $490,000 option price was thought to be so substantially discounted as of April 1, 1966 that it would assure that the option would be exercised. Indeed, there are several sections in the lease that suggest that the option might not be exercised or that if the option was triggered the tenant might default and lose its down payment. Additionally, consistent with the Tenant not being considered an owner, Section 36 explicitly states that the nothing contained in the Lease shall require the Tenant to pay any inheritance, succession or transfer taxes charged against the Landlord.

Throughout his expert opinion, Weinstock makes a series of arguments that remain unsubstantiated or are simply not true of any common lease, let alone a single industrial tenant it a building it alones occupies. This Lease is consistent with a standard industrial lease of its era, in that it sets forth the respective rights and obligations of Landlord and Tenant. To claim that this lease is unusual in any way and therefore contrary to the explicit language of the agreement, and understanding of the roles of the parties in that it should treat the Tenant is a de facto Landlord or Owner is to engage in a gross misreading of the Lease.

Written and Prepared by: David I. Tesler, Esq.

_____

1 http://www.fasb.org/cs/BlobServer?blobkey=id&blobwhere=1175820908834&blobheader=application%2Fpdf&blobcol=urldata&blobtable=MungoBlobs

Exhibit M

Expert Opinion of
B. Tod Delaney, Ph.D., P.E., BCEE

Next Millenium Realty, LLC, et al.

v.

Adchem Corporation, et al.

United States District Court
Eastern District of New York
Case No.: 2:03-CV-5985

October 2013

Bernard T. Delaney, Ph.D., P.E., BCEE

Prepared by: First Environment, Inc.
91 Fulton Street
Boonton, New Jersey 07005

FIRST ENVIRONMENT

PLF/DEF Delaney
EXHIBIT A
DATE 1/9/14 RPTR
Jineen Pavesi, RPR, RMR, CRR

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Appendix A: Legal CV of B. Tod Delaney

1.0 Introduction

I have been asked by Sive, Paget & Riesel, PC, counsel representing the defendants, to provide my opinion(s) in the matter known as Next Millennium Realty, LLC, et al. v. Adchem Corp., et al. (Case No. 2:03-CV-5985) United States District Court, Eastern District of New York, regarding the sources of perchloroethylene (PCE or Perc) contamination at a former industrial site located at 89 Frost Street, Village of Westbury, Town of North Hempstead, Nassau County, New York (hereinafter, the "Site").

The Site is located at 89 Frost Street in the Village of Westbury, Town of North Hempstead, County of Nassau, New York in the New Cassel Industrial Area. The Site consists of 3.5 acres and currently houses a parking lot. A 55,000 square foot facility located on the Site was utilized by various tenants for commercial businesses between approximately 1964, when the building on the Site was erected on vacant land, through 1976, when the structures on the Site were destroyed by a fire. Throughout this time period, the building had a septic system that ultimately discharged wastewaters into a number of drywells and/or cesspools located on the Site. In turn, the cesspools/drywells leached the wastewaters into the soils and groundwater underlying the Site. At all relevant times concerning the analysis presented in this report, there was no public sewer service at the Site (i.e., the wastewaters were not conveyed to a publicly owned treatment system that discharged to a surface water body). (Third-Amended Complaint and Jury Demand, Next Millennium Realty, LLC v. Adchem Corp., 03-cv-5985 (E.D.N.Y.) Filed July 12, 2012)

Lincoln Processing Corp. ("Lincoln") operated at the Site from approximately late 1966 until approximately June 1, 1972. Lincoln was a commission bonding and laminating business that bonded customers' cloth piece goods to urethane foam or to an acetate tricot or nylon tricot using water-based adhesive. Marvex Processing and Finishing Corporation (hereinafter "Marvex") a manufacturer and processor of double-knit fabric for clothing, operated at the Site from approximately June 1, 1973 to May 30, 1976, when the building was destroyed by fire.

A replacement building was constructed on the Site in approximately 1978 and was demolished in 1998 so that the Site could serve as a parking lot for the department store constructed on the adjacent 770 Main Street site. This report does not address any potential on-site sources of PCE contamination due to the operations between 1978 and 1998.

1.1. Summary of Opinions

Based on (1) documents and deposition transcripts in the record for this matter; (2) additional references concerning the operation of various dry-cleaning machines utilizing PCE that were used in the fabric manufacturing and knitting business; (3) other expert reports submitted in this matter; (4) specialized scientific and technical knowledge based upon my review of historical documents; (5) my experience,[1] education and expertise; and (6) other resources generally accepted as reliable in the field of forensic PCE source analysis, my opinions are as follow:

1. During the years that Marvex Processing and Finishing Corporation operated at the Site, it contributed a large mass of PCE to the subsurface soils and groundwater at the Site through its use, handling, and disposal practices of PCE as related to its operation of large-scale industrial dry cleaning equipment, including the continuously-fed industrial dry-cleaning machine it operated at the Site from approximately 1973 or 1974 until May 30, 1976. The continuous dry-cleaning machine operated by Marvex was most likely manufactured by Rimar Meccania, Ltd., an Italian manufacturer.
2. The majority of PCE that contaminated the subsurface soils and groundwater at the Site is attributable to a single event: the catastrophic discharge of PCE during the 1976 fire that destroyed the building at the Site. Some additional amount of PCE contamination resulted from Marvex's routine use of PCE at the Site.
3. Lincoln Processing's operations at the Site between approximately late 1966 and approximately June 1, 1972 did not make a significant contribution to the PCE contamination present at the Site.

1.2. Professional Experience

I am a Professional Engineer licensed in 12 states and a member of the American Academy of Environmental Engineers. I was awarded the Bachelor of Science Degree in 1968 and the Master of Science degree in 1972, both in Chemical Engineering, from the University of New Mexico, and a Ph.D. degree in Environmental Health Engineering from the University of Texas in 1976. I received a Master's in Business Administration from Pepperdine University. I am currently the President of First Environment, Inc., a strategic environmental engineering and management consulting firm with corporate headquarters at 91 Fulton Street in Boonton, New Jersey.

[1] Among other cases, my experience includes serving as an expert witness in a matter involving a similar site in New Jersey, where the dispute involved the cleanup of PCE contamination at the site and the subsequent lawsuit by the current owner of the site against a former tenant who previously conducted textile knitting and continuous dry cleaning operations at the site in the 1970s.

My education, training, personal experience, and knowledge of industrial operations and associated raw material and waste management practices, remedial design and construction, combined with my familiarity with relevant sources of information found in scientific and technical literature and generally accepted industry practices and standards, were used to develop this professional opinion. A copy of my CV, including a list of publications I authored within the preceding 10 years, is provided in Appendix C. Compensation for the preparation of this expert report and my testimony is $325/hour.

1.3 Methodology

Based on historic records, deposition transcripts and other writings, I have confirmed that Marvex's operations are similar to other knitting operations that were conducted in the 1970s. I have firsthand knowledge of at least one such operation located in New Jersey (Originit Fabrics) that operated during the same timeframe as Marvex and used the same type of continuously-fed industrial dry-cleaning machine that I believe Marvex used. From my review of both operations, analogies between the two can be made to estimate what quantities of PCE were used by Marvex and the sources of PCE discharges that occurred at the Site.

2.0 Site History

2.1 Marvex's Operations at the Site

Deposition testimony and historical documents establish that Marvex performed knitting and dry cleaning operations at the Site using knitting machines and an Italian-made continuous dry-cleaning machine. Marvex also heat-set fabrics using a tenter frame oven purchased from Lincoln Processing. The dry cleaning operations conducted by Marvex at the Site utilized PCE, and the continuous dry-cleaning machine utilized by Marvex had a solvent still to recover PCE for re-use. Marvex had an aboveground storage tank that contained PCE at the Site and periodically received deliveries of PCE via tanker truck. Marvex also had a number of 55-gallon drums at the Site, although it is unknown how many were typically present or what those drums contained.

According to a June 1977 National Labor Relations Board ("NLRB") Decision, Marvex was a New York corporation "in the business of performing dry-cleaning and finishing of polyester fabric and related services." (Marvex Processing & Finishing Corp. and Local 819, et al., Case 29-CA-4835, June 6, 1977, 229 NLRB No. 188, AA04811-4821 ("Marvex NLRB Decision") at Page AA04811). During the deposition of Fred Margolin, the President of Marvex, Mr. Margolin confirmed that a dry-cleaning machine was among the stationary equipment he installed at the Site. (Fred Margolin Deposition, 9-16-13, Page 15, Lines 2-16) He recalled that the dry-cleaning machine was ordered from a company located in Italy and that because it was coming from Italy, it took some time for the dry-cleaning machine to be installed at the Site. (Id. at Pages 72-73). Mr. Margolin also recalled that the dry-cleaning machine was approximately 10 feet wide by 15 feet long and that it was operated by feeding in a continuous piece of fabric at one end that would exit the machine at the other end. (Id. at 84-88) He also stated that fabric was brought to the Site from other sites specifically to be dry-cleaned and heat-set. (Id. at Page 104, Lines 10-25) The fabric was heat-set in a tenter frame oven purchased from Lincoln Processing. (Id. at Pages 96, 104-106; see also CP 150) Mr. Margolin also stated that PCE was used for dry cleaning at the Site. (Fred Margolin Deposition, 9-16-13, Pages 14-15)

Another former Marvex employee, Dieter Kannapin, also recalled at his deposition that a continuous dry-cleaning machine was used by Marvex in its operations at 89 Frost Street. (Dieter Kannapin Deposition, 10-8-13, Pages 9-10). Mr. Kannapin could not remember

the length and width of the dry-cleaning machine but recalled that it was approximately 12 feet tall, and that long rolls of fabric were fed through the machine to be dry cleaned in a continuous process. (Id. at Pages 10-11) Mr. Kannapin also stated that "perc" (PCE) was used as a solvent in Marvex's dry-cleaning machine; that the machine was connected to a still used to recover perc; that there was a separate aboveground storage tank connected to the dry-cleaning machine that contained perc; and that Marvex periodically received deliveries of perc via tanker truck. (Id. at Pages 17-20) Mr. Kannapin stated that Marvex had 55-gallon drums at the Site but did not know what they contained. (Id. at Page 21) Mr. Kannapin also confirmed that Marvex heat-set materials. (Id. at 22)

Mr. John Pufahl, who visited the Site during Marvex's occupancy, testified in his April 8, 2013 deposition that Marvex performed knitting operations and operated a continuous dry cleaner as part of Marvex's knitting operation at 89 Frost Street: "I remember, he did some knitting and he had, I don't even know how to describe this machine, it was a continuous -- essentially a continuous dry cleaner." (John Pufahl Deposition, April 8, 2013, Page 88, Lines 23-28 and Page 89, Lines 2-6). Mr. Pufahl also testified that Marvex's dry-cleaning machine used PCE. (Id. at Page 90, Lines 3-11)

Both Messrs. Margolin and Kannapin also recalled that Marvex had knitting machines at 89 Frost, although neither could recall how many knitting machines Marvex had. (Fred Margolin Deposition, 9-16-13, Pages 93-94; Dieter Kannapin Deposition, 10-8-13, Page 25) However, testimony referenced in a decision by members of the National Labor Relations Board in a case entitled Marvex Processing & Finishing Corp. and Local 819, et al. (Case 29-CA-4835, June 6, 1977, 229 NLRB No. 188), hereinafter "NLRB Decision", AA04811-21) suggests that Marvex had at least 14 knitting machines, and likely as many as 24. (NLRB Decision at AA04817 ("Each knitter was usually assigned approximately six machines to watch. As of January 12, Luis Imbert was assigned machine numbers 9 through 14."), AA04816 ("During the period of time here in question there were four knitters working on each shift."))

2.2 Lincoln's Processing Operations at the Site

Lincoln was a commission bonding and laminating business that bonded customers' cloth piece goods to urethane foam or to an acetate tricot or nylon tricot using water-based adhesive.

Adchem Corp. et al.'s Response to Interrogatories from Next Millennium Realty, LLC, et al., (Next Millennium Realty v. Adchem Corp., 03-cv-5985 (E.D.N.Y.) (Nov. 7, 2008) at Page 7)

Lincoln Processing occupied a narrow area of business that provided the service of combining two fabrics, or a fabric and foam, into one permanent "sandwich" of those materials. Two processes were used by Lincoln: flame lamination and wet bonding. Flame lamination did not use adhesive but instead melted the surface of a foam sheet which was adhered by contact to a fabric. Wet bonding used a waterbased adhesive that was precision applied in a "dot" pattern to one material, and the second fabric was "bonded" to it while the adhesive was still wet allowing the "dots" of adhesive to adhere to each surface and make a permanent "sandwich" of material. In the wet bonding process, the adhesive was then dried and cured via the application of heat. These combined "sandwich" fabrics then went to their customers, primarily for making women's apparel. Neither of these processes used PCE. (Expert Report of Thomas G. Godonis, August 16, 2013)

There is conflicting testimony as to whether PCE was ever used by Lincoln Processing at the Site. According to Charles Pufahl, the President of Lincoln Processing, no PCE was employed at Lincoln Processing. (Charles Pufahl Deposition, January 16, 2013, Pages 53-54) On the other hand, two former Lincoln employees have testified that a small dry-cleaning machine that utilized PCE was at the Site and was used by Lincoln to test strips of the bonded cloth for quality control purposes beginning in approximately 1969 or 1970. (Obadiah Goodman Deposition, September 17, 2013, Pages 15-17, 189; Lloyd Leary Deposition, September 18, 2013, Pages 11-13) However, neither the inventory of equipment Lincoln Processing liquidated when operation was being decommissioned in approximately 1975 to 1976 (CP00057- CP00082) nor a tax document listing Lincoln Processing equipment sold in 1972 (AA01292) included any type of Dry Cleaning apparatus, so there appears to be no written factual materials that support the former Lincoln employees' statements regarding the dry-cleaning machine at the Site.

One of those Lincoln employees also testified that Charles Pufahl, or other Lincoln employees, would take strips of cloth to a commercial dry cleaner near the Site prior to the time when Lincoln's dry-cleaning machine was added to the Site. (Obadiah Goodman Deposition, September 17, 2013, Pages 189-90) This suggests that if Lincoln did operate a

dry-cleaning machine at the Site, it was not present during the entirety of Lincoln's occupancy of the Site.

For the purposes of this report, I will assume that Lincoln had a dry-cleaning machine at the Site of the type described by the former Lincoln employees and discuss the nature and extent of releases of PCE to the environment that would likely be associated with such a machine. According to those Lincoln employees, the batch-type[2] dry-cleaning machine that Lincoln allegedly used was similar in size to a household washing machine with a window in front like a laundromat drier. (Obadiah Goodman Deposition, September 17, 2013, Pages 129-34; Lloyd Leary Deposition, September 18, 2013, Page 35) Based on the time frame and the alleged size and PCE consumption of the machine, I believe that the Lincoln dry-cleaning machine was a small-capacity dry-cleaning machine of the type that might have been used as a coin-operated dry-cleaning machine in the 1960s.

[2] In contrast to a continuous dry-cleaning machines, which fed fabric to be dry cleaned through the machinery in a continuous manner, a batch-type dry-cleaning machine operates much like a commercial washer/dryer in that a single load of fabric is placed in the machine, which is then closed, and a dry-cleaning cycle is run, after which the load of fabric is removed from the machine.

3.0 Discussion

3.1 Marvex's Operations Are Analogous to Other Knitting Operations During the 1970s

Marvex's operations are similar to other knitting operations that were conducted in the 1970s. I have extensive experience with such an operation located in New Jersey that operated during the same timeframe as Marvex and utilized continuous dry-cleaning machines manufactured by an Italian firm, Rimar Meccania, Ltd. ("Rimar"). I believe that the continuous dry-cleaning machine used by Marvex was also manufactured by Rimar and was similar to the one employed in the New Jersey knitting operation. From my review of both operations, comparisons between the two can be made to estimate what types and quantities of materials were used and the sources of PCE discharges that occurred at the Site.

Knitting and continuous dry-cleaning operations necessarily worked in tandem in the 1970s to knit yarn into fabric and then remove oil (used to lubricate the moving needles on the knitting machines) from the newly-knitted fabrics. The knitting process often leaves residual knitting and coning oils on the fabric as a stain. Continuous dry-cleaning machines were typically used in knitting operations to clean oils off of fabric after its initial knitting and possibly to treat the fabric with a stain repellant. Knitted fabrics are cleaned by running them through the continuously-fed dry-cleaning machine to remove the stains.

The solvent most widely used in the continuous dry-cleaning machines in use in the 1970s is PCE. PCE is an effective solvent in the dry cleaning of double knit and polyester knit fabrics. PCE was also used as a solvent for water repellents and for melting agents and dyes in dyeing operations and as a cleaning fluid for the removal of spinning oils and lubricants from equipment by textile processors. (Source Reduction of Chlorinated Solvents - Textiles Manufacture, California Department of Toxic Substances Control and U.S. Environmental Protection Agency, June, 1991)

3.1.1 Originit Fabrics

Originit Fabrics was a knitting company that operated from about 1977 to 1981 at a facility in Teterboro, New Jersey. Originit's knitting operations produced double-knit fabrics during this time through the use of 100 knitting machines. After the fabrics were knit, they were processed through a continuous dry-cleaning machine to remove knitting and coning oils. After this solvent finishing, all fabrics were framed and heat-set on a FabCon unit with one large heating

chamber. The goods were processed through this unit at speeds that varied between 22 to 35 yards a minute. Processing temperature in the heat chamber was maintained at between 325 to 350°F. ("Orginit's production powered by enthusiasm, quality," Knitting Times, June 6, 1977. Pages 25-26)

Originit employed two continuous dry-cleaning machines manufactured by Rimar to degrease the fabrics. One was a second-hand Rimar unit purchased from an unidentified facility that was closing on Long Island around 1977. The second was a new Rimar unit presumably purchased through the U.S. distributor of the Italian manufacturer. Each unit had the capacity to hold approximately 1,500 to 2,000 gallons of PCE. To supply the Rimar continuous dry-cleaning machines, Originit had a 1,000-gallon aboveground storage tank (AST) for virgin PCE and a 1,000-gallon AST for waste oil recovered from the distillation process. Orginit's Teterboro facility would receive a 500- to 750-gallon delivery of PCE approximately once per month, depending on production. Accordingly, Teterboro consumed about 5,000 to 7,000 gallons of PCE per year of operation.

Based on my experience with the Originit case and with another large-scale commercial dry- cleaning and knitting operation, it is highly likely that the operations of Marvex would have closely tracked those of Originit in at least four ways as a knitting operation indicative of 1970's fabric manufacturing techniques and practices:

- Originit and Marvex produced double knit synthetic fabrics using knitting machines in the 1970s.
- Both employed knitting machines that resulted in the staining of the fabric from knitting and coning oils necessitating subsequent continuous, high throughput, dry cleaning of the fabric.
- Both employed Italian-made continuous dry-cleaning machines. As discussed below in Section 3.1.2, the continuous dry-cleaning machine used by Marvex was most likely manufactured by Rimar, the same manufacturer that made the continuous dry- cleaning machines used at Originit.[3]
- Both had aboveground storage tanks for PCE and periodically received deliveries of PCE via tanker truck.

Therefore, several parallels can be inferred concerning the types and amounts of PCE waste that was generated from the operations of Originit to the operations of Marvex. Marvex operated

[3] Originit had two Italian-made Rimar continuous dry-cleaning machines in its facility, while Marvex only had one continuous dry-cleaning machine. (Dieter Kannapin Deposition, 10-8-13, Page 10)

approximately 24 knitting machines and one continuously-fed industrial dry-cleaning machine at the Site that used PCE as the solvent during the time period. (NLRB Decision at AA04816-17; Margolin Deposition 9-16-13, Page 154; Kannapin Deposition 10-8-13, Page 10) Based on this, I estimate that the amount of chemicals used and wastes produced by Marvex in normal operations would be approximately 25 percent of that produced by Originit over similar periods of time.

3.1.2 Marvex's Continuous Dry-cleaning machine was Most Likely Made by Rimar Meccania, Ltd.

In general, the 1970's operations like Marvex had relatively limited choices as to the supplier of continuous dry-cleaning machines as opposed to batch-type dry-cleaning machines. The fact that Marvex's continuous dry cleaner was manufactured by an Italian company limits the possible sources of that machine even further. According to a 1974 industry survey by Knitting Times magazine, only two Italian manufacturers – Rimar Meccania, Ltd. and Omez Costruzione Macchine Tessili ("Omez") – made continuous dry-cleaning machines that were sold in the U.S. (See "Guide to Solvent Process Units", Knitting Times, Jan. 21, 1974, Pages 45, 47) The only other Italian manufacturer of solvent processing equipment for textiles at the time (Donini) only made batch-type dry-cleaning machines. (Id. at Page 47)

In the 1970s, Rimar manufactured continuous dry-cleaning machines sometimes referred to as solvent processing machines or continuous solvent scour ranges. Rimar held one of the only continuous dry-cleaning machine patents issued in the 1970s and was a leading exporter of dry-cleaning machinery to the United States. Rimar was assigned a patent for a "Machine for Washing Fabrics" (i.e., a continuously-fed dry-cleaning machine) filed in Italy on March 26, 1969 and in the United States on March 10, 1970. (U.S. Patent No. 3,631,692 (Issued Jan. 4, 1972)) This machine was the only Italian continuous dry-cleaning machine patented by Rimar Meccania, Ltd in the era that Marvex operated a Rimar continuous dry-cleaning machine. The Rimar line of machines was available commercially in the United States by no later than April of 1972. ("American Southern: major commission dyer in sunshine state", Knitting Times, Aug. 20, 1973, Page 50 ("Last April, American Southern installed a Rimar continuous dry-cleaning machine, one of the first to be in operation in the country.”))

In the early 1970s, Rimar solvent (PCE)-based continuous dry-cleaning machines were sold in the United States through the distributor ITM Ltd. (Id. at p. 45) They were the only Rimar U.S. agent listed in the "Guide to Solvent Process Units." ITM Ltd. was located at 100

Summa Avenue in Westbury, New York, less than half a mile from the Site. (Id.; Dept. of Health, Bureau of Land Resources Hazardous Chemical/Waste Storage Locations, Mar. 3 1987, Page 275, Bates No. 003578) Omez's U.S. distributor was located in Greenville, South Carolina. ("Guide to Solvent Process Units", Knitting Times, Jan. 21, 1974, Page 47) The proximity of ITM Ltd. and Marvex and the fact that ITM Ltd. was the only U.S. agent for Rimar implies strongly that the Marvex machine obtained from Italy was in fact a "Rimar Vibro Scour" obtained through ITM Ltd.

Dieter Kannapin testified at his deposition that the name Rimar as a manufacturer "sounds familiar." (Dieter Kannapin Deposition, 10-8-13, Page 14) Mr. Kannapin also stated that a photograph of a Rimar machine in operation at a knitting facility in New Jersey in 1977 "looks familiar," and that the machine depicted in the photograph "could be" the same size as the continuous dry-cleaning machine used by Marvex at the Site. (Id. at Pages 40-41)

Testimony referred to in a decision by members of the National Labor Relations Board in a case entitled Marvex Processing & Finishing Corp. and Local 819, et al. (Case 29-CA-4835, June 6, 1977, 229 NLRB No. 188, AA04811-21) states that one employee of Marvex (Pineda) "could operate the Remo machine and the dry-cleaning machine." (Id. at AA04815) Although there appears to have been some confusion regarding the name of the machine, it stands to reason that the machine referenced by the NLRB decision as a Remo machine was in fact a continuous dry-cleaning machine manufactured by Rimar, and that the reference to a "Remo" machine was a mispronunciation of "Rimar."

Based on the NLRB case, the testimony of Mr. Kannapin, the fact that the U.S. distributor of Rimar was located near to the Site, and the fact that there is no evidence that Marvex's continuous dry cleaner was manufactured by Omez,[4] I believe that the continuous dry-cleaning machine used by Marvex at the Site was manufactured by Rimar.

[4] Even if Marvex's continuous dry-cleaning machine was manufactured by Omez, the capacity of the two continuous dry-cleaning machines manufactured by Omez in the 1970s – 1,700 to 1,800 lbs/hour of fabric – was essentially identical to the of the larger of the two continuous dry-cleaning machines manufactured by Rimar during the same time period – 1,700 lbs/hour of fabric for the Rimar Vibro Scour Model FST, as opposed to 1,000 lbs/hour of fabric for the Rimar Vibro Scour. ("Guide to Solvent Process Units", Knitting Times, Jan. 21, 1974, Pages 45, 47)

3.2 Operation of the Rimar Continuous Dry-cleaning Machine

The Rimar machine available in the early 1970s was called the Vibro Scour and could dry clean 25 to 35 yards of fabric per minute. Through the dry-cleaning process using PCE as the solvent, the Vibro Scour was capable of reducing the oil content of polyester double knit and polyester/acrylic blends from 7 percent to 0.2 to 0.5 percent.

Orginit's Rimar continuous dry-cleaning equipment operation began with the fabric passing through a dry-cleaning solvent bath that would vibrate to enhance the solvent contact to the fabric. After going through the wet area, the fabric was run through rollers that squeezed out any excess solvent remaining. The fabric then went through a drying operation where the fabric was passed around a large drum. The drum would have an open screen where warm air was applied to the fabric and dried the fabric. After the fabric dried it would exit out of the machine.

In August 1974, Duobond Corporation paid $200,000 for a continuous solvent scour range manufactured by Rimar (Italy) and sold in the U.S. by ITM Ltd. Called the Vibro Scour, it operated at 25 yd/min (manufacturer claims 35 yd/min). Polyester double-knit and polyester/acrylic blends were processed in weight from 5 to 16 oz/yd. Oil content reached 7 percent in, and residuals range from 0.2 to 0.5 percent out. A schematic drawing of the Vibro Scour purchased by Duobond is depicted in Exhibit 2. (Environmental Pollution Control Textile Processing Industry, USEPA (EPA-625/7-78-002), October 1978, Page 6-88)

The excess solvent, which included the PCE and other impurities, that was squeezed out by the rollers dropped back into the bath and was then pumped into a still for distillation to remove the impurities. Steam heat was applied to boil the material and once the vapors came across the cooling coil, they condensed back to liquid.[5] Rimar's U.S. patent shows a similar arrangement for fabric washing but without a self-contained drying drum. (U.S. Patent No. 3,631,692 (Issued Jan. 4, 1972)) That patent references a distillation unit connected to a solvent recovery system "not shown for the sake of simplicity." (Id. Column 3, Lines 2 – 5) The Rimar Vibro Scour continuous dry-cleaning machine contained a distillation unit that recovered solvent from

[5] Mr. Kannapin confirmed that Marvex's continuous dry-cleaning machine was connected to a steam supply from the Site's boiler and that Marvex's machine used a still. (Deposition of Dieter Kannapin, 10-8-13, Pages 16-17)

the unit at a rate of around 600 gallons per hour, indicating that the amount of PCE that was used by the Vibro Scour unit was much higher than 600 gallons. (Id. at Page 6-88)

At Originit, the clean PCE was pumped to a holding tank and then back to the dry-cleaning machines. This liquid was separated from the PCE in a water separator and then discharged to a condensate tank, which was in turn pumped to an effluent tank and then to the sewer.[6] The waste oil removed during the distillation process was pumped to Orginit's waste oil tank.

3.3 Sources of Contamination from Continuous Dry Cleaning

3.3.1 Wastewater Discharges from Continuous Dry-Cleaning Machines

Wastewaters associated with a continuous dry-cleaning machine typically come from several sources:

- Distillation/Solvent Recovery,
- PCE-Water Separators,
- Scrubbers,
- Carbon Regeneration,
- Wash Down of Miscellaneous Spills.

Generally, continuous dry-cleaning machines would discharge wastewater. These wastewaters are generally discharged to a drain located in the manufacturing facility. (Neil and Spencer Ltd. Service Manual, Model "GT 110 I" Drycleaning Machine, 1961, page 37) Equipment was typically designed to discharge to the sewer. (Izzo, Victor J., *Dry Cleaners—A Major Source of PCE in Ground Water,* Calif. Water Quality Control Board, March 27, 1992, page 9-10) Indeed, under normal operating conditions, dry-cleaning operations employing continuous dry-cleaning machines would discharge PCE-laden wastewater to a floor drain or the machine would be hard-piped to a sewer line that discharged either to a sewer main or to an on-site septic or cesspool system.

According to a technical study focused on dry cleaners and PCE in groundwater, leakage through sewer lines is the major pathway through which PCE was introduced to the subsurface. As PCE is heavier than water, PCE can settle on the bottom of the sewer line and leak through joints or cracks. (Murphy, Brian L. and Morrison, Robert D., Introduction to

[6] The Site was not served by a municipal sewer during Marvex's occupancy. Wastes flowed to a Septic/Cesspool system.

Environmental Forensics, 2002, p. 277) Between 1988 and 1991, analysis of water samples from nine water separators in central California revealed an average PCE concentration of 151 parts per million with a range of PCE concentrations in condensate liquid from 0.056 ppm to 1,119 ppm, and a median value of 64 ppm. In addition, some samples collected from dry cleaners contained as much as 30 percent pure solvent. (Id. Izzo at pp. 2, 9-10, 21)

Although these studies focused on commercial dry cleaning operations utilizing water separators, the same contamination scenarios would apply to continuous dry-cleaning machines that use PCE as their cleaning solvent and utilized a water separator, such as the Rimar continuous dry cleaner used by Originit and likely used by Marvex.

3.3.2 Based on Originit's Operations, Marvex's Operations Would Have Consumed Approximately 140 Gallons of PCE per Month

Marvex operated approximately 24 knitting machines at the Site. This is approximately one-quarter of the number of knitting machines at Originit. This suggests that the amount of textiles knitted by Marvex and processed through Marvex's continuous dry-cleaning machine was approximately one-quarter of the amount of textiles knitted and dry-cleaned by Originit. This further suggests that the amount of chemicals used and wastes produced by Marvex would be approximately 25 percent of that produced by Originit.

Orginit's Teterboro facility (referred to as "Teterboro") would receive a 500- to 750-gallon delivery of PCE approximately once per month, depending on production. Accordingly, Teterboro consumed about 5,000 to 7,000 gallons of PCE per year of operation. I estimated that Teterboro consumed 560 gallons of PCE per month. If Marvex operated at about 25 percent of the Originit Teterboro production, then they would have consumed about 1,250 to 1,750 gallons of PCE per year, or about 140 gallons per month.

One significant difference between the operations was that Originit discharged wastewater to the public sanitary/industrial sewer, whereas wastewater from Marvex's operations at the Site discharged to an on-site septic system consisting of a cesspool and drywells. (Werfel, Fred, Deposition, December 11, 2012, Page 92, Lines 8-11 and Heaney Joseph M., Deposition, December 19, 2012, Page 79, Lines 22-23)

3.3.3 PCE Contamination Resulted From Marvex's Routine Operation of its Continuous Dry-Cleaning Machine

Most, if not the lion's share, of the PCE contamination that has been found below the surface of the Site is, to a reasonable degree of scientific certainty, a result of Marvex's operations. All continuous dry cleaning operations in the 1970s had PCE losses.

Solvent losses were a major problem with continuous dry-cleaning machines and such losses were often understated by manufacturers. According to USEPA, continuous dry-cleaning machines experienced "problems ... in the installation, startup and operation of a solvent dry-cleaning process with solvent recovery. Solvent consumption during start-up ranged from 20 to 30 percent. After fine-tuning, consumption decreased to 5 to 8 percent. It was felt that manufacturer's claims of 3 percent solvent consumption would be extremely difficult to attain." (Environmental Pollution Control Textile Processing Industry, USEPA (EPA-625/7-78-002), October 1978)

A 1991 report on the use of chlorinated solvents states that there are three major loss mechanisms of solvents in the textile industry: a) air emissions, b) waste generation, and c) water releases. In discussing losses from the dry cleaning systems, including continuous dry-cleaning machines like the Rimar units used by Originit (and likely used by Marvex), this report states "Causes of emissions include carry out of the solvent on fabric, loss of solvent from equipment due to diffusion, filling/draining losses, wastewater losses, solvent recovery still losses, storage tank vent losses, and fugitive equipment leaks from pipes, valves, or pumps. (Source Reduction of Chlorinated Solvents – Textiles Manufacture, California Department of Toxic Substances Control and U.S. Environmental Protection Agency, June, 1991 (Id. Page 36))

In addition, hazardous wastes are generated from the continuous dry-cleaning machines including contaminated liquid solvent, bottoms from solvent stills when on-site recycling is practiced, and bottom sludge that arises in cleaning of the continuous dry cleaning equipment."

3.3.4 The 1976 Fire was the Major Contributor to Contamination at the Site

The Todd Cox Expert Opinion (Cox, Todd, Expert Report. 7-17-2013, Page 3-4 and Ex. B) refers to calculations made by Walden and Ensafe (Goetz, Lori Ann, Expert Report. April 30, 2013) that "in excess of 58 gallon (sic.) Drums (55 gallons each) of PCE and TCE have been recovered or are currently in the soil and shallow groundwater at the Site ("Calculated Mass")."

This amounts to over 3,000 gallons of PCE under the Site. Robert Mutch (Supplemental Expert Opinion of Robert Mutch, 8-30-2013) has performed additional calculations showing that the Walden/Ensafe calculations likely overestimated the "Calculated Mass" by at least 3,700 lbs., or approximately 270 gallons of PCE.

Although releases of PCE to soil and/or groundwater from continuous dry-cleaning machines during normal operation in the 1970s are significant, under normal operating conditions the Rimar Continuous Dry-Cleaning Machine used by Marvex would not have contributed the entire volume of PCE that has been estimated to have been released at the Site. However, such a large volume of subsurface PCE found at the Site can be explained by Marvex's operations if one considers the amount of PCE that was likely lost to the subsurface during the fire.

The fire occurred on May 30, 1976 and was a three-alarm blaze that completely destroyed the manufacturing portion of the building. The efforts of more than 200 firefighters over several hours were required to bring the fire under control. ("Clothing Store in Westbury Burns", Daily News, May 31 1976, p.29) The term "three-alarms" implies that three pumper trucks responded, although news articles on the fire state that fire departments responded from six towns. (Id.) The building at the site was approximately 150 by 300 feet, with an approximately 20 foot ceiling height. (Construction Drawings, Reconstruction of Partial Fire Damaged Building, 89 Frost St., George H. Cook, RA, 1977) Large volumes of water (more than 1,000,000 gallons) would be required to extinguish a fire consuming a building of this size. (Guide for Determination of Needed Fire Flow, ISO Properties Inc., 2008) This quantity of water would carry PCE released during the fire to the floor drains and eventually to the subsurface.

It is likely that the fire caused a catastrophic loss of PCE to the ground, air, and firefighting water streams. These losses resulting from the fire likely caused the high levels of contamination observed in the subsurface. The fire destroyed the building and most of its contents including the Rimar machine, its associated solvent recovery still, and any storage vessel containing virgin or recycled PCE and PCE–containing waste oil, such as the aboveground storage tank or 55-gallon drums. The vessels likely burst due to increased internal temperatures and pressures during the heat of the fire.

John Pufahl visited the burnt-out building at the Site several days after the fire. In his April 2013 Deposition he related that the dry-cleaning machine appeared to be "exploded." (John Pufahl Deposition, April 8, 2013, Page 96, Lines 19-25) Accordingly, a significant volume of PCE contained in Marvex's dry-cleaning machine, still, and associated tanks would have been released into the building.

The Rimar Machines operated by Originit could hold approximately 1,500 to 2,000 gallons of PCE. To corroborate these stated volumes as to the PCE capacity of a Rimar Continuous Dry-Cleaning Machine, we contacted Mr. Mirko Franzan of Sperotto-Rimar in Italy. He indicated that such a machine manufactured in the 1970s could contain approximately 4,000 to 5,000 liters (1,000 to 1,300 gallons) of PCE. (Email from Luca Nencetti, First Environment, Inc., relating conversation with Mirko Franzan of Sperotto-Rimar in Italy.) The range of capacities likely relate to the fact that in the 1970s, ITM, Ltd. imported two Rimar models: the Vibro Scour and the Vibro Scour FST. The base Vibro Scour could process up to 1,000 pounds per hour while the FST could process up to 1,700 pounds per hour. ("Guide to Solvent Process Units", Knitting Times, Jan. 21, 1974, Page 47)

Originit had a 1,000-gallon aboveground PCE storage tank and a 1,000-gallon aboveground storage tank for the waste oil generated by the Rimar machines. Mr. Kannapin testified that Marvex also had an aboveground storage tank for PCE, although he could not remember the size of the tank. (Kannapin, Dieter Deposition October 8, 2013, Page 17) If we assume that, like Originit, Marvex had a 1,000-gallon storage tank for PCE, the amount of PCE present at the Marvex site at the time of the fire could be as high as 2,000 to 3,000 gallons of PCE even before considering PCE potentially contained in Marvex's solvent recovery still or any of the 55-gallon drums at the Site at the time of the fire.

Mr. Kannapin recalled seeing 55-gallon drums at the Marvex facility, although he did not know their contents. (Kannapin Deposition, 10-8-13, Page 17) It is reasonable to assume that Marvex had storage for waste oil or sludge generated by the solvent still, and this waste oil may have been stored in drums. It is also possible that the drums could have contained spent PCE being stored for off-site disposal or reclamation as Mr. Kannapin testified that at some point during Marvex's operation of the Site, spent PCE was taken off site via truck. (Id. at Pages 50-52)

Some of the PCE released during the fire would have spilled onto the floor and was entrained in firefighting water that would have gone to the floor drains and into the septic system. An additional quantity of PCE would likely have evaporated, but because of the cooling effects of the firefighting water much of the vapor would have condensed. PCE vapor is 5.7 times denser than air; therefore, any vaporized PCE would tend to sink in the atmosphere and stay close to the ground. (EPA Office of Pollution Prevention and Toxics, Chemical Summary for Perchloroethylene, August 1994. (EPA 749-F-94-020a)) It is also possible that some of the PCE, especially that portion exposed directly to an open flame, would have decomposed. Luckily, any of PCE's decomposition products, which include hydrochloric acid and phosgene gas, would have been immediately washed down by the firefighting water. It is very difficult to estimate exactly how much PCE would have survived the fire but is reasonable to say that hundreds, and likely thousands, of gallons of PCE would have reached the floor drains and flowed into the septic system.

A release of the PCE contained in Marvex's continuous dry-cleaning machine, Marvex's aboveground storage tank for PCE, and possibly drums of spent PCE or waste oil containing PCE explains the large amount of PCE found beneath the Site. The release of PCE during the fire is the most plausible explanation for the large volume of PCE found in the subsurface.

3.3.5 Lincoln Processing Was Not a Major Source of PCE at the Site

Lincoln Processing did not use PCE in their manufacturing operations which employed water-based adhesives for laminating and bonding fabrics.[7] The only possible source of PCE discharges from Lincoln Processing's operations appears to be the alleged batch-type retail store dry-cleaning machine, used for quality control, discussed above in Section 2.2. Based on the description of the size of the machine and the amount of PCE present at the Site while the machine was in use – according to the former employees' testimony, no more than a drum or two of PCE was present at Lincoln at any one time – the only type of a dry-cleaning machine that conceivably might have been employed by Lincoln would have been a smaller batch-type machine of the type that would have been used in the coin-operated self-serve dry cleaning establishments that existed in the 1970s.

[7] A former employee of Lincoln testified that a solvent was sometimes used to clean dried adhesive from Lincoln's machinery, but also stated that that solvent was methyl ethyl ketone (MEK), not PCE. (Obadiah Goodman Deposition, September 17, 2013, Pages 45-46).

This type of machine – an example of which is shown in Exhibit 3 – typically would have been roughly the size of a household washer/dryer and would have had a capacity of approximately 8 to 12 pounds of fabric. (See State Coalition for Remediation of Drycleaners, Conducting Contamination Assessment Work at Drycleaning Sites, Rev. Oct. 2010, available at http://dec.alaska.gov/spar/csp/guidance/Drycleaners%20reduced.pdf) This type of machine was introduced in 1960 by Whirlpool and was a dry-to-dry machine that could use PCE or Freon 113. Spent solvent is purified by filtration. Although the early models had powder filtration systems, the later models used cartridge filters. These machines did not have distillation units and would not have been hooked up to a heating or steam source or water supply. It would have had no need for a water separator and so would not have discharged wastewater as discussed in Section 3.3.1, above.

The only waste stream from this type of dry cleaner would be filter cartridges. Spent solvent in this type of machine was purified via filtration. Although the early models had powder filtration systems, the later models used cartridge filters. (Id.) These cartridges were typically replaced after they became clogged, and the old cartridge would be discarded with ordinary trash. Since the purpose of the dry-cleaning machine was for quality control of laminated/bonded fabric, the pieces of fabric would have been relatively clean to begin with and would have been dry cleaned multiple times. This means that there would be very little dirt residue in the solvent and consequently filter changes would be very infrequent. The amount of PCE that was carried out on the fabric, as opposed to being released into the environment, would also be increased as compared to fabric that was dry cleaned a single time. Hence, the main pathways for PCE losses to the environment would be through the air via fugitive emissions and any drips or leakage of PCE from saturated filters or from the disposal dumpster where they were likely disposed of. Neither of these pathways would release a significant amount of PCE to the subsurface.

In comparison to Marvex, which consumed about 140 gallons of PCE per month, if Lincoln used an on-site dry-cleaning machine, it would have consumed a very small amount of PCE and likely discharged extremely low concentrations of PCE to the subsurface as a result of small spills and any drips resulting from cartridge disposal. Additionally, there is no evidence that Lincoln had large-scale storage of PCE in aboveground or underground storage tanks at the Site. As stated previously, Originit had a 1,000 gallon aboveground storage tank (AST) for virgin PCE. By comparison, Marvex would need similar large storage capacity. On the other hand, Lincoln

had no need for large PCE storage tanks. Deposition testimony suggests that Lincoln never had more than two drums of PCE at the Site, and likely often had only one drum of PCE present. (See Goodman, Obadiah, Deposition September 17, 2013, Pages 134-36) Lincoln's operations therefore could not have contributed the large volume of PCE observed in the subsurface at the Site.

4.0 Opinions

Marvex was the major source of the PCE and its degradation products in the subsurface soils and groundwater at the Site. Marvex contributed to the mass of PCE detected beneath the Site via two major pathways. First, Marvex's routine operation of the Rimar Continuous Dry-Cleaning Machines and associated equipment consumed approximately 140 gallons of PCE per month, some portion of which would have been released to the subsurface via wastewater discharges and leaks or spills associated with routine operation.

Second, the catastrophic release of PCE to the ground, air, and firefighting water streams during the 1976 fire that destroyed the building would have been the major contributor of PCE to the subsurface at the Site. As a result of the fire, PCE was released into the environment directly through water from the firefighting effort, which would have carried significant amounts of PCE to the floor drains at the Site. Accordingly, PCE emanating from Marvex's operations is the major source of the severe PCE contamination found at the Site.

Third, the alleged batch-type dry-cleaning machine employed at Lincoln would have been very small, similar to a coin-operated dry-cleaning machine utilized in laundromats during the 1960s and 1970s. PCE losses to the environment from one of these small batch machines would be via fugitive emissions to the atmosphere and any drips or leakage of PCE from saturated filters or from the disposal dumpster where they were likely disposed of. Fugitive emissions would amount to three quarters of the PCE losses and any drips would probably be to the blacktop or concrete below the dumpster, from which it would eventually evaporate.

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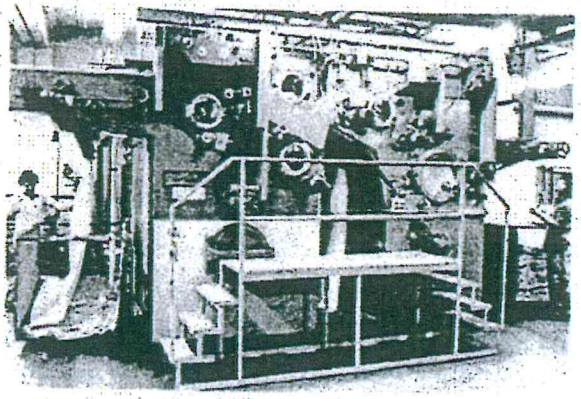
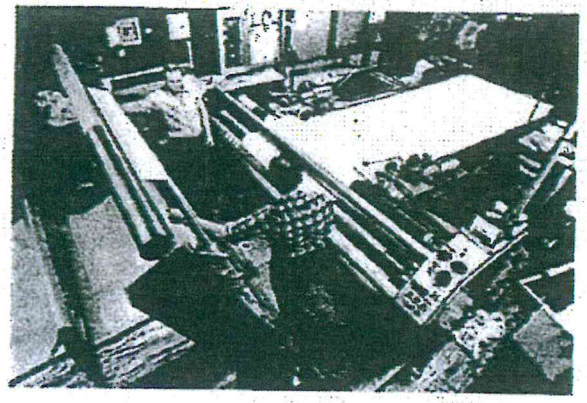
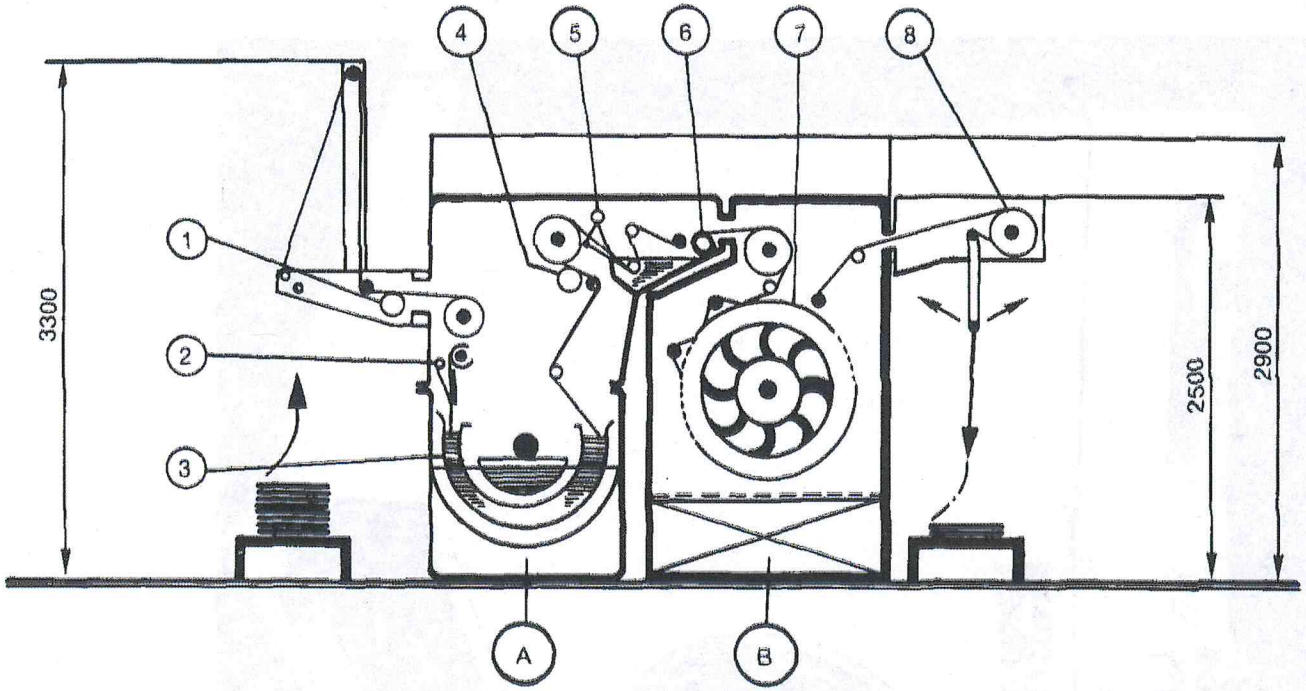
Exhibits

1. Photograph of the Originit Rimar and FabCon machines. ("Orginit's production powered by enthusiasm, quality," Knitting Times, June 6, 1977. Page 26)





2. Rimar (Italy) Vibro Scour Continuous Dry Cleaning Machine. (Environmental Pollution Control Textile Processing Industry, USEPA (EPA-625/7-78-002), October 1978, Page 6-88)



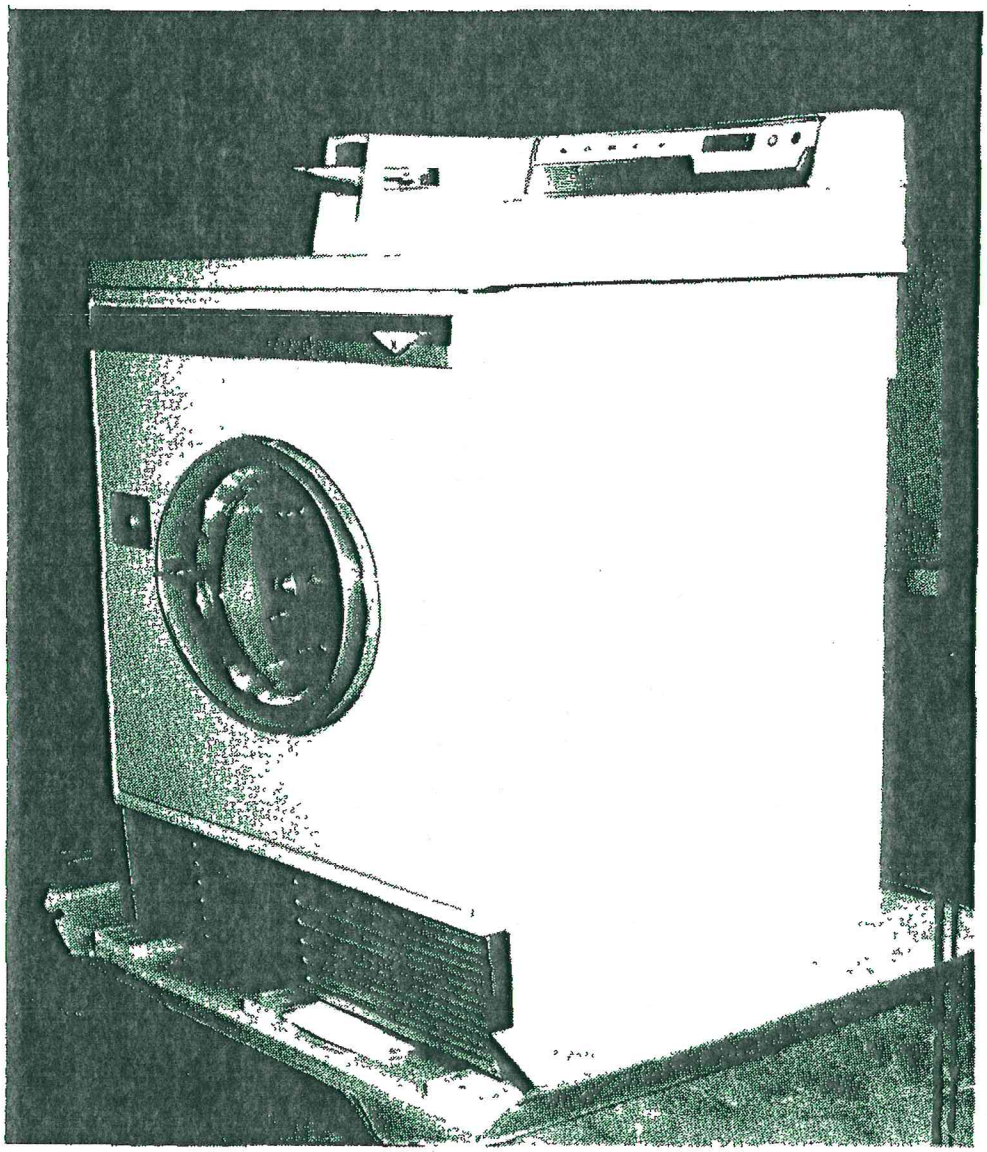
TECHNICAL DATA

Skeleton drum width	2 3 m
Width of material, up to	2 2 m
Speed of work	5-25 m /min
Absorbed power	20 KW
Voltage	to be stated
Frequency	50 Hz
Saturated vapor	4-6 Atm
Consumption of vapor	300-600 kg
Water not more than 20° C	1 5-6 Atm
Water consumption not polluted and totally recoverable at a temperature of 40-45° C.	5-10 Cu m
Compressed air	5-6 Atm
Consumption of air	700 l/hr
Consumption of solvent (on weight of material)	5%
Residual grease (within 5%)	0 5%
Output (average per hour)	500 kg

LEGEND

A = Scourer
B = Dryer
1 = Inlet of deodorizer
2 = Pre-scour spray tube
3 = Vibro Scour patented scouring device
4 = First aspiration tube
5 = Spray head for rinse
6 = Second aspiration tube
7 = Drying drum
8 = Outlet, deodorizing cylinder and material

3. Synthetic solvent coin-operated dry cleaning unit (Norge Sales Corp., Los Angeles, Calif.). (Air Pollution Engineering Manual, John A. Danielson, Air Pollution Control District County of Los Angeles, May 1973)



Appendix A: Curriculum Vitae of B. Tod Delaney

B. TOD DELANEY, PHD, PE, BCEE

President

Summary of Professional Experience:

A chemical and environmental health engineer, Dr. Delaney possesses over 30 years of diverse experience assisting clients on a range of environmental concerns, from greenhouse gas (GHG) management and air quality assistance to litigation support and expert testimony. Over the course of his career, he has worked for and consulted to hundreds of clients; taught graduate and undergraduate college courses in chemical and environmental engineering; and authored dozens of reports, presentations, and publications. As president of First Environment since 1987, Dr. Delaney provides strategic oversight on all of the firm's greenhouse gas management, biofuel RINs, and climate change adaptation projects.

Education:
PhD, Environmental Health Engineering, University of Texas at Austin, 1976
MBA, Pepperdine University, 1991
MS, Chemical Engineering, University of New Mexico, 1972
BS, Chemical Engineering, University of New Mexico, 1968

Years of Experience: 39

Certifications / Registrations:
Professional Engineer (NJ, NY, PA, CT, AL, CO, FL, GA, IA, IL, IN, MS, NE, OH, SC, TX)
Board Certified Environmental Engineer – American Academy of Environmental Engineers
Certified Principal Environmental Auditor – Institute of Environmental Management and Assessment, England
California Climate Action Registry Certified Lead Auditor

Professional Affiliations:
American Institute of Chemical Engineers
Air and Waste Management Association
American Chemical Society
International Standards Association – W2 Chair, SC7
Editorial Board of Environmental Claims Journal
Business Council for Sustainable Energy - Chairman Emeritus
Town of Cornwall, New York - Conservation Commission Appointee

CLIMATE CHANGE AND SUSTAINABILITY

ISO 14000 Series of Standards, Climate Change, Participation and Leadership. Dr. Delaney served as the American National Standards Institute's (ANSI's) representative to the Ad Hoc Group on Climate Change of International Organization for Standardization's Technical Management Board and the Chairman of ANSI's Virtual Technical Advisory Group on climate change. In addition, he was appointed as Co-Chair to the ISO's U.S. Technical Advisory Group (TAG) Climate Change Task Force and participates in the development of protocols on how the ISO 14000 Standards can be used to support global climate change. He represented the U.S. in this position at the 2002 Meeting of ISO's Technical Committee (TC) 207 on environmental management standards in Johannesburg, South Africa. He also attended the United Nation's Framework Convention on Climate Change in Buenos Aires in November of 1998 and in Bonn, Germany in 1999. He returned to Bonn, Germany and Lyon, France in the year 2000 for Meetings of the Subsidiary Bodies of the Kyoto Protocol as a member of delegation representing the Business Council for Sustainable Energy. He also attended the COP-6 meetings in Hague, Netherlands in November

of 2000. More recently, Dr. Delaney has attended the COP-15 meetings held in Copenhagen in 2009 and the COP-16 meetings held in Cancun in 2010.

Dr. Delaney also served as a technical expert for the U.S. team regarding ISO 14064, a standard for emission measurement, verification and reporting. He was the international coordinator and a technical expert for the team concerning ISO 14064 Part I, which focused on entity emission measurement, verification and reporting. He was also the lead expert for the U.S. on the portion of the standard that deals with project emission measurement, verification and reporting. He was the as-needed co-facilitator for Working Group 5 at international meetings about Part 2, and served as one of two U.S. experts for ISO 14065, which deals with accreditation. He also served as the International Convener for the new ISO 14066 standard involving competency requirements for validators and verifiers.

Dr. Delaney is also a member of the Greenhouse Gas Protocol Organization of the World Resources Institute (started in June 1999), which is developing protocols for measuring and verifying greenhouse gases and is serving on the organization's production and boundary teams. He is also participating in greenhouse gas studies being performed by the Civil Engineering Research Foundation (CERF), which focus on the transportation and cement manufacturing industries and employ the use of life cycle assessment.

Dr. Delaney was also among the original stakeholders in the process that produced the World Business Council for Sustainable Development/World Resources Institute Greenhouse Gas Protocol.

Business Council for Sustainable Energy. In 1997, Dr. Delaney joined the Business Council for Sustainable Energy (BCSE), a trade group organization created by senior executives in the energy efficiency, electric utility, renewable energy, independent power and natural gas industries in the U.S. Dr. Delaney, who served as the chairman of the Board of Directors of BCSE until 2010, has consistently attended COP meetings to represent the interests of U.S. clean energy companies at the UNFCCC talks.

ISO 14000 Series of Standards Participation, Life Cycle Assessment. In 1995, Dr. Delaney actively participated in the development of the ISO 14000 Series of Standards as a member of the U.S. Technical Advisory Group's (US TAG) to ISO's Technical Committee 207 (TC207). Through this participation, he was integrally involved in the development of life cycle interpretation guidelines. He was elected to serve as the United States expert representative on life cycle assessment, and, in that capacity, has consistently represented the interests of the United States at ISO International Meetings all over the world.

NJ TRANSIT, Adaptation of Assets to Climate Change, New Jersey. *Project director* for the development of an assessment of climate risk for New Jersey Transit which addressed all of NJ TRANSIT's fixed assets in the region. Dr. Delaney employed a specialized risk model to characterize and prioritize region specific risks from climate change. Impacts assessed included high heat, storm surge, high winds, sea level rise, flooding and erosion, snow and ice events, and lightening. To support both planning and current operations, region-specific risks indicators were developed and assets were assessed using these risk indicators for 0-5 years, 6-10 years, 11-20 years and 21 to 50 years. Dr. Delaney also assisted in the identification of potential mitigation strategies and developed cost estimates for mitigation actions. 2011 – 2012.

ENVIRONMENTAL MANAGEMENT SYSTEMS

Since early 1995, Dr. Delaney has been an active member of the U.S. TAG to TC 207 and charged with developing a uniform international environmental management system (EMS) standard and other documents. Dr. Delaney participates actively in the TC 207 meetings held throughout the country. As a member of subcommittee 5 (SC5), Working Group 5 (WG5), Life Cycle Analysis, he is integrally involved in the development of life cycle interpretation guidelines. He was elected to serve as the U.S. expert representative for SC5, WG5 and in that capacity has represented the interests of the U.S. at ISO International Meetings in Oslo, Norway; Vancouver, British Columbia; and Rio de Janeiro, Brazil. He was the lead U.S. negotiator for the life cycle assessment WG5 subcommittee at the ISO meetings in Kyoto, Japan and Madrid, Spain in 1997; in Seoul, Korea in 1999; and in Kuala Lumpur in 2001.

ISO Standards Development Involvement						
Standard	**Subject**	**Group**	**US Technical Expert**	**US Lead Expert**	**International Convener**	**International Coordinator**
ISO 14043	Life cycle interpretation	USTC207, WG 3	1995-1997			
ISO 14064, Part 1	GHG Entity	USTC207, WG 5; TC 207 SC7 WG4	2002-2006			2013 - ongoing
ISO 14064, Part 2	GHG Project	USTC207, WG 5: TC 207 SC7 WG5		2002-2006		
ISO 14064, Part 3	GHG Verification	USTC207, WG 5; TC 207 SC7 WG6	2002-2006		2013 - ongoing	
ISO 14065	GHG Accreditation	USTC207, WG 7; TC 207 SC7; WG6		2005-2009	2013 - ongoing	
ISO 14066	GHG Competency	USTC207, WG 7; TC 207 SC7 WG1			2009-2012	
In these roles, Dr. Delaney has attended and facilitated international meetings across the globe, oftentimes negotiating on behalf of the U.S. throughout the standards development process.						

In addition, Dr. Delaney taught ISO 14000 courses and seminars for national training organizations, including government institutes and private corporations. He has worked with industrial and federal clients as they implement ISO 14001 environmental management systems.

Dr. Delaney also developed and presented general ISO 14000 / EMS training courses for the American Institute of Chemical Engineers, the Center for Energy and Environmental Management, and other national training companies. He developed a highly rated and successful interactive training course on ISO implementation that takes participants through exercises that mimic the process of setting up an EMS. He also developed and presented training on EMS auditing, performance measures, and life cycle assessment. In recognition of his knowledge and experience in environmental and management systems auditing, Dr. Delaney was made a member of the Auditor Certification Board of Registered Accreditation, the primary accreditation body of quality and environmental systems auditors.

Dr. Delaney also contributed to the development of the scrap recycling industry's integrated quality, environmental, health, and safety management system standard, known as RIOS.

GREENHOUSE GAS MANAGEMENT

Confidential Major Oil and Gas Company, Greenhouse Gas Inventory. Assisted with a formal review and assessment of GHG management strategy. Analyzed the organization's decisions and understanding of GHG management issues. Developed the company's corporate GHG Inventory Protocol. Advised the team that worked on the development of this corporate level guidance document. This protocol was designed to drive the corporation toward the creation of a robust data collection system that ensures consistency, comparability and transparency throughout the organization. This protocol is also intended to be an effective communication tool to inform interested stakeholder groups of the company's policies, practices and methodologies for GHG data collection.

Georgia Pacific, Greenhouse Gas Verification. *Lead verifier*. Helped conduct an in-depth assessment of the company's greenhouse gas inventory protocol design and implementation. Along with the verification team, he also evaluated the preliminary year 2000 GHG inventory report conducted under the guidance of the protocol.

Bentley Prince Street, CCAR Greenhouse Gas Verification, California. *Senior internal reviewer* for First Environment's certification of the client's 2002 through 2005 GHG reports to the California Climate Action Registry (CCAR). Verifications have included addressing the company's onsite solar electricity generation, purchases of RECs, and emissions from its sales staff vehicle fleet. 2003 – 2006.

Eastman Kodak, CCAR Greenhouse Gas Verification, California. *Senior internal reviewer* for First Environment's verification of Kodak's 2002, 2003, 2004, and 2005 CCAR GHG reports covering its U.S. operations as well as reports of GHG emissions from non-U.S. operations. 2003 – 2006.

Waste Management, Inc., CCX Greenhouse Gas Project Verification. *Lead verifier* for numerous verification reports that were provided to Waste Management as a deliverable of the Chicago Climate Exchange's (CCX's) project verification process

SITE INVESTIGATION AND REMEDIATION

Over the past 20 years Dr. Delaney has directed numerous industrial site investigations and remediation projects. These efforts include the development of sampling plans, the performance of remedial site investigation, the design and feasibility studies of cleanup alternatives, and the supervision and management of final cleanup. Final cleanup efforts include soil removal, building decontamination, and groundwater pumping and treatment. These investigation and cleanup efforts have involved all types of organic chemicals from simple petroleum hydrocarbons like gasoline to refractory organics typified by polychlorinated biphenols (PCB's); and inorganic chemicals (heavy metals) such as lead, arsenic, cadmium, and chromium.

- Dr. Delaney's work with solid and hazardous contamination of the soil and groundwater has been extensive. He has developed design manuals for the disposal of wastes, developed and executed field investigation programs, developed remedial designs for treatment facilities, and provided complete permit support.

- For the Electric Power Research Institute, Edison Electric Institute, and other utility groups, he has directed or has been the principal investigator for numerous studies, which assessed the impact of heavy metals on the environment resulting from the combustion of coal. These have included the following: the impact of RCRA and other regulatory programs on utility solid wastes (including flyash and bottom ash,) the impact of RCRA on coal gasification and liquification technology, and the preparation of comments for flue gas desulfurization equipment manufacturers that focuses on the impacts that RCRA has on the disposal of ordinary flue gas desulfurization waste products.

- Dr. Delaney has also directed numerous projects for private industry directed at compliance with the Resource Conservation and Recovery Act (RCRA) and the Underground Storage Tank (UST) program included in the 1984 RCRA Amendments.

- Dr. Delaney is certified in New Jersey under the New Jersey Department of Environmental Protection, Bureau of Underground Storage Tank Program for all aspects of UST work including installation, closure, corrosion protection, testing, and subsurface evaluations.

- Dr. Delaney has extensive experience in the investigation of underground storage tank (UST) leaks involving a wide variety of petroleum products and solvents. He also has extensive experience in the design, installation and operation of soil and groundwater remediation systems for UST leaks. Dr. Delaney was the project manager on a design manual for a national car rental firm. This manual, created for all of the company's facilities, provided generic designs and specifications for the installation of new tankage and the retrofitting of old tankage in accordance with Federal and state UST regulations.

- Dr. Delaney directed a project to stabilize a six-acre fly ash surface impoundment. This project required the investigation, testing, design, and installation of a novel dewatering program to stabilize fly ash by removal of excess water. This program and two pilot surface impoundment stabilization programs (one for a tire manufacturer and another for a synthetic dye manufacturer) have proven this technique applicable to a wide variety of industrial process surface impoundments.

Dri-Print Manufacturing Site, Site Investigation and Remediation, Rahway, New Jersey. *Project manager.* Investigation and remediation at 28-acre site located adjacent to the South Branch of the Rahway River. Responsible for assessing and then designing the remedial action for a wide range of contaminants of concern, including volatile organic compounds (VOCs), heavy metals, and polychlorinated biphenyls (PCBs). The contamination was nested around a variety of areas of concern including buried drums, underground storage tanks, wetlands, stream beds, and stormwater outfalls.

The investigation involved the collection of 180 soil and sediment samples from 109 locations to delineate the area of impacted soil (containing heavy metals) associated with the buried drum areas. Remediation work included the excavation and disposal of approximately 6,000 tons of soil and sediment which contained elevated concentration of cadmium, chromium, and lead. Conducted a feasibility study to evaluate remedial alternatives and disposal options for the soil. The feasibility study identified a nearby beneficial use project that provided the client with a cost effective remedial option. PCBs were identified during follow-up investigation activities within the floodplain and riverbed adjacent to site.

Led the horizontal and vertical delineation project to determine the impact PCBs had on the ecological receptors in the floodplain and river channel. Developed the Ecological Risk Assessment for 3.5 acres of wooded wetlands/ floodplain and portions of the river channel. The work area was located within the 100-year floodplain. Also completed a wetland delineation survey, soil erosion sediment control plan, and freshwater wetland, stream encroachment, and waterfront development permits to complete the work. 2008 – 2012.

Kikuchi Colour, Site Investigation, Paterson, New Jersey. Performed a sump investigation at a former paint pigment site located in Paterson, New Jersey. He led a team of scientists and engineers to determine the source of contamination at the site. Investigated the design of the sewer system at the site and the structural integrity of several sumps that were interconnected to the sewer system. Discovered the leaks in the sump system were caused by faulty construction of the sumps, and that wood artifacts and construction debris had been used to support the cement structure of the sump and that these wooden artifacts rotted providing an egress route to the environment. 2009 – 2010.

Frontier Environmental/American Linen Supply Site Investigation, Seattle, Washington. Led a team of geologists and engineers in performing a sewer integrity investigation related to the discharge of PCE into the soils and groundwater underlying an industrial dry cleaning site in Seattle. Designed the investigation of the plant's cast iron sewer pipes and concrete sump system to determine the source of PCE contamination. PCE was detected at the site in high concentrations in the deep groundwater. Excavated the sewer line at several points within the building. Determined the sewer joints were the source of leaking wastewaters that contained dilute amounts of PCE. The sewer joints were composed of lead seals that had been compromised during several earthquakes that hit the Seattle area in the 1960s and '70s. Also investigated the sump system that interlaced with the sewer system throughout the plant. 2011 – 2012.

City of Newburgh, Former MGP Site Investigation, Newburgh, New York. *Project manager.* Led a team of site investigators that were retained by the City of Newburgh to commence subsurface investigations to determine the source and extent of the contamination at the city's sewage treatment plant. Investigation revealed that the source of contamination was coal tar migrating from an adjacent property. Researched and obtained historic maps, aerial photographs, and geologic survey maps. They also interviewed knowledgeable individuals. Site investigation data was obtained from 160 soil borings. The team analyzed the land configuration, historic operations, and the subsurface conditions at the site to determine its hydraulic connectivity with the Hudson River.

Developed two dynamic computer-driven models to clearly and accurately define the source areas and migration patterns. First, used a shoreline model to illustrate how the depth, extent, and configuration of fill changed during the evolution of the shoreline from 1865 to 1998. Next, used a subsurface model to illustrate the preferential geologic pathways and the distribution over time of coal tar in these pathways that ran from the former MGP plant to the Hudson River. These models were then converted to onscreen animations to demonstrate to regulators the source of the contamination. 2002 – 2006.

City of Newburgh, Provan Ford Brownfields Site Remediation, Newburgh, New York. *Project manager and lead engineer.* Providing Brownfields remediation services at the Provan Ford Brownfields Site in Newburgh. Began working on the site by performing a detailed environmental study in 1999. The study identified petroleum contamination in soils and groundwater, as well as several leaking underground storage tanks (USTs). Performed an environmental assessment of petroleum hydrocarbons and other contaminants and developed a Site Investigation/Remedial Alternatives Report (SI/RAR). Led the study of the groundwater for petroleum hydrocarbons and related volatile organic compounds (VOCs). Groundwater contaminated with chlorinated solvents was also identified originating from two separate areas as dense non-aqueous phase liquid (DNAPL).

Also investigated free-phase, two 5,000-gallon waste oil USTs, an 8,000-gallon UST, a 4,000-gallon gasoline UST, a 10,000-gallon gasoline UST, and a 20,000-gallon diesel fuel UST. Work led to the extensive excavation of contaminated soils. Also conducted several soil gas surveys to identify VOCs emanating from the shallow groundwater and addressed potential off-site vapor intrusion issues.

Designed the remedial actions completed at the site and has conducted additional soil, soil gas, and groundwater sampling of the overburden and bedrock aquifers to define the extent of soil contamination identified on site. Based on these data, conducted a thorough evaluation of viable remedial alternatives for the site and prepared a Remedial Action Report/Remedial Action Work Plan (RAR/RAWP) for submission to the New York State Department of Environmental Conservation (NYSDEC) that resulted in a Record of Decision. 1999 – 2012.

Condominium Complex, Flood Damage Assessment, Greenwich Village, New York. Called by the owner of a condominium complex near the Hudson River Manhattan to evaluate the extent of flooding damage from Hurricane Sandy. The owners experienced flooding in the first floor and basement of their complex and sewage was spread throughout the unit and complicated the cleanup. Performed several inspections of the units and evaluated the amount of damages for an insurance claims made regarding damages experienced during Sandy's storm surge event.

LITIGATION SUPPORT/EXPERT TESTIMONY

Dr. Delaney has provided litigation support to clients in a wide variety of matters concerning manufactured gas plants, Superfund actions, private cost recovery and cleanup allocation issues, bankruptcies, underground storage tanks and insurance claims. He has provided expert witness services for plaintiffs and defendants and has served as a court-appointed expert. Dr. Delaney has testified in state and federal court. As a result of his 30 years of experience, Dr. Delaney is an expert with regard to historical waste disposal practices. As such, he provides expert testimony with regard to the reasonableness of uses, storage and disposal practices and their consistency or inconsistency with the prevailing industry practice at the time; ensuring that the past waste management practices are evaluated within a proper historical context.

- Dr. Delaney was recently retained by counsel for a large aircraft manufacturer to provide expert testimony with regard to the manufacturing operations conducted by a previous operator of the site and to assess the volume of usage of specific chlorinated organic solvents during its decades of operation. Dr. Delaney testified with regard to the historical industrial usage, handling and disposal, and fate and transport of these solvents.

- Dr. Delaney's years of experience and expertise enables him to play an integral role in counsel's development of litigation strategies. Recently, Dr. Delaney's detailed evaluation of a cost allocation scheme developed by his adversaries revealed inadequacies and inaccuracies in the scheme. Based on his findings, Dr. Delaney assisted counsel with the preparation of their case against the applicability of the cost allocation scheme. This strategic litigation support resulted in a very favorable outcome for his client.

- He has prepared expert reports, given deposition testimony and served as a testifying expert witness for litigation matters involving insurance claims for cost recovery and damage claims resulting from UST leaks. His recent experience includes serving as a testifying expert witness for a case involving damage claims resulting from a UST leak at an automobile dealership. Dr. Delaney's expert testimony included the time dating of the tank leak, supporting a claim that the tank was leaking prior to the purchase of the property by the current

owner. For a worldwide automobile rental company he served as an expert witness to support a claim that contamination detected during construction at a large airport was from jet fuel and not the rental company's USTs.

- His work has involved "finger printing" contamination to demonstrate that the contaminants were not attributable to gasoline.

AIR EMISSIONS MEASUREMENT AND ESTIMATION

Dr. Delaney began his career primarily in the air emissions field. His work has included the development and execution of extensive field data collection programs (ambient and stack as well as associated meteorological data); atmospheric dispersion modeling; and the conceptual, preliminary, and final designs of air emissions control equipment. Dr. Delaney has executed extensive emission stack testing programs for automobile manufacturers, sugar refineries, electrical utilities, cement kilns, cogeneration facilities, and many other industrial establishments.

Dr. Delaney's experience in the air pollution control field includes the design and installation of air pollution control equipment for Universal Oil Products (now Honeywell UOP). UOP installed one of the first limestone slurry and mobile bed scrubber systems to remove sulfur dioxide in 1965. Dr. Delaney designed and installed a UOP scrubber system at a production facility for the control of acid gases and sulfur dioxide emissions. Dr. Delaney supervised the construction and installation of air pollution control units and evaluated them during shake-down test operations. As part of this project, Dr. Delaney led a group of designers to determine the optimum control techniques for pH, reagent utilization, scaling and sulfurization.

Dr. Delaney has conducted numerous site audits/environmental assessments for private clients throughout the United States, Canada and Mexico. An important part of these audits/environmental assessments is making a determination of the adequacy of a company program for dealing with any asbestos that may be in use at the site or in place procedures for remediation and/or monitoring. He has also directed numerous projects for private industry dealing with the removal and disposal of asbestos and asbestos containing materials from a wide range of industries.

Dr. Delaney has taught graduate-level courses on air pollution in the Departments of Chemical Engineering at the University of New Mexico and Rutgers University and basic chemical engineering at Cooper Union in New York.

Large Petroleum Company, Air Emissions Measurement and Management. Dr. Delaney had responsibility for the measurement of emissions and development of emission factors for refinery and chemical plant pumps and valves. He also performed dispersion modeling to evaluate the effects of releases from refinery safety valves. He served as a member of an American Petroleum Institute Committee and had responsibility for the development of a test program and a data analysis program to evaluate tanker emissions during all phases of operations, including loading and unloading. Prior to his involvement with air emissions in the petroleum industry, he also worked in oil field and refinery operations.

U.S. Air Force, Airbase Emissions Dispersion Model, *Consultant.* Member of a team that developed a dispersion model to simulate airbase emissions. Sources modeled included jet aircraft, fueling, operations, fueling storage tanks, support vehicles, and maintenance. He was also part of the team that collected field emissions to calibrate the model. Along with this work, he developed a three-dimensional model, which simulates the downward transport and dispersion of an aircraft's exhaust products during climbout and approach. Also in connection with his Air Force consulting, he drafted a field data collection manual for gathering the required input data for the airbase model.

U.S. Army, Chemical Warfare Division at Fort Riley, Kansas. *Chemical warfare specialist.* 1970 – 1971.

U.S. Air Force Weapons Laboratory at Kirkland Air Force Base, New Mexico. Worked on the redesign of fire training programs at air bases to prevent groundwater impacts. 1971 - 1972

Electric Power Research Institute / Edison Electric Institute Coal Combustion Studies, *Principal investigator.* For these and other utility groups, principal investigator for numerous studies that assessed the impact of air emissions of heavy metals on the environment resulting from the combustion of coal. As part of these studies, he assessed the

environmental impacts of fly ash, bottom ash, coal gasification and liquidification technologies, and flue gas desulfurization.

Stack Testing Programs. Participated directly in the field operations and project management of stack testing programs involving the collection and interpretation of compliance, design, and operating data from pollution control equipment such as limestone scrubber systems. He designed the stack tests to address particulate matter (organic and inorganic) and gaseous emission collection (organic and inorganic), ambient air sampling programs (organic and inorganic), particle size distribution and analysis for particulate matter, flue gas desulfurization, and the quantification of acid-gas emissions.

Field Data Collection. Work has included the development and execution of extensive field data collection programs (ambient and stack as well as associated meteorological data); and atmospheric dispersion modeling in support of the conceptual, preliminary, and final designs of air pollution control equipment.

Air Permitting. Provides regulatory support in obtaining all required air pollution control permits for industrial and utility operations and equipment including Title V permits, state construction and operating permits, PSD permits, and non-attainment permits. At a cogeneration plant in New Jersey, determined the water-to-fuel ratio while measuring the plant's pollutant output to establish compliance with New Source Performance Standards (NSPS).

Engineering Assessments. Routinely performs plant inspections to evaluate the efficiency of operating assets and the potential redesign or replacement of such assets to maximize pollution control at the most efficient cost. He quantifies GHG emissions from industrial and utility operations using generally accepted scientific models and formulas. At a foil printer located in New Jersey, Retained to demonstrate the destruction efficiency of two large thermal oxidizers and to evaluate the continuous emissions monitoring system (CEMS) associated with the oxidizers.

STATE OF THE ART/STANDARD OF CARE

Dr. Delaney has extensive experience in the review of historical chemical handling and industrial manufacturing operations. He routinely analyzes solvent handling, storage, use, recycling and disposal systems at industrial plant sites and dry cleaning facilities with specific emphasis on determining the state of the industrial practices at the time and the historical standard of care.

Dry Cleaning Plant, Standard of Care, Seattle, Washington. At a commercial dry cleaning plant located in Seattle, retained to opine on the standard of care involving the operation of several industrial dry cleaning machines including the Spencer GT 110 I Dry Cleaning Machine Serial 1427 and a Permac dry cleaning machine (125 gallon capacity). This matter involves an insurance claim where the operation of the Permac and Spencer dry cleaning machines is at the center of the litigation. Cleaning operations that involved water, detergents and Perc were analyzed and distinguished as part of his opinion. Prepared two expert declarations on this matter and was deposed by opposing counsel.

Textile Manufacturer, Piping System Evaluation, Teterboro, New Jersey. Retained to opine on a textile manufacturer's operation of a dry cleaning machine in Northern New Jersey. The operation of these dry cleaning machines allegedly resulted wide-spread contamination of Perc and its biodegradation products in the groundwater and soils at the site. Evaluated the discharge piping systems that historically operated at this site to determine their state of repair relative to alleged discharges of wastewaters to the surrounding areas. Prepared an expert report for the mediation portion of this case and was deposed. Prepared a supplemental report prior to the trial.

Retail Dry Cleaning, Litigation Support, Georgia. Testified at a trial in Georgia involving the release of Perc to the groundwater that resulted from the operation of the retail-scale dry cleaning machine and the handling and disposal of Perc throughout the retail establishment.

Electronics Manufacturer, State of Repair Assessment, Endicott, New York. Project involved the review of dozens of piping, electrical and structural designs and drawings to determine the general state of repair of physical systems that operated at this plant since the early 1900s. Reviewed other historical documents concerning the facility to determine how drainage conduits operated during the period in question. Determined what standard industrial practices should have been conducted at a site where trichloroethylene (TCE) was used and disposed of on the plant

site. Determined the general state of knowledge of the facility and standard of care that would have applied during the time period in question. This determination established a link between underlying groundwater pollution to the wastewater treatment operations, including a settling lagoon. Also determined that past disposal practices were consistent with the prevailing industry standards.

Chlorinated Solvent Use Toxic Tort, New York. Large toxic tort lawsuit in New York State involving the determination of the standard of care for solvent use and handling over the period from 1940 to 2002. The lawsuit involves a suit by hundreds of plaintiffs regarding a neighboring plant site where electronics were manufactured on a large scale. Reviewed historical documents concerning the facility and applied his expertise on how chemicals were handled during the period in question by the client and by members of the client's industrial sector. A key aspect of his opinion is how industry and regulators viewed discharges of solvents to sanitary sewers and what was the then state of the art in disposal practices.

Chlorinated Substances Standard of Care, California. Reviewed analytical data at site in California to determine how certain chlorinated substances, including TCE and 1,2,3-trichloropropane (TCP), were used in the repair, maintenance, overhauling, and refurbishing of aircraft from the 1940s through the 1980s. Using these data, analyzed whether this use was consistent with then-prevailing state of manufacturing and industry knowledge, practices, and trends.

WWII Maintenance Operations Disposal Practices Standard of Care. Evaluated manufacturing and maintenance operations from WWII to determine whether disposal practices involving TCE, perchlorethylene (PCE) and 1,1,1-trichlorethane (TCA) were consistent with the then-applicable standard of care.

U.S. Army and Department of War Former WWII Plancor Facility, New York. Examined historic records to determine whether TCE storage, handling and disposal operations associated with vapor degreasing operations were consistent with then-prevailing state of manufacturing-industry knowledge, practices, and trends.

Publications / Presentations

- "Anatomy of a Carbon Credit: How Transportation Agencies Can Engage in Carbon Markets - Pratt & Whitney Engine Cleaning Protocol for Hawaiian Airlines." Transportation Research Board, Washington, D.C., January 13, 2013
- "Adaptation and MRV (Measurement, Reporting and Verification)," United Nations 18th Annual Climate Change Conference, Doha, Qatar. November 30, 2012
- "Climate Change - Infrastructure – Adaptation," Presented at New Jersey Water Environment Association Conference, Atlantic City, NJ, May 14, 2012
- "What the Science Tells Us & How Practitioners Can Use the Science," Presented at US DOT FTA Climate Change Workshop: Washington, D.C., August 3, 2011
- "Benefits of ISO 14064, 14065 and 14066," Presented at Low Carbon Earth Summit: Dalian China, October 20, 2011
- "ISO 14064 Series of Standards: A Comprehensive Approach to GHG", Presented at Chicago Climate Exchange-CCFE Sixth Annual Members Meeting, Chicago, IL. June 11, 2009
- "The Coming of Age of the Voluntary Market: Perspective from an American Verification Company," Presented at Carbon TradeEx, Washington, DC. April 7, 2009
- "Verification: Standards & Quality: The evolution of verification, its role in the climate change world and an introduction to the process and ISO Standards," Presented at Navigating the American Carbon World, San Diego, CA. April 3, 2009
- "Carbon Offsets: The Whats, Hows, And Watchouts of Verifying Offsets," Presented at EBC Carbon Management Series, GHG Inventories, Registries, Life Cycle Assessments and Disclosure Requirements, Westborough, MA. March 6, 2009

- "Verification from a Verifier's Perspective: Tips for an Easier Verification," Presented at The Climate Registry Pre-Forum Workshop, Boston, MA. November 19, 2008
- "RIOS QEH&S Management Systems: Certification and Best Practices for the Electronics Recycling Industry," Presented at E-Scrap 2008 Pre-Conference Workshop, Orlando, FL. September 16, 2008
  "ISO 14064 Series of Standards: A Comprehensive Approach to GHG," Presented at Auditing Roundtable, Crystal City, VA. September 4, 2008
- "Understanding Your Footprint," Presented at BIO International Convention, San Diego, CA. June 2008
- "De-mystifying the Carbon Footprint," Presented at the Institute of Scrap Recycling Industries Annual Convention, Las Vegas, NV. April 7, 2008
- "Issues Regarding GHG Validation and Verification," Presented at Operating in a Carbon-Constrained World: Positive Experiences from the UK, Los Angeles, CA. October 12, 2007
- "Use of ISO 14064-2 and ISO 14064-3 in Voluntary Emissions Reductions Schemes," Presented at ISO 14064 Workshop - Implementation and Outlook, Beijing, China. June 28, 2007
- "ISO 14064: An International Standard for GHG Management," Presented at Carbon Finance Conference 2006, Millennium Gloucester, London. October 9, 2006
- "Best Practices in Greenhouse Gas Verification," Presented at the Business Roundtable GHG Verification Workshop, August 23, 2006
- "ISO 14064: An International Standard for GHG Management," Presented at SEMARNAT National Institute of Ecology, Mexico City. April 25 & 26, 2006
- "ISO 14064: An International Standard for GHG Management". Presented at GLOBE 2006, Vancouver, Canada. March 29, 2006
- With Jay Wintergreen, "Climate Change: Pressroom, Boardroom, Courtroom". Presented at American Bar Association Environmental Law Conference, Keystone, CO. March 10, 2006
- "ISO 14064: An International Standard for GHG Management," Presented at AWMA International Specialty Conference, "Planning for the Future: Climate Change, Greenhouse Gas Inventories & Clean Energy Linkages", San Francisco, CA. March 8, 2006
- "Role of CDM Credits in Financing in South America Emerging Markets," Presented at Latin America Energy Finance, Miami, FL. February 3, 2006
- Moderator of side event "Market Perspectives on the Clean Development Mechanism Reform." UNFCCC Conference of the Parties, Montreal, Canada. December 2005
- "Overview on International Scenario for Certification of Projects and Organization Inventories upon GHG," Presented at Brazilian Climate Change Workshop, Sao Paulo, Brazil. November 8, 2005
- "Climate Change as an Issue of Jobs and Trade: Reframing Climate Change Debate." Presented at Stephen M. Ross School of Business. June 3, 2005
- "Incorporating Sustainability into Business Practices: A Practical Approach," Presented at American Bar Association Environmental Law Conference, Keystone, CO. March 10, 2005
- "Role of Clean Development Mechanism credits in financing in South American emerging markets," Presented at Financing Latin American Energy Projects, Miami, FL. February 4, 2005
- "The Status of the Development of the New ISO Climate Change Standard: ISO 14064," Presented at Business Roundtable GHG Management Workshop, San Francisco, CA. September 18-19, 2003
- With James D. Heeren, P.E., "Benefits of New Technology Demonstrated through Life Cycle Assessment," Presented at AIChE 2001 Annual Meeting: Reno, NV, November 2001
- With Reeva I. Schiffman, J.D., "Flexibility of the ISO 14001 EMS Standard: A Presentation of Case Studies from Different Sectors," Presented at AWMA's Annual Conference, Orlando, FL, June 2001

- With James D. Heeren, P.E., "Life Cycle Analysis, Environmental Management and Global Climate Change," Presented at AIChE Annual Conference in Los Angeles, CA, November 2000
- With Elizabeth Delaney, MBA, "Kyoto Protocol – Toward COP6 ISO and the CDM, "CEEM Newsletter, September 2000
- With William S.S. Pendexter, Ph.D., "Characterization of the Complex Flow Geometry of DNAPL's in the Vadose Zone," Presented in Warsaw, Poland and included in The Warsaw 1998 Symposium Proceedings, September 1998
- With Reeva I. Schiffman, Esq. and Scott Fleming, "Implementation of an ISO 14001 Environmental Management System." Chapter in ISO 14000 Handbook, Irwin P. Publishing Co., Burr Ridge, IL
- With Reeva I. Schiffman, Esq., "Organizational Issues Associated with the Implementation of ISO 14000." AAEE Environmental Engineer, January 1997
- With Reeva I. Schiffman, Esq. "The Clean Air Act: Strategic Environmental Planning." Environmental Law and Practice Journal, July/August 1994
- With First Environment "Bioremediation of Soils Contaminated with Bis-(2-ethylhexyl) Phthalate (BEHP) in a Soil Slurry Sequency Batch Reactor." Presented at the Pittsburgh National AIChE Meeting, August 1991
- Delaney, B. Tod, Ph.D., P. E., "Site Assessments and Clean-up Plan Development." Presented at the ECRA Update seminar: Somerset, NJ, May 2, 1985
- With J. L. Duncan, "A Remedial Action Evaluation for Asbestos-Containing Materials in the Ceiling of Washington Dulles International Airport." A Report Prepared for the Federal Aviation Administrator, February 1985
- Delaney, B. Tod, Ph.D., P.E., "Dewatering to Stabilize Ponded Fly Ash." Presented at the Center for Energy and Environmental Management 1984 Conference on Superfund, November 1984
- With J. L. Duncan, "Organic Contamination in Groundwater Removal by Spray Irrigation." Presented at the Center for Energy and Environmental Management's 1984 Conference on Groundwater Compliance: Designing, Installing and Operation of Groundwater Wells, September 1984
- With T. S. Sekulic, "Assessing Hazardous Waste Treatment Facility Fugitive Atmospheric Emissions." Presented at the Center for Energy and Environmental Management 1983 Conference on Superfund, May 1983
- With T. S. Sekulic, Ron C. Tai and K. R.Bolt, "Air Quality Effects of a Hazardous Waste Incineration System." Environmental Progress Vol. 2, No. 1, February 1983
- With J. D. Lauber and W. J. Hinckley, "Controlling the Burning of Hazardous Waste as Fuels in Combustion Installations and Processes." Presented at the Mid-Atlantic Air Pollution Control Association Technical Conference: Albany, NY, November 1982
- With T. S. Sekulic, "Hazardous Waste Facility Air Monitoring Program." Presented at the Mid-Atlantic States Section Air Pollution Control Association Technical Conference: Philadelphia, PA, May 1982
- With F. Lorincz, "Treatment and Disposal of Coal Conversion Residues." Presented at Western Conference on Energy/Water Resources: Boulder, CO, April 1982
- With D. D. Roderique and W. K. Tusa, "The Future of Utility Waste Disposal in New York State." Presented at the Governor's Conference on Expanding the Use of Coal in New York State: Albany, NY, May 1981
- Delaney, B. Tod, Ph.D., P.E., "Technical Standards for Landfills." Presented at the Energy Bureau Conference on Consolidated Permits: Washington, D.C., December 1980
- With A. R. Japhet and J. A. Isacs, "Environmental Aspects of the Hazardous Waste Chemical, Physical and Biological Permit Writer Guidelines Manual." Presented at the American Institute of Chemical Engineers 73rd Annual Meeting: Chicago, IL, November 1980
- With D. Lipsky and I. Lelichter, "Air Monitoring of Vinyl Chloride on and Adjacent to the Hauppauge Landfill, Islip, New York." Task Report to Environmental Protection Agency: New York, NY, 1980

- Delaney, B. Tod, Ph.D., P.E., "Cogeneration in the Brooklyn Gas Company Service Area." Presented at the Cogeneration Society of New York and New Jersey: New York, NY, 1980
- With P. H. Woods, S. A. Smith and W. H. Crowell, "On-Site Cogeneration on Urban Areas." Cogeneration Society of New York and New Jersey: New York, NY, 1980
- With T. Sekulic, "Atmospheric Emission Estimating Model for Aqueous Waste Lagoons." 1979
- With P. H. Woods and T. S. Sekulic, "Advantages and Disadvantages of Industrial Cogeneration as Compared to Central Power Stations." Presented at 72nd Annual Meeting of the Air Pollution Control Association: Cincinnati, OH, June 1979
- With S. A. Smith, "Potential Problem Waste Streams Generated by Coal-Fired Industrial Boilers." Presented at the 72nd Annual Meeting of the Air Pollution Control Association: Cincinnati, OH, June 1979
- With F. C. Hart, "The Impact of RCRA (PL 94-580) on Utility Solid Wastes." Prepared for Electric Power Research Institute, FP-878, June 1978
- Delaney, B. Tod, Ph.D., P.E., "Dispersion from Safety Valves and Other Momentum Emission Sources; Intermittent." Exxon Research and Engineering. Florham Park, NJ, 1978
- Delaney, B. Tod, Ph.D., P.E., "Vaporization During Loading, Transit and Unloading of a Tanker," American Petroleum Institute, 1977
- Delaney, B. Tod, Ph.D., P.E., Aircraft Vortex Effects on Ground Level Pollutant Concentration and Tracking of Vortex Movement in the Airport Environment, Dissertation. University of Texas at Austin, December 1976
- With Dennis F. Naugle, "United States Air Force Aircraft Pollution Emissions." USAF, 1973
- Dr. Delaney currently is a member of the Editorial Review Board for the *Environmental Claims Journal, a* Taylor & Francis Publication

Exhibit N

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
Case No. 2:03-CV-5985
----------x
NEXT MILLENNIUM REALTY, L.L.C., et al.,

Plaintiffs,

- against -

ADCHEM CORP., et al.,

Defendants.
----------x
October 8, 2013
10:12 a.m.

Videotaped Deposition of DIETER KANNAPIN, pursuant to Subpoena, held at the offices of Sternbach, Lawlor & Rella LLP, The Fred F. French Building, 551 Fifth Avenue, New York, New York, before Jineen Pavesi, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter and Notary Public of the State of New York.

A P P E A R A N C E S

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ALSO PRESENT:
DEV WRITE, Videographer

KANNAPIN

goods and receiving goods being processed 12:57:45PM
during the day and shipped out to our 12:57:51PM
vendors. 12:57:52PM
Q. What sort of goods? 12:57:53PM
A. Textiles. 12:57:54PM
Q. Any particular type of 12:57:56PM
textiles, knits, wovens? 12:57:58PM
A. It was polyesters, cottons, 12:58:01PM
knits, of that nature. 12:58:04PM
Q. What did Marvex do with the 12:58:07PM
textiles it received and then shipped out? 12:58:09PM
MR. MALDONADO: Objection to 12:58:14PM
form. 12:58:14PM
A. We cleaned them, heat set them 12:58:15PM
and sent it back. 12:58:21PM
Q. How were the materials cleaned? 12:58:23PM
A. Through continuous dry-cleaner. 12:58:27PM
Q. Were the materials only cleaned 12:58:34PM
with the dry-cleaner or was there also a 12:58:35PM
wet-washing process at Marvex? 12:58:37PM
A. No, there was not. 12:58:39PM
Q. Just to clarify, there was not 12:58:43PM
also a wet-washing process? 12:58:44PM
A. I don't recall there was one, 12:58:47PM

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let me put it this way. 12:58:48PM
Q. How many dry-cleaning machines 12:58:54PM
did Marvex have? 12:58:55PM
A. There was one dry-cleaning. 12:58:57PM
Q. You said that was a continuous 12:59:01PM
dry-cleaning? 12:59:03PM
A. Correct, yes. 12:59:04PM
Q. So if I understand correctly, a 12:59:05PM
continuous dry-cleaner is the type where 12:59:07PM
there is a long roll of fabric or perhaps 12:59:11PM
rolls of fabric that are stitched 12:59:13PM
together, it is fed into one side of the 12:59:15PM
machine, travels through the machine which 12:59:17PM
dry-cleans it, and then is rerolled or 12:59:20PM
refolded on the other side. 12:59:22PM
A. That's correct. 12:59:24PM
Q. Do you know what type of 12:59:28PM
solvent the dry-cleaning machine used? 12:59:30PM
A. I can tell you what we called 12:59:34PM
it, I don't know if it is the right word. 12:59:36PM
Q. What did you call it? 12:59:38PM
A. PERC. 12:59:39PM
Q. How big was the dry-cleaning 12:59:45PM
machine that Marvex used? 12:59:52PM

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Q. Was the dry-cleaning machine 01:06:07PM
connected to a steam supply? 01:06:15PM
A. Yes. 01:06:20PM
Q. And that would have been 01:06:20PM
connected to a boiler in the plant? 01:06:23PM
A. Yes. 01:06:26PM
Q. Did the dry-cleaning machine 01:06:27PM
use compressed air in any way, in addition 01:06:29PM
to steam? 01:06:32PM
A. I can't recall. 01:06:33PM
Q. Did the dry-cleaning machine 01:06:38PM
use cooling water? 01:06:40PM
A. I can't recall. 01:06:46PM
Q. Was the dry-cleaning machine 01:06:53PM
connected to the plant's electric supply? 01:06:55PM
A. Yes. 01:06:58PM
Q. Are you familiar with the smell 01:07:12PM
of PERC, do you know what it smells like? 01:07:14PM
A. Yes. 01:07:24PM
Q. Did you ever smell PERC when 01:07:26PM
Marvex's dry-cleaning machine was 01:07:28PM
operating? 01:07:30PM
A. Yes. 01:07:36PM
Q. Was there any sort of still or 01:07:44PM

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distillation apparatus connected to the 01:07:47PM
dry-cleaning machine to recover the PERC? 01:07:51PM
A. There was, yes. 01:07:54PM
Q. About how big was that still? 01:07:55PM
A. I can't recall. 01:08:00PM
Q. Was it contained within the 01:08:01PM
machine itself or was it a separate 01:08:03PM
apparatus? 01:08:05PM
A. I can't recall. 01:08:10PM
Q. Was there a tank of PERC that 01:08:13PM
was connected to the machine but that was 01:08:17PM
separate from it? 01:08:18PM
A. There was a tank, it was a tank 01:08:23PM
for the PERC, yes. 01:08:25PM
Q. That tank was above ground? 01:08:31PM
A. Yes. 01:08:34PM
Q. And it was separate from the 01:08:36PM
machine itself? 01:08:37PM
A. Correct, yes. 01:08:39PM
Q. Approximately how big was that 01:08:41PM
tank? 01:08:43PM
A. I can't recall. 01:08:48PM
Q. Did you ever see that tank 01:08:51PM
being loaded with fresh PERC? 01:08:54PM

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A. Yes. 01:08:56PM

Q. Can you describe that operation 01:08:58PM for me. 01:09:00PM

A. Same operation when you're 01:09:04PM heating at home, a guy puts a hose in, 01:09:07PM fills it up. 01:09:10PM

Q. So a truck would come? 01:09:13PM

A. Correct. 01:09:15PM

Q. Sort of like a fuel oil truck, 01:09:16PM one with the big tank on the back? 01:09:18PM

A. Correct. 01:09:20PM

Q. Was it about the same size as a 01:09:21PM fuel oil truck that would come supply your 01:09:24PM home? 01:09:26PM

A. I can't recall. 01:09:28PM

Q. How did the hose from the tank 01:09:30PM truck that supplied the PERC get to the 01:09:38PM tank that it supplied? 01:09:44PM

A. Say that again. 01:09:46PM

Q. When deliveries of PERC were 01:09:48PM made via truck, you said the guy comes in 01:09:50PM with the hose and fills the tank. 01:09:54PM

A. Right. 01:09:55PM

Q. How did he get the hose into 01:09:56PM

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the building. 01:09:58PM

A. I don't know if it was inside, 01:10:02PM

outside, I don't recall. 01:10:04PM

I only notice the truck came, I 01:10:06PM

don't know exactly where he put it in. 01:10:10PM

Q. Was the tank of PERC inside the 01:10:13PM

building or outside? 01:10:15PM

A. Inside the building. 01:10:17PM

Q. What I am trying to figure out 01:10:19PM

is if he brought the hose in through a 01:10:21PM

loading dock, a door, a window. 01:10:24PM

A. I don't recall. 01:10:26PM

Q. Did you ever see any PERC 01:10:33PM

spilled in the process of refilling the 01:10:34PM

PERC tank for the dry-cleaning machine? 01:10:36PM

A. No. 01:10:38PM

Q. Did you ever see any spills or 01:10:40PM

leaks from the PERC tank itself? 01:10:42PM

A. No. 01:10:45PM

Q. Did you ever see any spills or 01:10:45PM

leaks of PERC from the dry-cleaning 01:10:46PM

machine? 01:10:49PM

A. No. 01:10:50PM

Q. Do you know how much PERC the 01:10:53PM

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machine contained? 01:10:55PM
A. I don't know. 01:10:58PM
Q. About how often were deliveries 01:11:15PM
of PERC made at Marvex? 01:11:17PM
A. I can't recall. 01:11:22PM
Q. Do you know how much PERC would 01:11:23PM
be pumped into the tank at each delivery? 01:11:25PM
A. No. 01:11:31PM
Q. I believe you said earlier 01:12:07PM
there was a still where the PERC from the 01:12:08PM
dry-cleaning machine was recovered. 01:12:10PM
A. Correct. 01:12:11PM
Q. Was that still ever cleaned out 01:12:12PM
during your time at Marvex? 01:12:14PM
A. Yes. 01:12:17PM
Q. Can you describe that process 01:12:19PM
for me. 01:12:20PM
A. I didn't do it, so I have no 01:12:25PM
idea. 01:12:27PM
Q. You didn't personally observe 01:12:28PM
that? 01:12:29PM
A. No, right. 01:12:29PM
Q. Was there any waste oil or 01:12:34PM
sludge generated by the dry-cleaning 01:12:37PM

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machine? 01:12:39PM
A. I can't recall. 01:12:40PM
Q. Did you ever see any drums, 01:12:46PM
55-gallon drums, in the Marvex plant? 01:12:50PM
A. There were drums. 01:12:55PM
Q. What was in the drums? 01:12:57PM
A. I don't know. 01:12:59PM
Q. Were you responsible for 01:13:26PM
ordering the deliveries of fresh PERC at 01:13:27PM
Marvex? 01:13:29PM
A. No. 01:13:30PM
Q. Do you know who was? 01:13:30PM
A. I can't recall. 01:13:35PM
Q. Do you recall if there was any 01:13:36PM
sort of logo or business name on the truck 01:13:37PM
that delivered PERC? 01:13:39PM
A. I can't recall. 01:13:47PM
Q. Were there any floor drains at 01:14:11PM
Marvex? 01:14:13PM
A. Sorry? 01:14:13PM
Q. Were there any drains in the 01:14:14PM
floor of the Marvex facility? 01:14:15PM
A. I can't recall. 01:14:18PM
Q. After Marvex dry-cleaned the 01:14:25PM

KANNAPIN

Would you mark the approximate 01:52:15PM
location of the inspection machine, if you 01:52:16PM
recall. 01:52:19PM
A. I can't recall. 01:52:22PM
Q. Mr. Kannapin, do you recall 01:53:17PM
there was a fire at Marvex's plant? 01:53:18PM
A. Yes. 01:53:20PM
Q. Did you ever go back to the 01:53:22PM
plant and see the damage that was done in 01:53:23PM
the fire? 01:53:26PM
A. Yes. 01:53:26PM
Q. Can you describe the condition 01:53:29PM
of the plant following the fire? 01:53:31PM
A. It was burned down. 01:53:35PM
Q. The roof was collapsed, the 01:53:37PM
walls were down? 01:53:40PM
A. Correct. 01:53:40PM
Q. Did the roof collapse in the 01:53:44PM
area that you indicated on Defendants' 01:53:46PM
Exhibit 250, in the area of the tank that 01:53:53PM
was used to supply PERC? 01:53:55PM
A. I can't recall. 01:53:57PM
Q. Did the roof collapse in the 01:53:59PM
area where the dry-cleaning machine was 01:54:00PM

KANNAPIN

housed? 01:54:04PM
A. I can't recall. 01:54:04PM
Q. Did you see the dry-cleaning 01:54:05PM
machinery after the fire? 01:54:06PM
A. I can't recall. 01:54:11PM
Q. Did you see the tank of PERC 01:54:12PM
after the fire? 01:54:13PM
A. I can't recall. 01:54:13PM
Q. Did Marvex have delivery trucks 01:54:18PM
that it used? 01:54:20PM
A. Yes. 01:54:21PM
Q. Where were those trucks 01:54:21PM
ordinarily parked? 01:54:23PM
A. In the back. 01:54:25PM
Q. In the parking lot behind the 01:54:28PM
building? 01:54:29PM
A. Correct. 01:54:29PM
Q. Were they parked there after 01:54:30PM
the fire? 01:54:31PM
A. I can't recall. 01:54:33PM
Q. Do you recall the name Barney 01:54:40PM
Ferrante? 01:54:41PM
A. Yes. 01:54:48PM
Q. Do you recall him working at 01:54:48PM

KANNAPIN

Marvex? 01:54:49PM

A. Yes, he did. 01:54:50PM

Q. Were you aware that he was 01:54:52PM

convicted of arson in connection with the 01:54:53PM

fire at Marvex? 01:54:55PM

A. No, I was not. 01:54:56PM

Q. Do you know who Marvex's 01:55:13PM

landlord was at Frost Street? 01:55:15PM

A. No. 01:55:20PM

Q. While you worked at Marvex, did 01:55:20PM

anyone from the landlord ever come to the 01:55:22PM

plant to inspect the property? 01:55:23PM

A. I don't know. 01:55:27PM

MR. ROGGENKAMP: I have no 01:55:33PM

further questions at this time. 01:55:33PM

EXAMINATION BY 01:55:34PM

MR. MALDONADO: 01:55:40PM

Q. Just a couple of questions for 01:55:40PM

you, sir. 01:55:41PM

What exactly was your job title 01:55:44PM

at Marvex, did you have one? 01:55:46PM

A. I didn't have a job title. 01:55:49PM

Q. What years did you work there? 01:55:51PM

A. Million dollar question; I 01:55:55PM

Exhibit O

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
Case No. 2:03-CV-5985
----------x
NEXT MILLENNIUM REALTY, L.L.C., et al.,

Plaintiffs,

- against -

ADCHEM CORP., et al,

Defendants.
----------x
September 16, 2013
10:42 a.m.

Videotaped Deposition of FRED MARGOLIN, pursuant to Subpoena, held at the Law Office of Frederick Eisenbud, 6165 Jericho Turnpike, Commack, New York, before Jineen Pavesi, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter and Notary Public of the State of New York.

A P P E A R A N C E S

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ALSO PRESENT:

WAYNE SALINE, Videographer

MARGOLIN

would have needed somebody to do the 01:39:37PM
knitting. 01:39:39PM
But I wouldn't say it would 01:39:41PM
change too much because, in other words, 01:39:44PM
you only needed so many people to run a 01:39:49PM
machine. 01:39:51PM
Q. Do you have any documents left 01:40:02PM
over from your days at Marvex? 01:40:10PM
A. No. 01:40:12PM
Q. No letters, no bills, no 01:40:15PM
checks? 01:40:17PM
A. Zero. 01:40:19PM
Q. Did Marvex have an accountant 01:40:24PM
during its time at 89 Frost Street? 01:40:27PM
A. Yes. 01:40:29PM
Q. Do you remember who that was? 01:40:29PM
A. No. 01:40:30PM
Q. Do you remember where your 01:40:33PM
accountant was? 01:40:34PM
A. No. 01:40:35PM
Q. This exhibit, 236, the bill of 01:40:39PM
sale from Lincoln, shows that you bought 01:40:43PM
those three pieces of equipment for 01:40:46PM
$43,000, right? 01:40:48PM

MARGOLIN

A. That's what it says on the 01:40:53PM
bill. 01:40:54PM
Q. Was that a fair price for the 01:40:55PM
equipment at that time? 01:40:57PM
A. I doubt it very much if I would 01:41:00PM
overpay. 01:41:02PM
Q. Do you think you underpaid? 01:41:06PM
A. No, I don't think they would 01:41:08PM
give them to me for less than they could 01:41:09PM
get. 01:41:12PM
Q. So this was a -- 01:41:12PM
A. Well, let's say that they might 01:41:15PM
not have gotten a full value, the tenter 01:41:17PM
frame is quite a job setting it up and 01:41:23PM
taking it down, so they probably didn't 01:41:28PM
want to get -- take it with them and the 01:41:32PM
setter price, which is usually in the cost 01:41:42PM
of the machine when you buy it, probably 01:41:44PM
wasn't there. 01:41:47PM
I would assume they were 01:41:59PM
satisfied and I guess I was satisfied. 01:42:01PM
Q. How many different types of 01:42:08PM
machines were operating at 89 Frost Street 01:42:19PM
when Marvex was there? 01:42:23PM

MARGOLIN

dry-cleaning machine had filters on it? 03:21:15PM

A. I do not know anything about 03:21:21PM

the filtering system of the dry-cleaning 03:21:24PM

machine. 03:21:27PM

Q. Do you know anything about the 03:21:29PM

waste system, if there was one, on the 03:21:34PM

dry-cleaning machine? 03:21:36PM

A. If there was any waste -- 03:21:45PM

MR. EISENBUD: Do you recall? 03:21:52PM

A. No, I don't recall, I really 03:21:53PM

don't recall. 03:21:55PM

Q. Did you visit 89 Frost Street 03:22:10PM

after the fire? 03:22:12PM

A. I'm sure I was there on some 03:22:14PM

occasion. 03:22:17PM

Q. Do you have a recollection of 03:22:19PM

going and seeing it after the fire? 03:22:20PM

A. Yes. 03:22:22PM

Q. Can you describe for me what 03:22:24PM

condition the building was in. 03:22:25PM

A. The roof was collapsed and 03:22:28PM

steel beams were collapsed and there was a 03:22:35PM

lot of debris. 03:22:40PM

Q. Was there anything salvageable 03:22:44PM

MARGOLIN

in the building? 03:22:47PM
A. I don't know, I didn't try to 03:22:50PM
salvage anything. 03:22:51PM
Q. Do you know if anyone at Marvex 03:22:55PM
tried to salvage any equipment or 03:22:56PM
material? 03:23:01PM
A. No. 03:23:01PM
Q. You don't know or, no, no one 03:23:02PM
did? 03:23:03PM
A. No, I don't know if anybody 03:23:04PM
tried to salvage anything. 03:23:09PM
Q. Did you see the dry-cleaning 03:23:14PM
machine after the fire? 03:23:15PM
A. No, I didn't. 03:23:16PM
I shouldn't say that; I don't 03:23:18PM
recall seeing the dry-cleaning machine. 03:23:20PM
Q. Do you have any knowledge at 03:23:28PM
all about the state of the dry-cleaning 03:23:31PM
machine after the fire? 03:23:35PM
A. No. 03:23:41PM
Q. Did you have any discussions 03:23:51PM
with anybody after the fire about the 03:23:55PM
possible release of chemicals or other 03:23:59PM
materials into the environment? 03:24:04PM

Exhibit P

This Agreement BETWEEN JERRY SPIEGEL of 270 North Broadway, Hicksville, New York

as Landlord

and FUFANL REALTY CORP., a domestic corporation, having its principal office and place of business at 635 Main Street, New York, New York

as Tenant

Witnesseth: The Landlord hereby leases to the Tenant the following premises: the premises hereinafter described in Schedule A annexed hereto

for the term of twenty (20) years to commence as hereinafter set forth and to end twenty (20) years from the date of such commencement.

to commence from the day of 19 and to end on the day of 19 to be used and occupied only for

(See addendum to lease)

upon the conditions and covenants following:

1st. That the Tenant shall pay the annual rent computed as hereinafter set forth in #38 hereof, and to commence as provided for in Paragraph 36.

said rent to be paid in equal monthly payments in advance on the 1st day of each and every month during the term aforesaid, as follows: as hereinafter set forth during the lease term.

2nd. That the Tenant shall take good care of the premises and shall, at the Tenant's own cost and expense make all repairs of whatever kind and nature ordinary and extraordinary, interior and exterior, structural and nonstructural, including glass and necessary maintenance of plumbing, electrical and other equipment and painting and repair of entire premises including exterior doors and windows & sanitary system, and at the end or other expiration of the term shall deliver up the demised premises in good order or condition, damages by the elements excepted. and reasonable wear and tear excepted. (See par.# 39)

3rd. That the Tenant shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and City Government and of, any, and all their Departments and Bureaus applicable to said premises, for the correction, prevention, and abatement of nuisances or other grievances, in, upon, or connected with said premises during said term; and shall also promptly comply with and execute all rules, orders and regulations of the New York Board of Fire Underwriters, or any other similar body, at the Tenant's own cost and expense.

4th. That the Tenant, successors, heirs, executors or administrators shall not assign this agreement, or underlet or underlease the premises, or any part thereof, or make any alterations on the premises, without the Landlord's consent in writing; or occupy, or permit or suffer the same to be occupied for any business or purpose deemed disreputable or extra-hazardous on account of fire, under the penalty of damages and forfeiture, and in the event of a breach thereof, the term hereby (See par.# 34 mediately cease and determine at the option of the Landlord as if it were the expiration of the original term.

5th. In case of damage, by fire or other cause, to the building in which the leased premises are located, without the fault of the Tenant or of Tenant's agents or employees, if the damage is so extensive as to amount practically to the total destruction of the leased premises or of the building, or if the Landlord shall within a reasonable time decide not to rebuild, this lease shall cease and come to an end, and the rent shall be apportioned to the time of the damage. In all other cases where the leased premises are damaged by fire without the fault of the Tenant or of Tenant's agents or employees the Landlord shall repair the damage with reasonable dispatch after notice of damage, and if the damage has rendered the premises untenantable, in whole or in part, there shall be an apportionment of the rent until the damage has been repaired. In determining what constitutes reasonable dispatch consideration shall be given to delays caused by strikes, adjustment of insurance and other causes beyond the Landlord's control.

6th. The said Tenant agrees that the said Landlord and the Landlord's agents and other representatives shall have the right to enter into and upon said premises, or any part thereof, at all reasonable hours for the purpose of examining the same, or making such repairs or alterations therein as may be necessary for the safety and preservation thereof.

7th. The Tenant also agrees to permit the Landlord or the Landlord's agents nine months in advance the premises to persons wishing to hire or purchase the same; and the Tenant further agrees that on and after the sixth month, next preceding the expiration of the term hereby granted, the Landlord or the Landlord's agents shall have the right to place notices on the front of said premises, or any part thereof, offering the premises "To Let" or "For Sale", and the Tenant hereby agrees to permit the same to remain thereon without hindrance or molestation.

8th. That if the said premises, or any part thereof shall be deserted or become vacant during said term, or if any default be made in the payment of the said rent or any part thereof, or if any default be made in the performance of any of the covenants herein contained, the Landlord or representatives may re-enter the said premises by force, summary proceedings or otherwise, and remove all persons therefrom, without being liable to prosecution therefor, and the Tenant hereby expressly waives the service of any notice in writing of intention to re-enter, and the Tenant shall pay at the same time as the rent becomes payable under the terms hereof a sum equivalent to the rent reserved herein, and the Landlord may rent the premises on behalf of the Tenant, reserving the right to rent the premises for a longer period of time than fixed in the original lease without releasing the original Tenant from any liability, applying any moneys collected, first to the expense of resuming or obtaining possession, second to restoring the premises to a rentable condition, and then to the payment of the rent and all other charges due and to grow due to the Landlord, [redacted] the Tenant, [redacted] shall remain liable for any deficiency.

9th. Landlord may replace, at the expense of Tenant, any and all broken glass in and about the demised premises. Landlord may insure, and keep insured, all plate glass in the demised premises for and in the name of Landlord. Bills, for the premiums therefor shall be rendered by Landlord to Tenant at such times as Landlord may elect, and shall be due from, and payable by Tenant when rendered, and the amount thereof shall be deemed to be, and be paid as, additional rental. Damage and injury to the said premises, caused by the carelessness, negligence or improper conduct on the part of the said Tenant or the Tenant's agents or employees shall be repaired as speedily as possible by the Tenant at the Tenant's own cost and expense.

10th. That the Tenant shall neither encumber nor obstruct the sidewalk in front of, entrance to, or halls and stairs of said premises, nor allow the same to be obstructed or encumbered in any manner.

11th. The Tenant shall neither place, or cause or allow to be placed, any sign or signs of any kind whatsoever at, in or about the entrance to said premises or any other part of same, except in or at such place or places as may be indicated by the Landlord and consented to by the Landlord in writing. And in case the Landlord or the Landlord's representatives shall deem it necessary to remove any such sign or signs in order to paint the said premises or the building wherein same is situated or make any other repairs, alterations or improvements in or upon said premises or building or any part thereof, the Landlord shall have the right to do so, providing the same be removed and replaced at the Landlord's expense, whenever the said repairs, alterations or improvements shall be completed. (See #32)

12th. That the Landlord is exempt from any and all liability for any damage or injury to person or property caused by or resulting from steam, electricity, gas, water, rain, ice or snow, or any leak or flow from or into any part of said building or from any damage or injury resulting or arising from any other cause or happening whatsoever unless said damage or injury be caused by or be due to the negligence of the Landlord.

13th. That if default be made in any of the covenants herein contained, then it shall be lawful for the said Landlord to re-enter the said premises, and the same to have again, re-possess and enjoy. The said Tenant hereby expressly waives the service of any notice in writing of intention to re-enter, a[redacted]

14th. That this instrument shall not be a lien against said premises in respect to any mortgages that are now on or that hereafter may be placed against said premises, and that the recording of such mortgage or mortgages shall have preference and precedence and be superior and prior in lien of this lease, irrespective of the date of recording and the Tenant agrees to execute any such instrument without cost, which may be deemed necessary or desirable to further effect the subordination of this lease to any such mortgage or mortgages, and a refusal to execute such instrument shall entitle the Landlord, or the Landlord's assigns and legal representatives to the option of cancelling this lease without incurring any expense or damage and the term hereby granted is expressly limited accordingly.

15th. The Tenant has this day deposited with the Landlord the sum of $ as security for the full and faithful performance by the Tenant of all the terms, covenants and conditions of this lease upon the Tenant's part to be performed, which said sum shall be returned to the Tenant after the time fixed as the expiration of the term herein, provided the Tenant has fully and faithfully carried out all of said terms, covenants and conditions on Tenant's part to be performed. In the event of a bona fide sale, subject to this lease, the Landlord shall have the right to transfer the security to the vendee for the benefit of the Tenant and the Landlord shall be considered released by the Tenant from all liability for the return of such security; and the Tenant agrees to look to the new Landlord solely for the return of the said security, and it is agreed that this shall apply to every transfer or assignment made of the security to a new Landlord. (See #52)

16th. That the security deposited under this lease shall not be mortgaged, assigned or encumbered by the Tenant without the written consent of the Landlord.

17th. It is expressly understood and agreed that in case the demised premises shall be deserted or vacated, or if default be made in the payment of the rent or any part thereof as herein specified, or if, without the consent of the Landlord, the Tenant shall sell, assign, or mortgage this lease or if default be made in the performance of any of the covenants and agreements in this lease contained on the part of the Tenant to be kept and performed, or if the Tenant shall fail to comply with any of the statutes, ordinances, rules, orders, regulations and requirements of the Federal, State and City Government or of any and all their Departments and Bureaus, applicable to said premises, or if the Tenant shall file or there be filed against Tenant a petition in bankruptcy or arrangement, or Tenant be adjudicated a bankrupt or make an assignment for the benefit of creditors or take advantage of any insolvency act, the Landlord may, if the Landlord so elects, at any time thereafter terminate this lease and the term hereof, on giving to the Tenant five days' notice in writing of the Landlord's intention so to do, and this lease and the term hereof shall expire and come to an end on the date fixed in such notice as if the said date were the date originally fixed in this lease for the expiration hereof. Such notice may be given by mail to the Tenant addressed to the demised premises.

18th. Tenant shall pay to Landlord the rent or charge, which may, during the demised term, be assessed or imposed for the water used or consumed in or on the said premises, whether determined by meter or otherwise, as soon as and when the same may be assessed or imposed, and will also pay the expenses for the setting of a water meter in the said premises should the latter be required. Tenant shall pay Tenant's proportionate part of the sewer rent or charge imposed upon the building. All such rents or charges or expenses shall be paid as additional rent and shall be added to the next month's rent thereafter to become due.

19th. That the Tenant will not nor will the Tenant permit undertenants or other persons to do anything in said premises, or bring anything into said premises, or permit anything to be brought into said premises or to be kept therein, which will in any way increase the rate of fire insurance on said demised premises, nor use the demised premises or any part thereof, nor suffer or permit their use for any business or purpose which would cause an increase in the rate of fire insurance on said building, and the Tenant agrees to pay on demand any such increase.

20th. The failure of the Landlord or Tenant to insist upon a strict performance of any of the terms, conditions and covenants herein, shall not be deemed a waiver of any rights or remedies that ~~the Landlord~~ either may have, and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained. This instrument may not be changed, modified or discharged orally.

21st. If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then and in that event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding and Tenant shall have no claim against Landlord for the value of any unexpired term of said lease. [redacted] of any award shall belong to the Tenant. (See #47)

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and the estimated cost of restoration and repair of the premises

#30. LIABILITY AND PROPERTY DAMAGE INSURANCE: The Tenant agrees

to take out and maintain throughout the entire term of this lease,

what is commonly known as Public Liability Insurance and Boiler

Insurance, protecting the Landlord, in the amount of $500,000.00

for a single person, and $1,000,000.00 for any occurrence for

personal injury, plus $50,000. for Property Damage, said policy

to cover the entire premises demised herein. If a boiler is re-

quired, the Tenant will supply such policy in the name of the

Landlord in the limit of $250,000.00 per accident. Ten days be-

fore the expiration of said policy, Tenant shall deliver to the

Landlord a renewal of such policy. In the event the Tenant fails

to do so, the Landlord may order such policy and pay the premium

therefor and add the same to the following month's rent, as addi-

tional rent after three days written notice. All such policies

shall be issued by companies licensed to do business in the State

of New York. Tenant shall give written notice to Landlord of any

proposed changes, cancellations or amendments in said policies,

and copies of all such shall be promptly furnished to Landlord.

#31. IMPROVEMENTS TO PREMISES. The Tenant shall have the right

and privilege to remove any and all improvements to the premises

at or prior to termination of the lease term, however, it being

expressly understood and agreed by the parties that prior to the

removal of any such improvements by the Tenant, which the Tenant

shall have made in the premises, the Tenant shall advise the Land-

lord in writing by certified or registered mail, return receipt

requested, of the Tenant's intention so to remove any of same at

a date not less than 30 days from the date of said notice, and in

the event that the estimated cost by the Landlord of any necessary

restoration of the premises occasioned by the removal of any said

improvements shall exceed the security deposit by the Tenant pur-

suant to paragraphs 15 and 16 hereof, prior to the removal of any

such improvements the Tenant shall first deposit with the Land-

lord the difference between the amount of such security deposit

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and the estimated cost of restoration and repair of the premises which may have been occasioned as aforesaid. This shall in no way release the Tenant from its obligation and liability for restoration and repair of the premises which shall be necessary by reason of the removal of any such improvements.

#32. SIGNS. Notwithstanding the provisions of par. #11, Landlord consents to placing of one or more dignified signs on the demised premises for the business of the Tenant, provided such sign or signs shall comply with the Ordinances of the Town of North Hempstead and other governmental authorities.

#33. CONSTRUCTION. The Landlord does hereby agree to construct and erect upon the demised premises a building containing approximately 15,000 sq.ft. substantially in accordance with the plot plan and specifications annexed hereto and identified by the signatures of the parties to this agreement of lease.

#34. ASSIGNMENT AND SUB-LETTING. Anything to the contrary notwithstanding in par. #4 of this lease, the parties hereto agree that the Tenant herein, its successors or assigns, shall have the right to assign this agreement, or sub-let the premises in whole or in part, on condition, however, that the assignee assume the terms of this lease agreement on a standard form of lease assignment, in recordable form and on further condition that the Tenant remain liable under the terms of this agreement for the entire lease term.

#35. FIRE INSURANCE. With regard to Fire Insurance to be maintained upon the premises during the term of this lease agreement, the Tenant does hereby agree to reimburse the Landlord for all premiums for such insurance, which insurance shall be in an amount as may be required by the bank or lending institution which may grant a mortgage upon the improved premises or in the event that there shall be no such lending institution then in an amount not less than co-insurable minimum requirements of the premises to be erected based upon full insurable value thereof. Such premiums shall be due and payable from the Tenant to the Landlord as addi

tional rent on the rent date next following the giving of notice to the Tenant by the Landlord of the amount due for such premium. The parties shall apportion such premiums at the commencement and termination of the lease term.

Each party hereto, does to the extent of collectible insurance in force in favor of either or both parties hereto, hereby waive any and all causes of action, claims or demands against the other party hereto which may hereafter arise or exist by reason of or resulting from any loss, destruction or damage to the premises herein described or the contents thereof caused by or resulting from any fire, or any peril included in extended coverage as defined in the standard New York State Fire Insurance Policy occurring during the time this lease is in full force and effect.

Said policy of fire insurance shall include the Tenant as an assured or in lieu thereof a waiver of subrogation if obtainable for the sole purpose of barring the assertion by the insurance companies of subrogation claims against the Tenant.'

It is understood and agreed by the parties that the procurement of the foregoing fire insurance by the Landlord in behalf of the Tenant from an agent or broker designated by the Landlord shall be conditioned upon the procurement of such insurance at the lowest available rates to the Landlord and Tenant for such type of insurance by a company licensed to do business in the State of New York.

Fire Insurance coverage shall include coverage for fire, extended coverage, vandalism, malicious mischief and sprinkler leakage.

#36. LEASE TERM. The lease term shall commence upon the date that the Landlord delivers to the Tenant a Certificate of Occupancy (temporary or permanent) for the premises to be erected hereunder, or upon the taking of possession of the premises by

the Tenant, whichever shall occur first. In the event that the lease term shall commence on a date other than the first day of the month, the rent shall be pro-rated for the period from the date of the commencement of the lease term to the first day of the succeeding month and the monthly installments of rent shall thereafter be paid on the first day of each succeeding month as heretofore set forth herein. It being agreed by the parties that the lease term shall expire twenty (20) years from the first day of the month next following the commencement of the term as herein-before set forth. Landlord shall give Tenant at least two weeks notice as to approximate date of issuance of the Certificate of Occupancy.

#37. REAL ESTATE TAXES AND ASSESSMENTS: As a further consideration for the granting of this lease, the Tenant hereby covenants and agrees that it will throughout the demised term pay, as additional rent hereunder, and in addition to the rents above specified, all taxes and assessments, general and special, ordinary or extra ordinary, by virtue of or under any present or future law or requirement of any governmental authority, and all water and sewer rates, sprinkler charges, rates, fees, licenses and all other penalties and impositions, and all municipal and other governmental charges which are or may hereafter be or become a lien on the demised premises, general or special, ordinary or extraordinary, of every kind and nature whatsoever (except only inheritance and estate taxes and except landlord's withholding, franchise and income taxes not herein expressly agreed to be paid by the Tenant), which may become due or payable or which may be levied , assessed or imposed at any time during the term hereof, or for any part of the term of this lease, upon the demised premises or any part thereof or upon any buildings or improvements at any time situated thereon, or upon the estate or interests of the Landlord in the demised premises or any part thereof of the buildings or improvements thereon or in or under this lease during or for the term thereof, including

all taxes and assessments for improving any streets, alleys, sidewalks, sidewalk vaults and alley vaults, as well as any rent or charge which the Town of North Hempstead or any other authority may at any time during the term of this lease, levy, spread or charge for inspection fees of governmental authorities only or for the use of any specs on or under any sidewalks or on or under or above any alley or street adjacent to the premises or any building at any time during the term of this lease located thereon.

Nothing herein contained shall be construed as requiring the Tenant to pay any so-called inheritance, succession or transfer taxes or corporate franchise taxes charged against the Landlord or the estate or interest of the Landlord in the demised premises or upon the right of any person to succeed in the same or any part thereof by inheritance, succession or transfer.

The Tenant is hereby expressly given the right to contest any such charge, lien, assessment, or other imposition with the appropriate governmental department or in a court having jurisdiction, thereof. The cost of any such contest or proceeding shall be borne solely by the Tenant.

The foregoing taxes and charges shall be paid by the Tenant in the following manner:

a) During the first full tax year - The Landlord shall disburse in behalf of the Tenant all of the taxes, charges and impositions heretofore set forth herein as the same shall become due and payable to the respective governmental authorities or other companies or agencies and the Tenant shall reimburse the Landlord for such payments on the rent date next following the payment by the Landlord of such items and the rendering of a statement by the Landlord to the Tenant of the payment thereof, and all of said items shall be due and payable from the Tenant to the Landlord as additional rental hereunder.

b) ~~After the first full tax year~~ - The Landlord shall pay all of the foregoing taxes, charges and impositions as heretofore set forth herein as the same shall become due and payable as set forth in subdivision (a) hereof, and the Tenant shall reimburse the Landlord for the same by paying to the Landlord concurrently and together with the monthly installments of rent a sum equal to 1/12 of the foregoing taxes, charges and impositions for the preceding tax year, each of which additional installments shall be due and payable from the Tenant to the Landlord as additional rental. At the end of each tax year there shall be an adjustment between the Landlord and the Tenant taking into account the amount paid by the Tenant to the Landlord during the preceding tax year and the actual amount disbursed by the Landlord for said items and any excess of payment by the Tenant shall be credited to the Tenant for the next tax year, and any deficit which may be due from the Tenant to the Landlord for taxes actually paid by the Landlord during the preceding tax year shall be due and payable from the Tenant to the Landlord on the rent date next following the giving of notice by the Landlord to the Tenant of the amount due therefor.

c) At such time during the first full tax year, as the Landlord shall receive a tax bill which shall reflect or be based upon the full assessed valuation of the land as fully improved together with the assessed valuation of the improvements thereon, the Tenant shall on the first day of the month next following the receipt by Landlord of the bill and presentation thereof to Tenant, pay to the Landlord concurrently and together with the monthly installments of rent a sum equal to 1/3 of the amount of said bill then due & payable and a like sum on the first day of the next succeeding month together with the monthly installment of rent, until said amount is repaid. The aforesaid deposits by the Tenant so paid to Landlord for taxes shall be included in the adjustment between the Landlord and Tenant at the end of the following tax year as herein above provided in sub-paragraph (b).

The term "tax year" as used herein shall be construed to include all those taxes, charges and impositions which shall become a lien upon the premises and/or due and payable from January 1st to December 31st.

Taxes shall be apportioned at commencement and termination of lease term.

#38. RENT, COMPUTATION OF: The parties do hereby expressly agree that the annual rental for each year of the lease term shall be an amount equal to the sum resulting from the multiplication of the actual total square foot area of the exterior of the completed building by the sum of 90¢, and the monthly rental which shall be due and payable in advance on the first day of each month of the lease term shall be 1/12 of said amount. The parties agree to accept the certification of the licensed land surveyor whose survey shall be guaranteed to the lending institution and the title company used in connection with the mortgage financing at the inception of the lease term as to building area.

#39. GUARANTEE OF LABOR & MATERIALS. The Landlord does hereby expressly agree and does hereby guarantee for a period of ~~One (1)~~ Two (2) years after the delivery of possession of the premises to the Tenant pursuant to the terms hereof, that all of the labor and materials which shall have been furnished and performed upon the demised premises by the Landlord shall have been performed in a

good and workmanlike manner and were of a good and proper quality in accordance with the terms of the specifications signed by the parties pursuant to this lease agreement. The Landlord does hereby agree that he shall make all repairs in and to the building hereby leased to the Tenant during the first Two years of the lease term, except those repairs which may have been occasioned by act or neglect of the Tenant. It being expressly understood and agreed by the parties that after the expiration of the foregoing ~~one (1)~~ Two (2) year period, the Tenant shall be obligated to make all repairs in and to the demised premises of each and every kind and nature. Upon the failure of the Tenant to make necessary repairs and maintenance during the term of the lease agreement, the Landlord shall have the right to either make such repairs and charge the cost thereof including charge for supervision, to the Tenant as additional rent, and said charge shall be due and payable from the Tenant on the rent date next following the completion of such repair and the rendering of a statement therefore by the Landlord to the Tenant or to declare a default by the Tenant under the terms of this lease agreement for the Tenant's failure to make such repairs and/or maintenance upon the giving of notice as is hereinbefore set forth herein.

#40. PARKING. The Tenant shall have available to it for its use and that of its employees, agents, servants, and/or invitees, for parking of automobiles, the area indicated on the plot plan annexed hereto and made a part hereof.

#41. BROKER. The Tenant does hereby represent to the Landlord that no broker or other person who might be entitled to the payment of a commission, has in any way negotiated or brought about the making of this lease agreement, the Landlord relying upon this representation in entering into this agreement.

#42. MEMORANDUM OF LEASE. Landlord and Tenant will upon the written request of the other at any time join in the execution and recording of a memorandum of lease in proper form for recording in the proper office or offices wherein the property is situated, setting forth the existence and term of this lease. Said instrument shall contain the following statement:

> "It is distinctly understood and agreed that the Landlord or the premises shall not be liable or responsible for the payment of any labor or materials performed or furnished at the instance of the Tenant; and that no contractor, sub-contractor, laborer or materialman employed by or through the Tenant shall have the right to file a mechanic's lien or other lien against the premises or to make the Landlord or the premises liable or responsible for the payment of such labor or materials. Every contractor, subcontractor, laborer and materialman supplying labor or materials at the instance of the Tenant shall and will rely strictly upon the financial responsibility of the Tenant for the cost of such work and materials."

Said instrument shall also give notice with respect to the subordination of this lease to mortgages, and that the lease requires Tenant to pay taxes and assessments, as hereinbefore provided.

#43. NOTICES. Any notice required or permitted to be made, given or served under this lease shall be deemed to be made, given and served, as the case may be, when delivered personally to Landlord or Tenant or when deposited in the United States mail, registered mail, or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to Landlord: 270 North Broadway
Hicksville, L.I., N.Y.

If to Tenant: 625 Main Street
New Cassel, N. Y.

or at such other address as either of the parties hereto may from time to time advise the other party in writing.

#44. SEWER LINES. It is understood and agreed that in the event that sewer lines are installed or brought to the demised premises the Landlord shall have no obligation to connect the demised premises to such sewer lines, however, the Tenant may at its option and at its own cost and expense connect to such sewer lines.

#44B. JURY TRIAL. The Tenant and Landlord do hereby expressly waive any and all right to trial by jury in any action or special proceeding for non-payment of rent or additional rent which may be brought under and by virtue of the terms of the terms of the within lease agreement, and the Tenant does hereby further expressly agree that in any such action or proceeding for rent or for recovery of possession of the premises, it shall not interpose in any such action or proceeding any defense by way of offset or counter-claim. This shall not be construed, however, as a waiver of any rights or claims which the Tenant may have against the Landlord, but shall merely act as a bar to the interposition of such claim against the Landlord in any action or proceeding for rent or for the recovery of possession of the premises.

#45. ESTOPPEL CERTIFICATE. The Tenant does hereby agree that it will at any time and from time to time upon ten (10) days' notice by the Landlord execute, acknowledge and deliver to the Landlord a statement in writing certifying that the lease or the lease as modified, as the case may be, represents the entire agreement between the parties, further certifying that no rent has been paid in advance; and further whether there are any existing defenses or off-sets which the Tenant has against the enforcement of the lease by the Landlord. The failure of the Tenant to so comply with the foregoing shall be construed as authorizing the Landlord as attorney in fact for the Tenant to execute such agreement.

#46. MORTGAGEE'S REQUEST FOR CHANGES. If an institution furnishing a mortgage on the demised premises shall require a change or changes in this lease as a condition of such financing and if the Tenant should refuse to agree thereto, the Landlord may terminate this lease at any time, provided such changes shall not substantially alter the obligations of the parties each to the other or to impose on the Tenant any condition more burdensome than as otherwise exists hereunder.

#47. CONDEMNATION. With regard to condemnation or acquisition for public or other purpose as heretofore set forth in par. 21st herein (including conveyance in lieu of condemnation) the parties do hereby expressly agree that in any such proceeding or conveyance which shall not affect the building upon the demised premises, this lease shall in no way be affected thereby and any and all such reward that shall be made in such proceeding shall belong to the Landlord. In the event that such proceeding or conveyance shall affect the demised building herein but shall not substantially affect the use by the Tenant of its equipment and machinery in the demised building the lease term shall not be affected and the rent shall abate proportionately in relation to the number of square feet so condemned or conveyed. In the event that such conveyance or condemnation shall substantially affect the use by the Tenant of its equipment and machinery, then and in that event either party hereto shall have the right and privilege to terminate this lease agreement upon written notice to the other by registered or certified mail as heretofore provided herein, and which notice must be given not later than thirty (30) days after the vesting of title of such portion of the premises in the public authority. Failure to give such notice shall be deemed a waiver by both parties of the right and privilege to terminate the lease by reason of such taking or conveyance. No part of any such award shall belong to the Tenant.

#48. SURVEY. The Landlord shall deliver to the Tenant upon the completion of the building to be erected hereunder a survey prepared by a licensed surveyor guaranteed to the title company being used by the Landlord in connection with the mortgage financing.

#49. INVALIDITY OF PORTIONS OF LEASE. The invalidity or unenforceability of any portion of the within lease agreement shall in no way affect the validity or enforceability of any other provision hereof.

50. DESCRIPTION OF DEMISED PREMISES. Upon the procurement of a guaranteed survey of the demised premises the metes and bounds description which shall be prepared by the title insurance company insuring the mortgage to be procured by the Landlord shall be annexed to the within lease agreement and deemed a part hereof with the same force and effect as if included herein in the first instance.

51. INDEX AND PARAGRAPH CAPTIONS. The annexed index and paragraph captions are included only for convenience, and are in no way to be construed as a part of this lease or as a limitation of the scope of the particular paragraphs to which they refer.

52. SECURITY DEPOSIT. With regard to the amount of the security deposit referred to in Par. #15 of the lease agreement, The Tenant does hereby expressly agree that the amount of security deposit to be given to the Landlord hereunder shall be a sum equal to three (3) months rent of the demised premises based upon the annual rent which shall have been computed by the multiplication of the total square foot area of the exterior of the demised building multiplied by the sum of 90¢ per sq. ft. At the execution of this Lease agreement, the Tenant shall deposit with the Landlord the sum of $3,375.00 as security which sum shall be adjusted at the time of the certification of the total square footage if required so that the security shall equal exactly three months rent. The Landlord shall deposit said security in an interest bearing account and the interest earned on said account shall belong to the Tenant, it being understood, however, that said interest shall not be withdrawn but shall be retained in the said account as additional security.

53. MECHANIC'S LIENS. The Landlord does hereby agree that it shall promptly undertake the removal and discharge of any mechanic's liens which may be filed against the premises relating to construction and improvements at the premises performed by the Landlord, which discharge shall either be by demand, bonding or other appropriate proceeding pursuant to the Lien Law.

#54. LANDLORD DEFAULT - CURING OF BY TENANT. In the event that the Landlord shall be in default of any of its obligations under the terms and conditions of this lease agreement, which default may be cured by payment of a sum of money such as payment of interest or amortization on any mortgage or any discharge of any taxes or similar charges, the Tenant may after fifteen (15) days' notice to the Landlord as heretofore provided herein, make payment of such item so as to cure the default and the amount of such payment by the Tenant shall be deducted from rent to become due to the Landlord from the Tenant. However, the tenants right secure mortgage defaults shall be limited only to a first mortgage and any renewals, extensions or consolidations thereof in the event that the Landlord in fact executes and delivers a first mortgage unto a ~~institutional~~ mortgagee, and only from and after the date of closing of said mortgage loan and the execution and delivery of said mortgage as aforesaid and only while said mortgage, (and and renewals, extensions or consolidations thereof) shall remain unpaid and outstanding in whole or in part.

#55. INTEREST ON PAYMENTS. In the event that either the Landlord or the Tenant shall disburse money in behalf of the other pursuant to the terms hereof and the party from whom said payment is due shall fail to make payment to the other party for same, interest at the rate of 6% shall accrue thereon from the date of payment in the first instance.

#56. REPAIRS BY TENANT IN BEHALF OF LANDLORD. In the event that the Landlord shall fail to make any repairs which it is obligated to make under the terms and conditions hereof, the Tenant may after fifteen (15) days' notice to the Landlord in writing as heretofore provided for, during which period of fifteen (15) days the Landlord shall have failed to commence to make such repairs, the Tenant is hereby authorized to make said necessary repairs in behalf of the Landlord and to deduct the actual cost from rent payments to become due to the Landlord from the Tenant. Tenants right to deduct from rent payment only those actual costs expend

by the Tenant only to the extent that same shall not exceed the rent required to be paid by the Tenant to the Landlord pursuant to the lease.

#57. ASSIGNMENT OF SECURITY. In the event of an assignment of the within lease agreement pursuant to the terms heretofore set forth herein, the Landlord does hereby consent that the Tenant may assign to the assignee any and all security deposits which may have been made by the Tenant pursuant to the terms of this lease agreement.

#58. RUBBISH. Tenant agrees to keep, at its own cost and expense, the demised premises free and clear of all cuttings, rubbish, waste paper and other waste material in conformity with the requirements of any insurance carrier of Landlord and/or governmental authority.

#59. EXTENSION OF LEASE: In the event Tenant shall remain in possession of the demised premises after the expiration of the term of this lease, then after the expiration of the term, without having executed a written lease with Landlord, such holding over shall not constitute a renewal or extension of the term but such holding over shall be construed as a tenancy from month to month, subject to all the terms and conditions of this lease, except as to the duration thereof, and in that event Tenant shall pay rent monthly in advance at the rate provided for herein, and real estate taxes and assessments shall be pro-rated for such period of holding over.

#60. TENANT CONTROL. Tenant is and shall be in exclusive control and possession of the demised premises as provided herein, and Landlord shall not be liable in any event whatsoever for any injury or damage to any property or to any person happening on or about the demised premises, nor for any injury or damage to any property of Tenant, or of any other person contained therein. The provisions hereof permitting Landlord to enter and inspect the demised premises are made for the purpose of enabling Landlord to be informed as to whether Tenant is complying with the agreements, terms, covenants and conditions hereof, and to do such acts as Tenant shall fail to do.

#61. The Tenant shall not commit a waste or injury to the demised premises, should keep the grass trimmed and maintain the grounds in a presentable condition and shall keep the sidewalks and entrance ways unobstructed and clean and free of rubbish, ice and snow.

#62. MECHANIC'S LIEN: Tenant shall have no power to do any act or make any contract which may create or be the foundation for any lien upon the reversion of Landlord, the premises herein demised or the building ot improvement of which said premises are a part. If any mechanics or other lien or order for the payment of money or any notice of intention to file a lien shall be filed against the demised premises, or the building or improvement of which said premises form a part, by reason of or arising out of any labor or material furnished to or for the demised premises or any occupant thereof, or for or by reason of any change, alteration or addition or the cost or expense thereof, or any contract relating thereto, or against the interest of Landlord, Tenant shall cause the same to be cancelled and discharged of record by bond or otherwise as allowed by law at the expense of Tenant within five (5) days after notice of the filing thereof, and Tenant shall also defend on behalf of Landlord, at Tenant's sole cost and expense, any action, suit or proceeding which may be brought thereon or for the endorsement of such lien, liens or orders, and Tenant will pay any damages and satisfy and discharge any judgment entered thereon and save harmless Landlord from any claim or damage resulting therefrom.

Nothing herein contained shall be construed as a consent on the part of the Landlord to subject the estate of the Landlord to liability under the Lien Law of the State of New York or any other law, it being expressly understood that the Landlord's estate shall not be subject to such liability.

#63. LANDLORD CAN ASSIGN RENT. The Landlord shall have the right without selling its fee interest in the demised premises or assigning its interest in this lease, to assign from time to time the whole of the rent at any time payable hereunder to any person, firm, corporation, trust or other entity designated by Landlord in a written notice to the Tenant and in any such case, the Tenant shall pay the rent, subject to the terms of this lease, to the Landlord's said designee at the address mentioned in any such notice for the period covered by such assignment.

#64. DEPOSIT FOR FIRST MONTH's RENT. The Landlord hereby acknowledges payment from Tenant of the sum of $1125.00 which said sum shall be applied to the first month's rent of the lease term heretofore set forth herein. The said sum of $1125.00 is an estimate and upon the ascertainment of the exact monthly rental, the first month's rent shall be adjusted accordingly.

#65. OPTION TO PURCHASE. Provided that the Tenant shall have fully and completely performed all of the terms and conditions of this lease agreement on its part to be performed, the Tenant shall have the right and privilege to purchase the demised premises during each of the eighth year of the lease term or during the eleventh year of the lease term and at no other time. The terms of the Contract of Sale for the premises are more particularly set forth in the contract annexed hereto and made a part hereof.

A. In the event that the Tenant elects to exercise said option during the 8th year, it shall give notice thereof to the Landlord in writing in the manner hereinafter set forth during the 8th year of the lease term. In the event that the option is exercised during the 8th year of the lease term, the total price to be paid by the Tenant to the Landlord for such purchase shall be the sum of $140,000.00, which said sum shall be paid by the Tenant to the Landlord in the following manner:

(1) $14,000.00 to be paid concurrently with the notice of the exercise of the option.

(2) Subject to the then principal balance of the then existing first mortgage, if any, held by a bank, insurance company or other licensed lending institution.

(3) The balance representing the difference between the purchase price of $140,000.00 and the total of (1) and (2) hereof shall be paid in cash or certified check, payable to the order of the Landlord, at the time of the closing of title and delivery of the Deed.

B. In the event that the Tenant elects to exercise said option during the 11th year of the lease term, it shall give notice thereof to the Landlord in writing in the manner hereinafter set forth during the 11th year of the lease term. The total price to be paid by the Tenant to the Landlord for such purchase price during the 11th year of the lease term shall be the sum of $125,000.00, which said sum shall be paid by the Tenant to the Landlord in the following manner:

(1) $12,500.00 to be paid concurrently with notice of exercise of the option.

(2) Subject to the then principal balance of the then existing first mortgage, if any held by a bank, insurance company or other licensed lending institution.

(3) The balance representing the difference between the purchase price of $125,000.00 and the totals of (1) and (2) hereof shall be paid in cash or certified check payable to the order of the Landlord at the time of closing of title and delivery of the Deed.

Title to said premises shall close not later than ninety (90) days after the giving of notice by the Tenant of the exercise of the option as aforesaid. The Tenant shall continue to pay rent to the Landlord pursuant to the terms of this lease agreement until the date of the payment of the balance of the purchase price and delivery of the Deed. The Tenant shall notify

the Landlord of the date of closing of title, which date shall not be later than ninety (90) days after the giving of notice by Tenant of the exercise of the option.

In the event that the Tenant shall exercise said option to purchase either in the 8th year or in the 11th year, but shall thereafter fail to close title to said premises pursuant to the terms hereof without good cause, the payment made under "A (1)" or under "B (1)" hereof shall be retained by the Landlord as liquidated damages and the relationship of the parties shall continue as Landlord and Tenant for the balance of the lease term under the other terms and conditions hereof.

In the event that the Tenant shall fail to close title as heretofore set forth after having given notice of the exercise of its option hereunder during the 8th year of the lease term, then and in that event, the Tenant shall NOT be deemed to have waived any and all further rights to any option for the purchase of the demised premises in the 11th year. In the event that the Tenant shall have exercised its option during the 11th year of the lease term, and shall have failed to close title as heretofore set forth then and in that event tenant shall also be deemed to have waived all rights to any option to purchase the demised premises.

The Deed of Conveyance shall contain the following language:

> "It is the express intention of the parties hereto that a certain indenture of lease, dated the 18th day of January, 1966, between Jerry Spiegel as Landlord and Pufahl Realty Corp. as Tenant, shall not be merged herewith but shall survive the execution and delivery of this Deed."

In the event that the Tenant shall elect to refinance the then existing mortgage, and there shall be any fees, charges or expenses in connection with the satisfaction of the then existing mortgage, which the Landlord shall be obligated to pay, the amount thereof shall be paid by the Tenant to the Landlord at the time of closing of Title and delivery of the Deed.

#66. FAILURE OF TENANT TO COMPLY. In the event Tenant shall fail to comply with and perform any of the covenants, conditions or agreements herein contained on the Tenant's part to be performed, [redacted], the Landlord shall have the right (but not be obligated) to perform any such covenants, conditions or agreements and the Tenant agrees to pay to the Landlord on demand as additional rent hereunder, a sum equal to the amount expended by the Landlord in the performance of such covenants, conditions or agreements. In the event Landlord shall perform any such covenants, conditions or agreements, Tenants agree that the Landlord, its agents or employees, may enter the premises and that such entry and such performance shall not constitute an eviction of Tenant, in whole or in part, nor relieve Tenant from the continued performance of all covenants, conditions and agreements of this lease, and further agrees that Landlord shall not be liable for any claim for loss or damage to Tenant or any one claiming through or under Tenant.

#67. NON-LIABILITY OF LANDLORD. Neither the rights or privileges reserved by Landlord under this lease nor the exercise thereof by Landlord nor any reference in this lease to repairs by the Landlord shall impose any liability or obligation upon the Landlord for maintenance or repair of heating, plumbing or sprinkler systems or sanitary systems or to make any other repairs, decorations or alterations or to furnish heat, hot water, gas, electricity or any other utility or service except as may be herein specifically provided; nor shall the exercise by Landlord of any of its said rights or privileges be considered as an assumption of dominion or control over the demised premises or any portion thereof.

~~#68. LANDLORD CAN ASSIGN RENT. The Landlord shall have the righ~~ without selling its fee interest in the demised premises or assigning its interest in this lease, to assign from time to tiem the whole of the rent at any time payable hereunder to any persoı firm, corporation, trust or other entity designated by Landlord i ~~a written notice to the Tenant and in any such case, the Tenant~~

shall pay the rent, subject to the terms of this lease, to the Landlord's said designee at the address mentioned in any such notice for the period covered by such assignment.

#69. The Tenant agrees that any and all loans of any and all kind and nature heretofore or hereafter made by the Tenant from any one or more of the stockholders, officers and/or directors of the said Tenant, shall be subordinate to this lease and to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which the demised premises form a part, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgagee. In confirmation of such subordination, Tenant shall execute promptly any Certificate that Landlord may request. Tenant hereby constitutes and appoints Landlord Tenant's Attorney in Fact to execute any such Certificate or Certificates for and on behalf of the Tenant.

#70. Tenant at own cost and expense shall provide rent insurance (extended coverage) in an amount equal to the annual minimum rental hereunder plus the amount of annual real estate taxes, said policies shall name the Landlord and Tenant as insured as their respective interests may appear but shall be deposited with the Landlord.

#71. The Landlord shall have the right, without selling its fee interest to demised premises or assigning its interest in the lease, to assign from time to time the whole or any part of the rent, at any time payable hereunder to any person, firm, corporation, trust or other entity designated by Landlord in written notice to the Tenant and in any such case, Tenant shall pay the rent subject to the terms of this lease to the Landlord's designee at the address mentioned in such notice for the period covered by such assignment.

#72. MORTGAGE. The within lease agreement is hereby made subject to the procurement by the Landlord from a banking institution, life insurance company or other type of bonafide lending institution within two (2) weeks of the date hereof, of a first mortgage loan commitment for the sum of not less than $120,000.00 to be amortized over a period of twenty (20) years and to bear interest at the rate of 5 3/4% per annum. In the event that the Landlord shall be unable to procure a commitment for said mortgage for any reason other than his own bad faith, then and in that event the Landlord shall give the Tenant written notice thereof that Landlord has failed to procur said commitment and elects to cancel the lease and upon such giving of notice this lease agreement shall be deemed nul and void and of no further force and effect and the Landlord shall forthwith refund to the Tenant any and all sums of money which may have been deposited by the Tenant with the Landlord hereunder. This provision is for the sole benefit of the Landlord.

#73. The Landlord herein is the owner in fee of the premises immediately adjacent on the East to the demised premises herein. It is agreed that the Landlord shall have the right to utilize the easterly wall of the building on the demised premises as the party wall and the Landlord is hereby licensed and authorized to enter upon the demised premises and do whatever is necessary for the purpose of utilizing said wall as a party wall for any building to be constructed on the said adjacent property. The Landlord may use the party wall for the position of beams or otherwise. If it shall become necesary to repair or rebuild the wall or any portion of the wall as constructed ~~because~~ The Cost of such repairing and/or rebuilding as to such portion of the wall at the time used by both the tenant herein and the owner or tenant of the adjacent premises, shall be borne equally by both parties. As to the remaining portions of the wall which shall not be used by both parties ~~for~~ such repairing and/or rebuilding shall be wholly at the expense of the party who shall ex-

~~clusively use that portion. If and when the said wall is re-built~~, it shall stand upon the same place and be of the same ~~kind~~ or similar materials of the same proportions as the existing wall. The cost of maintenance of the party wall shall be borne equally between the tenant herein and the owner or tenant of the adjoining premises to the extent that they share the wall in common. Upon the exercise of the option to purchase the demised premises herein, the tenant herein shall execute a party wall agreement in recordable form for the purpose of establishing a party wall agreement which shall then run with the land.

GUARANTEE

IN CONSIDERATION of the letting of the premises within mentioned to the within named Tenant and the sum of $1.00 paid to the undersigned by the within named Landlord, the undersigned does hereby covenant and agree, to and with the Landlord and the Landlord's legal representatives, that if default shall at any time be made by the said Tenant in the payment of the rent and the performance of the covenants contained in the within lease, on the Tenant's part to be paid and performed, that the undersigned will well and truly pay the said rent or any arrears thereof, that may remain due unto the said Landlord, and also pay all damages that may arise in consequence of the non-performance of said covenants, or either of them without requiring notice of any such default from the said Landlord. The undersigned hereby waives all right to trial by jury in any action or proceeding hereinafter instituted by the Landlord, to which the undersigned may be a party.

IN WITNESS WHEREOF, the undersigned has set its hand and seal this 5th day of January 1966.

LINCOLN PROCESSING CORP.

(Corporate Seal) By Herman Pohl L.S.
Pres.

ADDENDUM TO LEASE
dated the 18th day of January, 1966
between
JERRY SPIEGEL, Landlord
and
PUFAHL REALTY CORP., Tenant

1. Addendum to Para. #35 of Lease: It is understood and agreed that in the event the Landlord procurs the Fire Insurance provided for in Paragraph 35, that the Tenant shall be obligated to pay only such premium as the Tenant would have paid if the Tenant had procured the said insurance ~~with~~ ON ITS own account and provided that such insurance which Tenant could have procured shall be of the same coverage and provisions as provided for in the policy, which Landlord obtains.

2. Addendum to Para. #36: It is understood and agreed that nothing contained in paragraph 36 shall be deemed to require the Tenant to take possession of the premises prior to the date of issuance of the Certificate of Occupancy.

3. Addendum to Para. #38: The parties agree that the Tenant shall have the right to engage its own Surveyor or Engineer to compute the square footage of the exterior completed building to verify the computation of the Landlord's surveyor. In the event of disagreement between the surveyor or engineer of Tenant and the surveyor of the Landlord, both parties shall select an independant engineer or surveyor to compute the square footage and said independant surveyor or engineer's computation shall be deemed conclusive by both parties.

4. Addendum to Para. #3 and #39: Notwithstanding anything to the contrary contained in paragraph 3 and 39 of the lease, it is understood and agreed that during the term of the lease, the Landlord shall make all structural repairs to the demised premises except such structural repairs as may have been occassioned by any act or neglect of the Tenant. Structural repairs for the purpose of this lease are defined as follows:

Those repairs required to be made to the exterior and interior bearing walls, foundation, floor slab, roof deck and structural steel.

5. Addendum to Para. #44B: It is understood and agreed that Tenant shall have the right in any dispossess proceedings for nonpayment of rent or for recovery of the possession of the premises to interpose the defense of eviction, constructive, actual or partial

6. Addendum to Para. #21 and #47: Nothing contained in Paragraph 21 and 47 shall be deemed to prohibit the Tenant from recovering in condemnation proceedings for the taking of any or all of its trade fixtures. It is understood, however, that the Tenant shall not in any way in such proceedings for the recovery of an award for the taking of its trade fixtures interfere with the Landlord's proceedings for the recovery or an award for the taking of any portion of the demised premises.

7. Addendum to Para. #55: The Tenant shall have the right to make payment of the rent to the Landlord's assignee until such time as the assignee, together with the Landlord, shall notify the Tenant in writing that the rent thereafter shall be paid to the Landlord, at which time, the Tenant shall then commence to pay the rent to the Landlord.

8. Addendum to Para. #55: Notwithstanding that title to the premises shall close not later than ninety (90) days after the giving of notice by Tenant of the exercise of the option, the Tenant shall be entitled to a reasonable adjournment ~~fm~~ of the date of closing of title beyond the date specified in the Contract.

It is understood and agreed that in the event the Tenant shall have exercised its option during the 8th year, but shall have failed to close title without good cause, after having given the Notice of exercise of its option, the down payment under the Contract shall be deemed ~~and~~ to become the property of

to remain thereon without [illegible]

the Landlord as liquidated damages and no part thereof shall be applied toward the purchase price of the demised premises in the event that the Tenant shall elect to exercise its option during the 11th year of the lease term.

9. Addendum to Para. #72. In the event that the Landlord shall fail to give the Tenant notice of its failure to obtain a mortgage commitment within five (5) days after the expiration of the two week period, then in that event this lease shall be in full force and effect.

10. Addendum to Para. #39: The Tenant shall not be required to provide the Landlord with a certified statement from a C.P.A. unless the Landlord shall pay the usual and customary fee of the Certified Public Accountant for preparing such certified statement, however, it is understood that if the Tenant has a Certified Statement which Landlord is willing to make use of for its lending institution, the Tenant will provide same without charge. It is understood that the Landlord shall hold any and all certified statements of the Tenant deliver to it in trust soley for the purpose of submitting same to a lending institution for the purposes of procuring a mortgage.

11. Addendum to Para. #7: Landlord agrees that it will not enter into the factory portions of the demised premises for the showing thereof to prospective purchasers and tenants except after notice to the Tenant and under the Tenant's supervision to the end that the Tenant may protect its operations and trade secrets.

12. Addendum to Para. #15 and #52: It is understood and agreed that in the event of any sale of the demised premises by the Landlord, the Landlord will adjust the purchase price of the demised premises to credit the purchaser with security deposit of the Tenant so that the purchaser shall be deemed to have received the said security deposit.

... the Landlord's agents shall have the right to place notices on the front of said premises, or any part thereof, offering the premises "To Let" or "For Sale", and the Tenant hereby agrees to permit the same to remain thereon without hindrance or molestation.

13. Addendum to Para. #8, 13 and 17: It is understood and agreed that the Landlord shall give the Tenant fifteen (15) days written notice of any default by the Tenant in the performance of any of its terms, covenants and conditions of this lease on the part of the Tenant to be performed except for the payment of rent or taxes or any other charges required to be paid hereunder, prior to the Landlord pursuing any of its remedies under the lease to enforce same, and in the event that the Tenant shall have failed to cure said fault within the said fifteen (15) day period (except where by the nature of the default, it shall be impossible to cure same within said fifteen day period, in which event the Tenant ~~shall~~ must have commenced to cure said default within said fifteen day period and proceed to expeditiously cure same), the Landlord may then proceed without further notice to Tenant to enforce any and all provisions of this lease and pursue any and all remedies granted to the Landlord pursuant to the said lease.

14. Addendum to Para. #23: It is understood and agreed that notwithstanding the termination of the lease by reason of ejectment of the Tenant by summary proceedings or otherwise, or after the abandonment of the premises by the Tenant, the Tenant shall have the right to mitigate the damages of the Landlord by offering the demised premises for lease to a third party in the manner and subject to the provisions of paragraph #34 of the lease as if the Tenant was still in occupancy and not in default under the lease and the Landlord shall not unreasonably refuse to lease the demised premises to said Tenant offered by the Tenant herein if the proposed leasing shall be for ~~the~~ at least the balance of the term and at not less than the rental provided for in the lease, and the same rental as therein provided and the proposed tenant is financially responsible, provided Landlord has not already rented the demised premises

15. Use & Occupancy of Demised Premises by Tenant: The Tenant shall use and occupy the premises only for the lamination and coating of papers, textiles and fabrics and for general manufacturing purposes not in violation of the building zone ordinance

A00115

the term hereby granted, the Landlord or the Landlord's agents shall have the right to place notices on the front of said premises, or any part thereof, offering the premises "To Let" or "For Sale", and the Tenant hereby agrees to permit the same to remain thereon without hindrance or molestation.

of the Town of North Hempstead. The Landlord represents that the premises are zoned Industrial B in the Town of North Hempstead and that the certificate of Occupancy will permit the foregoing use and occupancy by the Tenant.

the term hereby granted, the Landlord or the Landlord's agents shall have the right to place notices on the front of said premises, or any part thereof, offering the premises "To Let" or "For Sale", and the Tenant hereby agrees to permit the same to remain thereon without hindrance or molestation.

Exhibit Q

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
Case No. 2:03-CV-5985
----------x
NEXT MILLENNIUM REALTY, L.L.C., et al.,

Plaintiffs,

- against -

ADCHEM CORP., et al,

Defendants.
----------x
April 5, 2013
10:12 a.m.

Deposition of ALAN EIDLER, pursuant to Notice, held at the offices of Sive Paget & Riesel P.C., 460 Park Avenue, New York, New York, before Jineen Pavesi, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter and Notary Public of the State of New York.

1

2 A P P E A R A N C E S

3

4 KEVIN MALDONADO & PARTNERS, LLC

5 5 Hickory Hill Road

6 Windham, New York 12496

7 Attorneys for Plaintiff

8 BY: KEVIN MALDONADO, ESQ.

9 kevinmaldonado64@yahoo.com

10

11 SIVE PAGET & RIESEL P.C.

12 460 Park Avenue

13 New York, New York 10022

14 Attorneys for Defendants

15 Pufahl Realty, Northern

16 Realty, Adchem and Lincoln

17 Processing

18 BY: DAN CHOROST, ESQ.

19 dchorost@sprlaw.com

20 ED ROGGENKAMP, ESQ.

21 eroggenkamp@sprlaw.com

22

23

24

25

EIDLER

32. 11:41:34AM

Do you see provision 2.08? 11:41:43AM

A. Yes. 11:41:45AM

Q. Net lease? 11:41:45AM

A. Yes. 11:41:46AM

Q. What's a net lease? 11:41:47AM

A. I don't like to use the terms 11:41:54AM net or gross, I like -- when I was 11:41:56AM general counsel -- I like to define the 11:41:59AM terms. 11:42:04AM

Net can be used differently in 11:42:06AM different parts of the country or even in 11:42:08AM the same state in different geographic 11:42:10AM locations. 11:42:13AM

A lot of times you have net, 11:42:13AM single net, double net, triple net; do you 11:42:15AM know what those are? 11:42:19AM

Q. Sure. 11:42:20AM

A. Normally a single net would be 11:42:21AM where the tenant pays the rent and taxes 11:42:27AM and then double would be the rent, the 11:42:32AM taxes and insurance and then triple would 11:42:34AM be the rent, the taxes, and the 11:42:37AM maintenance. 11:42:39AM

Exhibit R

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NASSAU

----------x

NORTHERN STATE REALTY CO.,

Plaintiff,

-against-

JERRY SPIEGEL, ALLENDALE MUTUAL INSURANCE CO., and FACTORY MUTUAL INSURANCE CO.,

Defendants.

----------x

Deposition of defendant JERRY SPIEGEL, taken by plaintiff, pursuant to notice, at the offices of Miller & Summit, Esqs., 90 Broad Street, New York, New York 10004, on August 16, 1976, at 2:20 p.m., before Robert X. Shaw, a Shorthand Reporter and Notary Public of the State of New York.

Commerce Reporting Company, Inc.
Forty One East Forty Second Street
New York, New York 10017
CERTIFIED SHORTHAND REPORTERS (212) MU 2-7790 A COMPLETE REPORTING SERVICE SINCE 1935

PLF/DEF
EXHIBIT 14
DATE 11/2/14 RPTR
Jineen Pavesi, RPR, RMR, CRR

Corrections re Examination Before Trial
of Jerry Spiegel made on
August 16, 1976

1. Page 7, line 10 should read "after".

2. Page 17, line 21, should read "may have".

3. Page 20, line 14 should be corrected to delete the word "jar" and put in the word "job".

4. Page 22, line 10 - immaterial.

5. Page 27, line 11 - yes .

6. Page 41, line 23 - Yes, it is in the lease.

7. Page 42, line 2 - Yes .

8. Page 42, line 6 - No, there is a mortgage.

Sworn to before me
this 5th day of October, 1976.

JERRY SPIEGEL

RICHARD GRAYSON
NOTARY PUBLIC, State of New York
No. 30-6634575
Qualified in Nassau County
Commission Expires March 30, 1978

015509

APPEARANCES:

MILLER & SUMMIT, ESQS.,
Attorneys for plaintiff,
90 Broad Street
New York, New York 10004

BY: ELLIOT IRA MILLER, ESQ.,
FRANK J. FRANZINO, JR., ESQ.,
Of Counsel

KONHEIM HALPERN BLEIWAS & GREENBERG, ESQS.,
Attorneys for defendant Jerry Spiegel,
11 Park Place
New York, New York 10007

BY: SAMUEL HALPERN, ESQ.,
FRANK GREENBERG, ESQ.,
RICHARD GRAYSON, ESQ.,
Of Counsel

REIN MOUND & COTTON, ESQS.,
Attorneys for defendants Allendale Mutual Insurance Co., and Factory Mutual Insurance Co.,
130 John Street
New York, New York 10038

BY: ARTHUR N. BROOK, ESQ.,
Of Counsel

ALSO PRESENT:

JOHN PFAHL

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that all rights provided by the CPLR, including the right to object to any question, except

as to the form, or to move to strike any testimony at this deposition, are reserved, and, in addition, the failure to object to any question, or to move to strike testimony at this deposition, shall not be a bar or waiver to make such motion at, and is reserved for, the trial of this action.

IT IS FURTHER STIPULATED AND AGREED that this deposition may be sworn to by the witness being examined before a Notary Public other than the Notary Public before whom this deposition was begun, but the failure to do so, or to return the original of this deposition to counsel, shall not be deemed waiver of the rights provided by Rule 3116, CPLR, and shall be controlled thereby.

IT IS FURTHER STIPULATED AND AGREED that the sealing and filing of the original of this deposition are waived.

ooo

J E R R Y S P I E G E L, called as a witness by the plaintiff, was duly sworn by the Notary Public and testified as follows:

EXAMINATION BY MR. MILLER:

Q Would you give the reporter your name and addres

A Jerry Spiegel, 270 North Broadway, Hicksville.

Q Do you have any records that would indicate whether you had any negotiations with any other tenants for that building?

A No.

Q Do you have anything with you that would help you refresh your recollection about that?

A No.

Q Do you have anything with you that would help you refresh your recollection as to when the building at 89 Frost Street was completed and how long it had remained completed and unrented before you started negotiating with the Pufahls?

A No.

Q When Mr. Pufahl told you that he was interested in leasing more space and he had seen the sign, did you have any further conversations with him?

A He asked me how much rent I wanted.

Q What did you say?

A I told him in the area of $1 or $1.25.

Q Per square foot?

A Yes.

Q That is on a usable basis or rentable basis, when you say "net"?

Do you mean net rent?

A Net means he pays everything.

Q What does everything include?

A Insurance, taxes, water, telephone.

Q At the time you were negotiating with Mr. Pufahl, you knew how much this building had cost you; did you not?

A Yes.

Q You knew how much of a mortgage you had on the building; is that correct?

A There was no mortgage.

Q No mortgage on the building at that time.

You financed the construction of the building entirely out of your own funds?

A Yes.

Q But you were aware of how much it cost to put that building up; is that right?

A Yes.

Q You knew how much of a profit you would be making on a lease on an amortized basis; is that right?

A Yes.

Q Were there any further discussions or negotiations with respect to [illegible] lease?

A Yes.

Q Do you recall when those occurred?

A A short period after.

Exhibit S

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
Case No. 2:03-CV-5985
----------x
NEXT MILLENNIUM REALTY, L.L.C., et al.,

Plaintiffs,

- against -

ADCHEM CORP., et al,

Defendants.
----------x
November 28, 2012
10:12 a.m.

Videotaped Deposition of ARTHUR SANDERS, pursuant to Notice, held at the offices of Sive Paget & Riesel P.C., 460 Park Avenue, New York, New York, before Jineen Pavesi, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter and Notary Public of the State of New York.

1

2 A P P E A R A N C E S

3

4 KEVIN MALDONADO & PARTNERS, LLC

5 5 Hickory Hill Road

6 Windham, New York 12496

7 Attorneys for Plaintiff

8 BY: KEVIN MALDONADO, ESQ.

9

10

11 SIVE PAGET & RIESEL P.C.

12 460 Park Avenue

13 New York, New York 10022

14 Attorneys for Defendants

15 Pufahl Realty, Northern

16 Realty, Adchem and Lincoln

17 Processing

18 BY: DAN CHOROST, ESQ.

19 dchorost@sprlaw.com

20 ED ROGGENKAMP, ESQ.

21 eroggenkamp@sprlaw.com

22

23 ALSO PRESENT:

24

25 DEV WRITE, Videographer

SANDERS

lease where the tenant carries different 02:09:00PM
degrees of responsibility for the costs 02:09:06PM
and operation of the property. 02:09:10PM
Q. Those gradations, is that 02:09:14PM
single net, double net, triple net, is 02:09:17PM
that what you're referring to? 02:09:20PM
A. People generally refer to net 02:09:21PM
lease or triple net, one of the two. 02:09:23PM
Q. Is there a difference between 02:09:25PM
net lease and triple net lease when people 02:09:27PM
refer to them that way? 02:09:29PM
A. It kind of fluctuates, but 02:09:31PM
generally when you talk about triple net 02:09:33PM
lease, that generally means that the 02:09:34PM
tenant takes care of paying the rent, 02:09:37PM
taxes, insurance, maintenance, repairs. 02:09:40PM
Q. Are those in a triple net 02:09:48PM
lease, where the tenant is responsible for 02:09:52PM
paying the repairs, is that typically 02:09:54PM
structural and nonstructural repairs? 02:09:57PM
A. It depends; very often it is 02:10:01PM
all repairs except for structural. 02:10:03PM
Q. So let me see if I've got this 02:10:07PM
right. 02:10:11PM

SANDERS

A typical triple net lease 02:10:12PM
would be the tenant pays rent, taxes, 02:10:15PM
insurance, and nonstructural repairs? 02:10:22PM
MR. MALDONADO: No, that's not 02:10:27PM
what he testified to. 02:10:28PM
MR. CHOROST: I am asking him. 02:10:30PM
A. Again, I just want to clarify, 02:10:32PM
because the real estate industry is not a 02:10:35PM
scientific industry, so terms are 02:10:37PM
sometimes loosely used. 02:10:39PM
But in general parlance, under 02:10:40PM
a typical triple net lease, a tenant pays 02:10:43PM
for rent, insurance, taxes, and repairs 02:10:46PM
and maintenance of the building. 02:10:51PM
Q. In those situations for the 02:10:57PM
repairs, are we talking about structural 02:10:58PM
and nonstructural repairs or not? 02:11:00PM
MR. MALDONADO: Objection. 02:11:05PM
MR. CHOROST: What's the basis? 02:11:06PM
MR. MALDONADO: Are we talking 02:11:07PM
about Spiegel's practice, industry 02:11:09PM
practice? 02:11:11PM
MR. CHOROST: Yes, industry 02:11:11PM
practice. 02:11:13PM

SANDERS

A. I can't say that there is an 02:11:15PM
industry practice. 02:11:17PM
In triple net leases, it is 02:11:21PM
done both ways in terms of structural 02:11:23PM
repairs or nonstructural repairs. 02:11:26PM
I would say more often than 02:11:29PM
not -- it is very much a function of what 02:11:31PM
building it is and the strength of the 02:11:34PM
tenant and landlord in negotiation in the 02:11:36PM
market at the time. 02:11:39PM
The triple net refers more to 02:11:41PM
taxes, insurance, and rent, than it does 02:11:45PM
to the distinction between -- and repairs 02:11:49PM
and maintenance -- than it does to the 02:11:51PM
distinction between structural versus 02:11:53PM
nonstructural. 02:11:55PM
Certainly in triple net leases, 02:11:55PM
tenants do take care of in almost all 02:11:58PM
cases nonstructural. 02:12:02PM
Structural is due to 02:12:03PM
negotiation and, as I said, that's a 02:12:05PM
function of the market at the time and 02:12:07PM
nature of what's being leased. 02:12:08PM
Q. What about a double net lease, 02:12:18PM

Exhibit T

SUPREME COURT : NASSAU COUNTY

SPECIAL TERM, PART V-B

----------X

NORTHERN STATE REALTY COMPANY, :

Plaintiff, :

-against- :

JERRY SPIEGEL, ALLENDALE MUTUAL INSURANCE COMPANY, and FACTORY MUTUAL INSURANCE COMPANY, :

Defendants. :

----------X

Mineola, New York
April 20, 1977

B e f o r e:
HON. WILLIAM J. SULLIVAN,
J u s t i c e.

Appearances:

BURNS, JACKSON, MILLER, SUMMIT & JACOBY, ESQS.
Attorneys for the Plaintiff
By: ELLIOT I. MILLER, ESQ.

KONHEIM, HALPERN & BLEIWAS, ESQS.
Attorneys for defendant Spiegel
By: SAMUEL HALPERN, ESQ.

REIN, MOUND & COTTON, ESQS.
Attorneys for defendant Allendale
By: ARTHUR N. BROOK, ESQ.

ARNOLD COHEN, C.S.R.
Official Court Reporter

PLF/DEF 35
EXHIBIT
DATE RPTR
Jineen Pavesi, RPR, RMR, CRR

MR. HALPERN: It is hereby stipulated, consented to and agreed that the within case be settled with prejudice and upon the merits on the following basis:

The defendant Jerry Spiegel will pay to plaintiff Northern State Realty Company the sum of $75,000.

MR. MILLER: If it should appear that the bank refuses to pay a certain check by reason of remote date, the counsel for the maker of the check, which is one of the defendants in this action, agrees that the maker will replace the check with one of current date. Said check is fully described as follows: Said check was issued by the Factory Mutual System under their loss account, bears number 6601, is dated Norwood, Mass, January 24, 1977, and is signed by Mr. Conway, authorized signature, and is counter-signed by Mr. N. E. Heath. This check is payable in the amount of $7,385.48 and is executed to the order of Hauppauge Building Corp., Jerry Spiegel individually and as executor of the Last Will and Testament of Jacob Gellman, deceased, and Bertha Spiegel and Lincoln Processing Corp. and Jerry Spiegel as building owner and Northern State Realty Company as lessor.

MR. MILLER: By no later than May 11, 1977, the $75,000 will be paid by defendant Spiegel to plaintiff simultaneously with the execution of the extension agreements referred to below and the execution by Northern State Realty Company and its affiliated entities of documents presented to them as described below and effectuating the disposition of a claim and suit between defendants Jerry Spiegel and Allendale, bearing index number 10154/76.

MR. HALPERN: Which documents shall consist of the extensions of the leases as agreed upon in accordance with the terms set forth herein, and also general releases with respect to the premises 89 Frost Street and the lease and option agreement pertaining thereto, executed by the plaintiff to Jerry Spiegel for the amount of the settlement; also, stipulations of discontinuance on the merits and with prejudice, executed by the attorneys.

MR. GRAYSON: With respect to the extension of the lease for premises 625 Main Street, Westbury, New York, the term shall be extended for a period of five years from the date of the expiration of the present lease, which date is March 31, 1980, so that

the term shall expire March 31, 1985.

As to the premises 90 Sylvester Street, also known as 85 New York Avenue, Westbury, New York, the term of the lease shall be extended for a period of five years from the expiration date which is March 31, 1980, so that the term shall expire March 31, 1985.

As to the extension for 625 Main Street, the annual rent during the period of the extension shall be the same annual rent presently paid by the tenant.

As to premises 90 Sylvester Street, the annual rent shall be increased by an amount computed by multiplying the square footage of 8,733 square feet by 25¢ per square foot. The tenant shall on April 1, 1980 deposit with the landlord additional security for such premises so that this security shall equal three months' rent as so increased.

As to both premises, a provision shall be included in the extended leases to the effect that in the event that tenant shall fail to pay the rent within five days after the same shall become due, there shall be a late charge of $5 per diem retroactive to the first day of the month until such rent shall be paid. There shall also be a provision

in both extension agreements that in the event the tenant shall either assign or sublet the premises, any consideration received for said assignment or subletting, or increased rental received by the tenant, shall inure to the benefit of the landlord as additional rent.

MR. HALPERN: It is further stipulated and agreed with the consent of the Court that this case is adjourned for all purposes for a period of three weeks until May 11, 1977 to afford the parties the opportunity to complete the effectuation of the proposed settlement set forth herein.

MR. BROOK: With respect to defendant Allendale Mutual Insurance Company, effective on the closing of the transactions hereinbefore described, on the execution of all of the documents hereinbefore described, the plaintiff agrees and defendant Spiegel and defendant Allendale Mutual consent that Allendale will pay $855,000 to Jerry Spiegel within two weeks after receipt by its attorneys of all executed documents described herein in full settlement of this case and in full settlement of all claims under policy No. 85865 arising out of the fire which took

place at 89 Frost Street, Westbury, New York, on May 30, 1976, it being specifically understood that this settlement does not refer to any claims which may be made by any party under Allendale policy 85854, and the statement that I have just made is without any concession that there are any valid claims outstanding which the company recognizes, and indeed with the specific contention on my part and on behalf of Allendale that with the endorsement of Factory Mutual check 6601, any and all claims under that policy have been discharged under that rental value policy.

MR. HALPERN: This contention of Mr. Brook's is challenged and not acquiesced in by Mr. Spiegel and is to be determined at a future date.

MR. BROOK: The aforesaid amount of $855,000 will be paid in exchange for receipt by my office of a stipulation discontinuing this action with prejudice and on the merits and executed by all parties to this action, and by the receipt by my office of releases either prepared by my office and/or approved by Mr. Spiegel in form satisfactory to us, from Northern State Realty Company, Jerry Spiegel, the first mortgagee which is Prudential Insurance

Company of America, the public adjuster Saperstein, Hochberg & Haberman, and all named insureds on Allendale policy No. 85865.

MR. HALPERN: These releases pertain only to the building and fire with respect to damage and loss caused by the fire on May 30, 1976.

MR. MILLER: The payment of $75,000 by Spiegel to Northern State Realty Company is not contingent on the payment of $855,000 by Allendale Mutual Insurance Company to Spiegel.

MR. HALPERN: Except that the plaintiff and Lincoln Processing Corp. and all its affiliates listed on the policy as insureds release all right, title and interest to the $855,000 only upon conformity with the terms, covenants and conditions of this particular stipulation and consent by them that the payment of $855,000 may be payable to Jerry Spiegel.

MR. MILLER: That is right to the extent that you are talking about the payment of the $75,000 and the extensions of the leases.

MR. HALPERN: It is further stipulated, consented to and agreed that all parties hereto agree to execute any and all further documents as may be necessary to

effectuate the terms and conditions of the settlement and the intent thereof.

(The following took place in the courtroom.)

THE COURT: Have the clients come up to the counsel table.

MR. HALPERN: Mr. Spiegel is sitting here.

MR. MILLER: This is Herman Pufahl and Joseph Pufahl, and that is John Pufahl.

THE COURT: Of course, you are all well aware by now that the respective attorneys have been conferring with the Court since yesterday, and I am very pleased that the attorneys and their respective clients have had the good sense to work this matter out by stipulation of settlement. I think it is the advisable way to do it. Otherwise you might be involved in very costly litigation. First you would have to have a determination by this court, and undoubtedly there would be an appeal by the dissatisfied party and you can't tell how long that would last. Meantime you would have a hole in the ground and taxes going on and all that. I think this is a real good business-like way of working this out.

The attorneys in the presence of the Court have

worked upon and read into the record, subject to approval of the clients, a stipulation of settlement which of course is conditioned upon certain documents being signed and exchanged, all being completed by May 11, to which this case will be adjourned to give the parties an opportunity to effectuate the settlement.

This stipulation will now be read by the court reporter. I want Mr. Spiegel and Mr. Pufahl to listen to what is being read, because at the completion of the reading you will be asked to take the stand and be asked certain questions about it. So that is why we have you sit up here.

(The foregoing stipulation was read by the reporter.)

THE COURT: Mr. Miller, as counsel for the plaintiff, I suggest you call your client to the stand so that questions may be addressed to him in connection with this stipulation.

J O S E P H P U F A H L, residing at No. 10 Bear Lane, Locust Valley, New York, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MILLER:

Q Mr. Pufahl, are you a general partner in the

plaintiff Northern State Realty Company?

A Yes.

Q Are you authorized to act for it in connection with this matter?

A Yes.

Q You have heard read to you a stipulation of settlement, have you not?

A Yes.

Q And the terms and conditions of this were discussed with you before the actual language of the stipulation was worked out, is that so?

A That's so.

Q Do you understand the stipulation of settlement?

A I do.

Q Is it in conformance with your wishes?

A Yes.

Q Do you feel that it is fair and equitable insofar as Northern State Realty is concerned?

A Yes.

Q Do you have any questions with respect to it?

A No.

BY THE COURT:

Q And you are willing to do whatever has to be done

by your company to carry out the terms of this settlement?

A Yes, your Honor.

Q To make them effective by May 11, 1977?

A Yes, sir.

Q The intention of the Court is to adjourn this matter to that time by which time either these terms will have to be carried out or the trial will then be resumed.

Now, Mr. Halpern for defendant Spiegel.

BY MR. HALPERN:

Q Mr. Pufahl, Northern State is a partnership, is it not?

A Yes.

Q Did you discuss before taking the stand at this time with your other partners the settlement provisions as given to you by Mr. Miller, your attorney?

A Yes, sir.

Q And did they give you their consent to act for them in taking the stand at this time and accepting the settlement as has been read to you?

A Yes.

THE COURT: Mr. Brook, is there any question you wish to address?

MR. BROOK: I have no questions.

(The witness was excused.)

J E R R Y S P I E G E L, residing at 270 North Broadway, Hicksville, New York, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HALPERN:

Q Mr. Spiegel, you are listed as a defendant here in this case?

A Yes.

Q And you are the landlord of the premises mentioned in the policy where a fire occurred on May 30, 1976?

A Yes.

Q You sat alongside of me and did you hear distinctly the provisions of the stipulation that were read into the record?

A Yes.

Q Did I discuss the stipulation with you before you took the stand at this time?

A Yes.

Q And did you also discuss it with Mr. Grayson, your personal attorney?

A Yes.

Q Are you satisfied with the provisions of the stipulation of settlement as were read into the record?

A Yes.

Q And you are willing to accept the terms, covenants and conditions of the same?

A Yes.

BY MR. MILLER:

Q Mr. Spiegel, are you authorized to act in connection with this matter by Hauppauge Building Corp.?

A Yes.

Q Are you authorized to act in connection with this matter as executor of the Last Will and Testament of Jacob Gellman, deceased?

A Yes.

Q And are you authorized to act in connection with this matter for Bertha Spiegel?

A Yes.

Q And you are acting in connection with this matter for all those persons?

A Yes.

THE COURT: Are those persons whom you named other insureds under the policy?

MR. MILLER: That is correct.

MR. BROOK: No questions.

BY THE COURT:

Q You heard me address certain questions to Mr.

Pufahl. I ask you the same questions, that is to say, you are prepared to execute the necessary documents required of you by this stipulation of settlement and to complete this settlement by May 11, is that correct?

A Yes.

Q And you understand that if this is not accomplished, this trial will then have to go ahead on May 11?

A Yes.

Q The Court anticipates, however, that the terms of the settlement will have been completed by all parties and counsel's stipulation of discontinuance delivered to the court on or before May 11.

MR. HALPERN: Yes, sir.

THE COURT: Did you have any questions, Mr. Brook?

MR. BROOK: I have no questions.

(The witness was excused.)

MR. HALPERN: I would like to say something for the record. There has been a lot of publicity with respect to the laziness and lack of ability and lack of care on the part of judges, and unfortunately the Bar in general has not come up to defend the judges. I want to state for the record that I give the utmost thanks to Mr. Justice Sullivan for the time and the

energy and the help that he put into this case in order to effectuate a settlement. If this case were permitted to go to trial and without the help of Justice Sullivan, many days or weeks would be spent tying up the court, tying up the representatives of the court, the attendants, at a cost to the county and the state of many thousands of dollars. I would like the record to show that as a member of the Bar for 48 years I congratulate Judge Sullivan upon the energy and the ability he put into this case.

THE COURT: Those words are most welcome to me and I accept them with thanks, sir, and not only on behalf of myself but on behalf of my colleagues, because judges are not in good repute these days. It is very nice to note that they do have the good-will of counsel.

But I want to say that this settlement never could have been accomplished except that counsel themselves were willing to cooperate and have complete understanding and avoid misapprehensions as to the motives of the various parties involved, and I also say the clients had to have understanding and willingness to bring about, as I said initially, a good

businesslike settlement of this controversy.

Mr. Brook, you haven't said anything. I want you to say for the record this settlement is all completely to your satisfaction and you are going to deliver that $855,000 check when you get the necessary papers; right?

MR. BROOK: Your Honor, not only is the settlement to my satisfaction, but I join in the sentiments voiced by my brother attorney Mr. Halpern enthusiastically.

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Arnold Cohen, Official Court Reporter, do hereby certify that the foregoing is a true and correct transcript of the stipulation entered upon the record in the above-entitled case.

Arnold Cohen

NASSAU INDEX # 10754/76 19__

FILED

JUL 11 1977

HAROLD W. MC COY
COUNTY CLERK NASSAU COUNTY

Index No. 10154/76 Year 19

SUPREME COURT OF THE STATE OF NEW YORK : COUNTY OF NASSAU

NORTHERN STATE REALTY CO.,

Plaintiff,

-against-

JERRY SPIEGEL, ALLENDALE MUTUAL INSURANCE COMPANY and FACTORY MUTUAL INSURANCE COMPANY,

Defendants.

STIPULATION DISCONTINUING ACTION

KONHEIM, HALPERN, BLEIWAS & GREENBERG
Attorneys for defendant, Jerry Spiegel
Office and Post Office Address

11 PARK PLACE
NEW YORK, N. Y. 10007
CORTLANDT 7-8698

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated, 19

Attorney(s) for

NOTICE OF ENTRY

Sir:- Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.

KONHEIM, HALPERN, BLEIWAS & GREENBERG
Attorneys for
Office and Post Office Address

11 PARK PLACE
NEW YORK, N. Y. 10007

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:- Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.
one of the judges of the within-named Court at

on the day of 19
at M.

Dated,

Yours, etc.

KONHEIM, HALPERN, BLEIWAS & GREENBERG
Attorneys for
Office and Post Office Address

11 PARK PLACE
NEW YORK, N. Y. 10007

To

Attorney(s) for

ATTORNEY'S AFFIRMATION

STATE OF NEW YORK
COUNTY OF
COUNTY

The undersigned, an attorney admitte practice in the courts of New York State, he affirms as true under all the penalties of pe that affiant is

the attorney(s) of record for

in the within action; that affiant has read the going

and knows the contents thereof; that the sa true to affiant's own knowledge, except as to matters therein stated to be alleged on informa and belief, and that those matters affiant beli to be true. Affiant further says that the reason affirmation is made by affiant and not by

The grounds of affiant's belief as to all ters not stated upon affiant's knowledge are a lows:

Dated 19

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
NEXT MILLENNIUM REALTY, L.L.C., and 101 FROST STREET ASSOCIATES,

Plaintiffs,

- against -

ADCHEM CORP., LINCOLN PROCESSING CORP., NORTHERN STATE REALTY CORP., NORTHERN STATE REALTY CO., and PUFAHL REALTY CORP.,

Defendants;
----------X
ADCHEM CORP., LINCOLN PROCESSING CORP., NORTHERN STATE REALTY CORP., NORTHERN STATE REALTY CO., and PUFAHL REALTY CORP.,

Third-Party Plaintiffs,

- against -

THE ESTATE OF JERRY SPIEGEL, and ALAN EIDLER, PAMELA SPIEGEL SANDERS, and LISE SPIEGEL WILKS, AS EXECUTORS OF THE ESTATE OF JERRY SPIEGEL,

Third-Party Defendants.
----------X

Case No. CV-03-5985 (ARL)

Certificate of Service

I certify that on January 28, 2014, true copies of

1. Defendants' Notice of Motion for Partial Summary Judgment;
2. Defendants' Memorandum of Law in Support of the Motion for Partial Summary Judgment;
3. Affirmation of Daniel Riesel, with accompanying Exhibits; and
4. A cover letter for the above items

were served via E-mail and Federal Express upon counsel for Plaintiffs:

Kevin Maldonado
Kevin Maldonado & Partners, LLC
5 Hickory Hill Road
Windham, New York 12496
Kevinmaldonado64@yahoo.com

Dated: New York, NY
April 2, 2014

SIVE, PAGET & RIESEL, P.C.

By: *<u>/s/Edward K. Roggenkamp, IV</u>*
Edward K. Roggenkamp, IV