

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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BASIL SEGGOS, as Commissioner of the New York State  
Department of Environmental Conservation and Trustee of New  
York State’s Natural Resources, and the STATE OF NEW YORK,

Civil Action No.:  
2:17-CV-2684  
(SJF/ARL)

Plaintiffs,

**CONSENT DECREE**

-against-

THOMAS DATRE, JR.; CHRISTOPHER GRABE; 5 BROTHERS  
FARMING CORP.; DAYTREE AT CORTLAND SQUARE INC.;  
IEV TRUCKING CORP.; COD SERVICES CORP.; ALL ISLAND  
MASONRY & CONCRETE, INC.; BUILDING DEV CORP.;  
DIMYON DEVELOPMENT CORP.; NEW EMPIRE BUILDER  
CORP.; CIPRIANO EXCAVATION INC.; TOUCHSTONE  
HOMES LLC; SAMS RENT AND CONSTRUCTION; SAM’S  
RENT, INC.; NEW YORK MAJOR CONSTRUCTION INC.;  
EAST COAST DRILLING NY INC.; TRITON CONSTRUCTION  
COMPANY, LLC; SUKRAM AND SONS LTD.; M & Y  
DEVELOPERS, INC.; “JOHN DOE”; ATRIA BUILDERS, LLC;  
WOORI CONSTRUCTION INC.; PLUS K CONSTRUCTION  
INC.; NY FINEST ENTERPRISES INC.; MONACO  
CONSTRUCTION CORP.; ALEF CONSTRUCTION INC.; 158  
FRANKLIN AVE. LLC; LUCIANO’S CONSTRUCTION, INC.;  
ILE CONSTRUCTION GROUP, INC.; EAST END MATERIALS,  
INC.; SPARROW CONSTRUCTION CORP.; CIANO  
CONCRETE CORP.; FREEDOM CITY CONTRACTING CORP.;  
and TOTAL STRUCTURE SERVICES INC.,

Defendants.

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Plaintiffs Basil Seggos (“Seggos”), as Commissioner of the New York State Department  
of Environmental Conservation (“DEC”) and Trustee of New York State’s Natural Resources, and  
the State of New York (Seggos and the State of New York, together, the “State”), agree as follows  
with defendant, COD Services Corp. (“Settling Defendant”):

**This Lawsuit**

**WHEREAS**, on May 4, 2017, the State commenced this action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) and New York common law, seeking damages for injury to, destruction of, and loss of New York’s natural resources (“natural resource damages”) caused by the alleged transportation, arrangement and release of hazardous substances at Roberto Clemente Park in Brentwood, Long Island, New York (the “Park”);

**WHEREAS**, the State alleged in its complaint that Settling Defendant, among others, is liable to the State for natural resource damages at the Park, pursuant to CERCLA §§ 107(a)(3) and 113(g)(1), 42 U.S.C. §§ 9607(a)(3), 9613(g)(1), and that Settling Defendant is also liable to the State for common law negligence and for a public nuisance under the common law and Real Property Actions and Proceedings Law (“RPAPL”) § 841;

**WHEREAS**, during the pendency of this lawsuit, and without any admission of liability, the State and Settling Defendant engaged in settlement discussions regarding the State’s claims for natural resource damages;

**WHEREAS**, the State and Settling Defendant (each a “Party” and together, the “Parties”) desire to enter into this Consent Decree to fully and finally resolve all claims that have been and could now or hereafter be asserted by the Parties with respect to the Matters Addressed, as defined below, without the necessity or further expense of prolonged and complex litigation, and without admission of liability, adjudication, or determination of any issue of fact or law;

**WHEREAS**, the State has determined that settlement of its claims against Settling Defendant in accordance with the terms set forth below is practicable and in the best interest of the public;

**The Town Lawsuit**

**WHEREAS**, the Town of Islip (the “Town”) owns the Park;

**WHEREAS**, the Town filed an action in 2016 in this Court entitled *Town of Islip v. Datre et al.*, Case No. 2:16-cv-02156-MKB-LB (the “Town Lawsuit”) against a number of defendants and others only identified as “John Does,” and specifically named Settling Defendant as one of the defendants in its Second Amended Complaint, filed on May 24, 2019;

**WHEREAS**, the Town alleges that, between May 2013 and May 2014, numerous individuals and entities engaged in a course of conduct resulting in the disposal of approximately 38,000 tons of construction and demolition debris, contaminated fill and other solid wastes at the Park;

**WHEREAS**, the Town alleges that it has incurred response costs in excess of \$4,000,000.00;

**WHEREAS**, Settling Defendant denies any liability for any of the costs and expenses allegedly incurred by the Town or any other damages it has allegedly suffered or will suffer in the future;

**WHEREAS**, Settling Defendant has reached a settlement with the Town to resolve all claims asserted against Settling Defendant in the Town Lawsuit which is contingent upon the settlement of this lawsuit (the “Town Settlement”);

**The Joint Settlement**

**WHEREAS**, Settling Defendant has demonstrated an inability to pay the full amount of its alleged liability in this lawsuit or the Town Lawsuit;

**WHEREAS**, the Town and the State have consulted with each other regarding the settlement of the lawsuit and the Town Lawsuit and have entered into an agreement to collectively

accept the total sum of \$40,000.00 from Settling Defendant in settlement of both the lawsuit and Town Lawsuit;

**WHEREAS**, the Settlement Amount is currently being held in Settling Defendants' attorneys' IOLA account;

**WHEREAS**, the Town Settlement is subject to the Court's approval and to date has not been approved by the Court.

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED BY AND BETWEEN THE UNDERSIGNED AS FOLLOWS:**

**PURPOSE AND SCOPE OF THIS CONSENT DECREE**

1. The purpose of this Consent Decree is to resolve claims set forth in the State's complaint and any other claims which could have been made by the State against Settling Defendant, Louis Durante ("Louis"), Eve Durante ("Eve") and Boots Holding Associates, LLC ("BH") (Louis, Eve and BH, collectively "Related Entities") with regard to the Matters Addressed, defined in paragraph 2 below; to release Settling Defendant and Related Entities from liability for the Matters Addressed; and to provide full and complete contribution protection to Settling Defendant with regard to the Matters Addressed, pursuant to CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2).

2. "Matters Addressed," as that term is used in this Consent Decree, means the State's claims for damages and costs which were asserted in its complaint.

**JURISDICTION**

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 42 U.S.C. § 9613(b). Settling Defendant hereby waives all objections and defenses it may have to the jurisdiction of the Court or to venue in this District. The Court shall

have continuing jurisdiction to enforce the terms of this Consent Decree and to resolve any disputes that may arise hereunder.

**PARTIES BOUND**

4. This Consent Decree shall apply to, and be binding upon, the State, including its departments, agencies, and instrumentalities, and shall apply to and be binding upon Settling Defendant, and its respective agents, successors, representatives, insurers, and assigns. Each signatory represents that he or she is fully and legally authorized to enter into the terms and conditions of this Consent Decree and to bind the party on whose behalf he or she signs.

**DEFINITIONS**

5. Unless otherwise expressly defined herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations.

**DISCLAIMER OF ADMISSIONS AND DENIALS**

6. Nothing in this Consent Decree shall constitute, or be construed as an admission or adjudication of liability on any issue of law or fact.

7. Nothing in this Consent Decree shall constitute evidence that natural resource damages are divisible or can be apportioned among any defendants in this action.

8. Settling Defendant is entering into this Consent Decree as a compromise of disputed claims and in doing so does not admit any liability, wrongdoing, or fault under any of the claims alleged against it in the complaint.

**PAYMENT OF NATURAL RESOURCE DAMAGES**

9. Settling Defendant shall pay the total amount of \$40,000 (\$20,000 of which is for the State's alleged natural resource damages and \$20,000 of which is for the Town's costs), to the

State and the Town, jointly, within 14 days of the effective date of this decree as defined below, in accordance with joint written instructions from the Town and the State.

10. The payment terms under this Consent Decree represent a fair and reasonable contribution by Settling Defendant toward the alleged natural resource damages at the Park. The Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated in good faith, that settlement of this matter will avoid prolonged and complicated litigation, and that this Consent Decree is fair, reasonable, and in the public interest.

### **COVENANTS NOT TO SUE AND RELEASE**

11. **Covenant Not to Sue and Release of Settling Defendant and Related Entities by the State.** For so long as Settling Defendant complies with all terms of this Consent Decree, and subject to the reopener in paragraph 20 of this Consent Decree, the State releases and covenants not to sue, execute judgment, or take any civil, judicial, or administrative action under any federal, state, local, or common law (other than enforcement of this Consent Decree) against Settling Defendant and Related Entities or their former, current and future assigns, agents, officers, directors, employees, attorneys, representatives, predecessors, successors, parent companies, subsidiaries, divisions, operating units, and affiliates for any matter arising out of or relating to the Matters Addressed in this Consent Decree including, without limitation, any claims or causes of action for natural resource damages, enforcement costs, interest, indemnification, contribution, or attorneys' fees.

12. **Covenant Not to Sue and Release of the State by Settling Defendant.** For so long as the State complies with all of the terms of this Consent Decree, Settling Defendant releases and covenants not to sue, execute judgment, or take any civil, judicial, or administrative action under any federal, state, local, or common law (other than enforcement of this Consent

Decree) against the State, or its employees, departments, agencies, or instrumentalities, or to seek against the State any damages, contribution, or attorneys' fees arising out of or relating to any of the Matters Addressed in this Consent Decree; provided, however, that if the State, pursuant to the reopener, asserts a claim or commences or continues a cause of action against Settling Defendant with respect to the Site, other than to enforce the obligations contained in this Consent Decree, this paragraph 12 shall not preclude the assertion by Settling Defendant of any claims, counterclaims, defenses (including, but not limited to the statute of limitations), or other causes of action against the State. Notwithstanding the foregoing, Settling Defendant may assert any claims or causes of action against any person other than the State, to the extent permitted by law, for any damages, contribution, or attorneys' fees arising out of any of the Matters Addressed in this Consent Decree.

### **CONTRIBUTION PROTECTION**

13. In consideration of Settling Defendant's compliance with this Consent Decree, the Parties agree that Settling Defendant is entitled, as of the effective date of this Consent Decree, to the full extent of protection from contribution actions, claims or cross-claims as provided by CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2), the Uniform Comparative Fault Act, and any other applicable provision of federal or state law, whether by statute or common law, extinguishing the potential liability of Settling Defendant to persons not party to this Consent Decree for the Matters Addressed. As provided under CERCLA § 113(f), 42 U.S.C. § 9613(f) and New York General Obligations Law § 15-108, and to the extent authorized under any other applicable law, Settling Defendant shall be deemed to have resolved its liability to the State under applicable law including, without limitation, CERCLA, the New York State Environmental

Conservation Law, RPAPL § 841, and common law, for purposes of contribution protection and with respect to the Matters Addressed pursuant to and in accordance with this Consent Decree.

14. Any rights Settling Defendant may have to obtain contribution or otherwise recover costs or damages from persons not party to this Consent Decree are preserved. In addition, all claims and defenses of Settling Defendant with respect to all persons other than the State are expressly reserved.

**DISMISSAL OF THE STATE'S CLAIMS  
AND RETENTION OF JURISDICTION**

15. All claims asserted by the State in its complaint against Settling Defendant are hereby dismissed with prejudice.

16. For purposes of entry and enforcement of this Consent Decree, the parties to this Consent Decree agree that the Court has jurisdiction in this matter and shall retain jurisdiction until Settling Defendant has fulfilled its obligations hereunder.

**SETTLEMENT OF ALL CLAIMS ASSERTED AGAINST  
SETTLING DEFENDANT IN THE TOWN LAWSUIT**

17. The settlement of this lawsuit including the payment of the Settlement Amount is contingent upon and subject to the Court's approval of the Town Settlement.

18. In the event that the Court does not approve the Town Settlement, Settling Defendant will be entitled to the return of the Settlement Amount from escrow, and this Consent Decree shall be null and void.

**EFFECT ON LIABILITY OF OTHER PARTIES**

19. Nothing in this Consent Decree is intended as a release of, or covenant not to sue with respect to, any person or entity other than Settling Defendant, Related Entities or their respective agents, successors, representatives, insurers, and assigns, and the State expressly



reserves its rights to assert in a judicial or administrative forum any claim or cause of action, past or future, in law or in equity, that the State may have against any other person, firm, corporation, or other entity.

**REOPENER**

20. Notwithstanding any other provision of this decree and any release, discharge, or covenant not to sue that Settling Defendant may receive from the State, the State reserves, and this decree is without prejudice to, the right of the State to institute proceedings seeking to compel Settling Defendant to reimburse the State for additional natural resource damages relating to the Site, but only if, after the effective date, contaminants previously unknown to the State are discovered to have been dumped at the Park.

**NOTIFICATIONS**

21. Any notification to the State and Settling Defendant shall be in writing or electronic mail and shall be deemed properly given if sent to the following (or to such other addresses as the parties may specify):

**As to Settling Defendant:**

COD Services Corp.  
21 Claridge Circle  
Manhasset, New York 11030-3928

**With a copy to:**

Jeffrey D. Lebowitz, Esq.  
Christopher E. Vatter, Esq.  
Jaspan Schlesinger LLP  
300 Garden City Plaza, 5<sup>th</sup> Floor  
Garden City, New York 11530  
[jlebowitz@jaspanllp.com](mailto:jlebowitz@jaspanllp.com)

**As to the State:**

Matthew J. Sinkman  
Assistant Attorney General  
New York State Department of Law  
Environmental Protection Bureau  
28 Liberty Street, 19th Floor  
New York, New York, 10005  
(212) 416-8446  
[Matthew.Sinkman@ag.ny.gov](mailto:Matthew.Sinkman@ag.ny.gov)

and

Andrew Guglielmi  
Office of the General Counsel  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, New York 12207  
(518) 402-9188  
[Andrew.Guglielmi@dec.ny.gov](mailto:Andrew.Guglielmi@dec.ny.gov)

Notification of the payment of natural resource damages made pursuant to paragraph 9 above shall also be sent via electronic mail by the State to:

Karen Diligent  
Cost Recovery Section  
Bureau of Program Management  
Division of Environmental Remediation  
New York State Department of Environmental Conservation  
625 Broadway, 12th Floor  
Albany, New York 12233  
(518) 402-9764  
[Karen.Diligent@dec.ny.gov](mailto:Karen.Diligent@dec.ny.gov)

**COMPLETE AGREEMENT/SIGNATURES**

22. This Consent Decree constitutes the complete agreement of the parties. This Consent Decree may not be amended, modified, supplemented, or otherwise changed without approval of this Court and the written consent of both the State and Settling Defendant. This Consent Decree may be signed in counterparts.

**EFFECTIVE DATE**

23. This Consent Decree shall become effective on the date that it is entered by the Court or the date that the Court in the Town Lawsuit issues an order of dismissal, whichever is later.

24. In the event that the Court in the Town Lawsuit does not issue an order of dismissal of the Town Lawsuit but this Court has entered this Consent Decree, this Consent Decree shall be null and void and the State's claims against Settling Defendant in this Lawsuit shall be reinstated.

**AGREED TO BY:**

Dated: New York, New York  
September 30, 2020

Dated: \_\_\_\_\_, New York  
September 9, 2020

BASIL SEGGOS, as COMMISSIONER OF THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION and TRUSTEE OF NEW YORK STATE'S NATURAL RESOURCES, and the STATE OF NEW YORK

COD SERVICES CORP.

By:   
Name: Louis Durante  
Title: President

By: Matthew J. Sinkman  
Name: Matthew J. Sinkman  
Title: Assistant Attorney General

SO ORDERED:

SANDRA J. FEUERSTEIN, U.S.D.J.