

State of New Jersey  
Department of Environmental Protection  
Division of Enforcement, Technical and Financial Support  
401 East State Street, 6th Floor West  
PO Box 420  
Trenton, New Jersey 08625  
Telephone: (609) 984-2902  
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<b>IN THE MATTER OF</b>	:	
<b>INDEPENDENCE MALL SITE,</b>	:	
<b>2465 SOUTH BROAD STREET, HAMILTON</b>	:	<b>ADMINISTRATIVE</b>
<b>TOWNSHIP, MERCER COUNTY</b>	:	
<b>PROGRAM INTEREST NO. 031417</b>	:	<b>CONSENT ORDER</b>
	:	
<b>and</b>	:	
	:	
<b>IP ASSOCIATES, LLC</b>	:	

The following Administrative Consent Order is issued pursuant to the authority vested in the Department of Environmental Protection of the State of New Jersey ("Department") by N.J.S.A. 13:1D-1 to -19 and the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24 ("Spill Act"), and duly delegated to the Director of the Division of Enforcement, Technical and Financial Support within the Site Remediation Program of the Department pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The Independence Mall site is located at 2465 South Broad Street, Hamilton Township, Mercer County, and is also known as Block 2389, Lots 1, 3 and 5 on the tax map of the Township of Hamilton, Mercer County (the "Property"), and all other areas to which any hazardous substance discharged there has migrated, which the Department refers to as Site Remediation Program Interest Number 031417 (hereinafter "the Site").

2. IP Associates, LLC was formed as a limited liability company in the State of New Jersey in 2014 and has a principal place of business of 112 West 34<sup>th</sup> Street, New York, NY 10120 ("IP Associates"). IP Associates acquired the tax certificate for the Property on June 19, 2014.

3. Independence Mall Shopping Center Company owned and operated a shopping center at the Site, which included a dry cleaning operation, from June 14, 1967 through March 25, 1996. J.D. Eastrich Properties No. 1 Limited Partnership ("J.D. Eastrich") owned and operated the Site from March 25, 1996 through April 14, 1997. Lamar Independence Associates, LLC owned the Site from April 14, 1997 through October 22, 2004, when it transferred the Site to Cobalt Realty LLC.

4. On October 24, 1996, a discharge of tetrachloroethene (PCE) was reported to the Department, which discharge is believed to have originated at a former dry cleaning operation at the Property.

5. As hazardous substances in ground water samples exceeded the Department's ground water screening levels, a vapor intrusion investigation was required at the Site.

6. Results of sampling conducted in 2007 and 2008 indicated sub-slab and indoor exceedences for PCE above NJDEP Indoor Air Screening levels in eight (8) residences in the vicinity of the Property. An additional six (6) residences had soil gas screening levels over 10 times the NJDEP Soil Gas Screening Level.

7. On February 25, 2010, the Department issued a Spill Act Directive to pay \$120,400.00 to the Department to install the required vapor extraction systems on the affected homes, conduct all necessary sub-slab and indoor air sampling on the homes with high sub-slab vapor readings, and sample homes that were not previously sampled ("2010 Directive"). The respondents of the 2010 Directive were: Wallace R. Plapinger and Adele Plapinger t/a Wallace-Adele General Partnership, Mervyn J. Platt and Betty Platt t/a Mervyn-Betty General Partnership, Allen R. Plapinger and Helene Plapinger t/a Allan-Helene General Partnership and Charles Levy, all partners d/b/a Independence Mall Shopping Center Company; Hamilton Town Center Associates; J.D. Eastrich Properties No. 1 Limited Partnership; Lamar Independence Associates, LLC; and Cobalt Realty, LLC (collectively, "2010 Directive Respondents"). None of the 2010 Directive Respondents complied with the 2010 Directive and the Department commenced the performance of additional remediation at the Site using public funds

8. On January 24 and 25, 2012, the Department conducted indoor air sampling inside the stores at the Property. Sampling results indicated the presence of PCE at levels that exceed Indoor Air Screening levels.

9. On September 19, 2012, the Department issued a Directive and Notice to Insurers to several respondents, requiring those parties to hire a Licensed Site Remediation Professional and to perform the required remediation at the Site ("2012 Directive"). The respondents of the 2012 Directive were: Wallace R. Plapinger and Adele Plapinger t/a Wallace-Adele General Partnership, Mervyn J. Platt and Betty Platt t/a Mervyn-Betty General Partnership, Allen R. Plapinger and Helene Plapinger t/a Allan-Helene General Partnership and Charles Levy, all partners d/b/a Independence Mall Shopping Center Company; Hamilton Town Center Associates; J.D. Eastrich Properties No. 1 Limited Partnership; Lamar Independence Associates, LLC; and Cobalt Realty, LLC (collectively, "2012 Directive Respondents"). None of the 2012 Directive Respondents complied with the 2012 Directive and the Department commenced the performance of additional remediation at the Site using public funds.

10. In the 2012 Directive, the Department directed the respondents to install a vapor mitigation system where concentrations exceeded indoor air screening levels pursuant to N.J.A.C. 7:26E-1.14(b)5, specifically, the installation of a sub-slab vapor extraction system for the entire mall area. In the 2012 Directive, the Department additionally directed the respondents to conduct a full site remedial investigation and remedial action.

11. The Department has incurred \$727,182.12 in cleanup and removal costs to perform

remediation of the hazardous substances discharged at the Site.

12. IP Associates represents to the Department that it is not a predecessor, successor, subsidiary, partner, shareholder, assign, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity to any party that is a discharger, a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs, including any of the 2010 Directive Respondents or 2012 Directive Respondents.

13. IP Associates further represents that, at the time of entering into this Administrative Consent Order, it is not currently and has never been an owner of the Property.

14. IP Associates further represents that, at the time of entering into this Administrative Consent Order, it is not a discharger, a person in any way responsible for a hazardous substance, or a person otherwise liable for cleanup and removal costs.

15. Based on the representations of IP Associates in paragraphs nos. 12 through 14 above, IP Associates does not have an obligation, pursuant to N.J.S.A. 58:10B-3a. to establish a remediation funding source and, therefore, is not subject to a 1% surcharge pursuant to N.J.S.A. 58:10B-11.

16. IP Associates, without admitting any fact, fault, or liability, has agreed to settle the past cleanup and removal costs for the Site referenced above, with the Department, and has agreed to assume all remaining remediation associated with the discharged hazardous substances at the Site.

NOW, THEREFORE, IT IS ORDERED AND AGREED AS FOLLOWS:

17. "Natural Resources" as used in this Settlement Agreement includes all land, fish, shellfish, wildlife, biota, air, waters and other such resources owned, managed, held in trust or otherwise controlled by the State.

18. "Natural Resource Damages" as used in this Settlement Agreement, include all claims arising from discharges of hazardous substances at the Property that occurred prior to the effective date of this Administrative Consent Order and that are recoverable by the Department as natural resource damages for injuries to Natural Resources under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Oil Pollution Act, 33 U.S.C. §§ 2701 et seq., the Clean Water Act, 33 U.S.C. §§ 1251 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., or any other state or federal common law, statute, or regulation, including:

(a) The costs of assessing injury to Natural Resources and natural resource services by DEP's Office of Natural Resource Restoration (hereinafter "ONRR"), ONRR's oversight costs determined consistent with N.J.A.C. 7:26C-4.7, attorneys' fees, consultants' and experts' fees, other litigation costs, and interest; and

(b) The compensation for restoration of, the lost value of, injury to, damage to, loss of use or destruction of Natural Resources and natural resource services.

Natural Resource Damages do not include, however:

- (a) Compliance with any statutory or regulatory requirement that is not within the definition of Natural Resource Damages;
- (b) Requirements to remediate any contamination as a result of discharges at the Site; or
- (c) The obligation of IP Associates, if any, to pay the Department's oversight costs incurred after the effective date of this Settlement Agreement.

19. In settlement of the Department's cleanup and removal costs for the Site prior to the Effective Date of this Administrative Consent Order, IP Associates agrees to pay a total amount of \$300,000 to the Department as follows:

a. Within thirty(30) days after the Effective Date of this Administrative Consent Order, IP Associates shall pay \$100,000 to the Department (see attached payment invoice);

b. IP Associates shall pay the remaining \$200,000 in equal, quarterly installments over the course of the two (2) calendar years, with the first \$25,000 installment due 120 days after the Effective Date of this Administrative Consent Order and subsequent \$25,000 installments due every 90 days thereafter;

c. All payments by IP Associates shall be submitted by check made payable to "Treasurer, State of New Jersey" and to the address indicated on the Department's respective payment invoices.

20. The Department agrees it will not take any action against IP Associates concerning the Department's outstanding cleanup and removal costs, including Natural Resource Damages, for the Site, including filing a lien against IP Associates and/or the Property pursuant to N.J.S.A. 58:10-23.11 f.f. until IP Associates takes title to the Property, after which time the Department reserves the right to file a first priority lien against the Property and to seek Natural Resource Damages in the event that IP Associates fails to make any payment required by this Administrative Consent Order or in the event that IP Associates fails to comply with any of its other obligations set forth in this Administrative Consent Order. The Department further agrees that it will file a warrant of satisfaction for any first priority lien concerning the Property after the completion of remediation provided the Department has received all payments pursuant to paragraphs 19(a) and 19(b) above.

21. IP Associates further agrees that it shall retain a Licensed Site Remediation Professional ("LSRP") and, within thirty (30) days of the Effective Date of this Administrative Consent Order, submit an LSRP retention form to the Department, pursuant to N.J.A.C. 7:26C-2.3(a)2.

22. IP Associates will undertake all remaining remediation necessary to be performed at the Site in accordance with the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C et seq., and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E et seq., including, without limitation, the following:

- a. (i) Within 30 days of the Effective Date, establish and maintain a

remediation trust fund in the amount of \$500,000; and (ii) within 90 days of the Effective Date, establish and maintain a remediation trust fund for the estimated cost of future remediation pursuant to N.J.A.C. 7:26C-5, with the understanding that IP Associates is not subject to a 1% surcharge as set forth in paragraph 15 above;

b. Completion of a remedial investigation by September 7, 2016, with no extensions;

c. Completion of the remedial action by September 7, 2019.

23. This Administrative Consent Order shall be fully enforceable in the Superior Court of New Jersey as a Final Order upon the filing of a summary action for compliance pursuant to R. 4:67-1 et seq. This Administrative Consent Order shall also be enforceable in the same fashion as an Administrative Order issued by the Department pursuant to the Spill Act.

24. Notwithstanding any other provision of this Administrative Consent Order, the Department reserves all rights to take any action against IP Associates should the Department determine that IP Associates fails to comply with this Administrative Consent Order.

25. Upon the Effective Date, this Administrative Consent Order shall constitute an administratively-approved settlement that resolves all liability of IP Associates for past cleanup and removal costs, including Natural Resource Damages, to the Department within the meaning of N.J.S.A. 58:10-23.11f.a.(2)(b) and 42 U.S.C.A. 9613(f)(2) for the purpose of providing contribution protection to IP Associates from contribution actions. The Department and IP Associates agree that IP Associates is entitled, upon fully satisfying its obligations under this Administrative Consent Order, to protection from contribution actions for matters addressed in this Administrative Consent Order.

26. In Order for IP Associates to obtain protection under N.J.S.A. 58:10-23.11f.a.(2)(b) from contribution claims concerning matters addressed in this Administrative Consent Order, the Department published notice of this Administrative Consent Order in the New Jersey Register and on the Department's website on November 17, 2014, in accordance with N.J.S.A. 58:10-23.11e.2. Such notice included the following information:

a. The caption of the matter noted in this Administrative Consent Order;

b. The name and location of the Property;

c. The name of the Settling Party; and

d. A summary of the terms of this Administrative Consent Order.

The Department, in accordance with N.J.S.A. 58:10-23.11e.2., arranged for written notice of the Administrative Consent Order to all other potentially responsible parties of whom the Department had notice as of the date the Department published notice of the Administrative Consent Order in the New Jersey Register in accordance with this paragraph.

27. The Department reserves, and this Administrative Consent Order is without prejudice

to, all rights against IP Associates concerning all other matters.

28. Nothing in this Administrative Consent Order shall be construed as precluding the Department from taking any action it deems necessary or appropriate to protect the public health and safety and the environment, and to enforce the environmental laws of the State of New Jersey.

29. Nothing in this Administrative Consent Order shall restrict the ability of the Department to raise or make the above Findings in any other proceeding.

30. Nothing in this Administrative Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Administrative Consent Order.

31. IP Associates consents to entry of this Administrative Consent Order and waives its right to request a hearing concerning the terms hereof pursuant to N.J.S.A. 52:14B-1 et seq.

32. IP Associates agrees not to contest (a) the authority or jurisdiction of the Department to enter into this Administrative Consent Order, and (b) the terms or conditions hereof, except that IP Associates does not waive its right to contest the interpretation or application of such terms and conditions in an action or proceeding brought by the Department to enforce this Administrative Consent Order.

33. This Administrative Consent Order shall be binding on IP Associates and any successor, subsidiary, assign, trustee in bankruptcy, or receiver appointed pursuant to a proceeding in law or equity of IP Associates.

34. Within 30 days after taking title to the Property, IP Associates agrees to provide to the Department written confirmation of the date upon which IP Associates took title to the Property. This written confirmation of title shall be included as an exhibit to this Administrative Consent Order and thereby become part of this Administrative Consent Order.

35. The Effective Date of this Administrative Consent Order shall be the date that IP Associates takes title to the Property, provided that both IP Associates and the Department have executed this Administrative Consent Order prior to that date.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Anthony Farro, Director  
Division of Enforcement, Technical and Financial  
Support Element

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Rich Boornazian, Assistant Commissioner  
Natural and Historic Resources

IP ASSOCIATES, LLC

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Samuel Gemal, Manager