

NEW YORK CITY LAW DEPARTMENT
AFFIRMATIVE LITIGATION DIVISION

In the Matter of

Agreement

Demand by THE CITY OF NEW YORK, to
DAVID KLEINER REAL ESTATE HOLDINGS

AGREEMENT IN LIEU OF LITIGATION

1. The New York City Department of Housing and Preservation (“HPD”) delegated to the New York City Law Department (“Law”) its authority to demand records required by New York City Childhood Lead Poisoning Prevention Act (“Local Law 1”) Administrative Code of City of New York (“NYC Admin. Code”) §§ 27-2056.1–27-2056.18.

2. David Kleiner (a/k/a Dovid Kleiner) and its affiliates 2723 Barnes Realty LLC, 1701 Eastburn Realty LLC, Drylawson Realty Corp., 2411 Prospect Realty LLC, 2415 Prospect Realty LLC, 2524 Grand Concourse I LLC, East 168 Realty LLC, RRW Realty Corp., 1267 Sheridan LLC, 124 E 176 Assoc. LLC, 337-341 East 146 Realty LLC, 1769 Realty Corp., 1769 Vyse LLC, 1665 Monroe Assoc. LLC, 2078 Arthur LLC, 136 W 170 LLC, 1855 Realty LLC, and 1760-1770 LLC (collectively, “Kleiner”) owns and manages more than 748 dwelling units in buildings throughout New York City.

3. Law, in consultation with HPD, the New York City Department of Health and Mental Hygiene (“DOHMH”) and the Mayor’s Office to Protect Tenants, determined that

Kleiner was failing to comply with Local Law 1. Law further determined that there were significant numbers of violations issued against Kleiner's properties by HPD, DOHMH, the New York City Department of Buildings ("DOB"), the New York City Fire Department ("FDNY") and the New York City Department of Environmental Protection ("DEP"). This Agreement contains the findings and relief agreed to by Law and Kleiner (collectively, the "Parties").

STATUTORY BACKGROUND

4. In 2004, the New York City Council, finding that childhood lead poisoning from paint was a preventable public health crisis, enacted the New York City Childhood Lead Poisoning Prevention Act of 2003. NYC Admin. Code § 27-2056.1 *et seq.* The Act focuses on "primary prevention, which means eliminating lead hazards before children are exposed" because that is an "essential tool to combat childhood lead poisoning." *Id.* § 27-2056.1.

5. The Act establishes a rebuttable presumption that the paint in dwellings built prior to January 1, 1960 where a child under six resides is "lead-based paint." *Id.* § 27-2056.5; 24 R.C.N.Y. § 173.14(b) (a "child of applicable age" is a child under six years of age). This presumption may be rebutted, or a building may be exempted from some requirements of the Act, if the owner submits evidence to HPD that there is no lead-based paint in the building. NYC Admin. Code § 27-2056.5(a), (b).

6. "Resides" means that a child routinely spends 10 or more hours per week in a dwelling. *Id.* § 27-2056.2(12). *See also* 28 R.C.N.Y. § 11-01(bb).

7. "Lead-based paint" means paint or other surface coatings containing at least 0.5 milligrams of lead per centimeter squared or 0.5 percent by weight, but upon the federal

Department of Housing and Urban Development's promulgation of at least one performance characteristic sheet or other sufficient technical guidance approving an x-ray fluorescence analyzer tested at the level of 0.5 milligrams of lead per square centimeter, shall mean paint or other similar surface coating material containing 0.5 milligrams of lead per centimeter or greater, as determined by laboratory analysis or by an x-ray fluorescence analyzer. NYC Admin. Code § 27-2056.2(7).

8. The Act requires owners of buildings where children under six reside "to prevent the reasonably foreseeable occurrence" of lead-based paint hazards and expeditiously remediate those hazards. *Id.* § 27-2056.3.

9. The Act provides that "remediate" or "remediation" means "the reduction or elimination of a lead-based paint hazard through the wet scraping and repainting, removal, encapsulation, enclosure, or replacement of lead-based paint, or other method approved by the [Commissioner of the New York City Department of Health and Mental Hygiene]." *Id.* § 27-2056.2(11).

10. The Act provides that "owner" includes an "agent, or any other person, firm or corporation, directly or indirectly in control of a dwelling." *Id.* § 27-2004(45).

11. "Lead-based paint hazards" are "any condition in a dwelling or dwelling unit that causes exposure to lead from lead-contaminated dust, from lead-based paint that is peeling,* or

* "Peeling" means that "the paint or other surface-coating material is curling, cracking, scaling, flaking, blistering, chipping, chalking or loose in any manner, such that a space or pocket of air is behind a portion thereof or such that the paint is not completely adhered to the underlying surface." *Id.* § 27-2056.2(10).

from lead-based paint that is present on chewable surfaces,[†] deteriorated subsurfaces,[‡] friction surfaces,[§] or impact surfaces^{**} that would result in adverse human health effects.” *Id.* § 27-2056.2(6).

Annual Investigations

12. The annual investigation requirements of the Lead Poisoning Prevention Act apply to buildings that were either (1) built before January 1, 1960, unless the presumption of lead-based paint has been rebutted or the building or dwelling unit has been exempted by HPD, or (2) built between January 1, 1960 and January 1, 1978 if the owner has actual knowledge of the presence of lead paint (together, “regulated buildings”). *Id.* § 27-2056.4(a).

13. The Act directs owners to conduct investigations at least annually for “peeling paint, chewable surfaces, deteriorated subsurfaces, friction surfaces, and impact surfaces” in dwellings and common areas in regulated buildings where a child under six resides and to expeditiously remediate all lead-based paint hazards and underlying defects.^{††} *Id.* §§ 27-2056.3, 27-2056.4(a).

[†] A “chewable surface” is “a protruding interior window sill in a dwelling unit in a multiple dwelling where a child of [under the age of six] resides and which is readily accessible to such child” and “any other type of interior edge or protrusion in a dwelling unit in a multiple dwelling, such as a rail or stair, where there is evidence that such other edge or protrusion has been chewed or where an occupant has notified the owner that a child [under the age of six] who resides in that multiple dwelling has mouthed or chewed such edge or protrusion.” *Id.* § 27-2056.2(1).

[‡] A “deteriorated subsurface” is an “unstable or unsound painted subsurface, an indication of which can be observed through a visual inspection, including, but not limited to, rotted or decayed wood, or wood or plaster that has been subject to moisture or disturbance.” *Id.* § 27-2056.2(3).

[§] A “friction surface” is “any painted surface that touches or is in contact with another surface, such that the two surfaces are capable of relative motion and abrade, scrape, or bind when in relative motion. Friction surfaces shall include, but not be limited to, window frames and jambs, doors, and hinges.” *Id.* § 27-2056.2(4).

^{**} An “impact surface” is “any interior painted surface that shows evidence, such as marking, denting, or chipping, that it is subject to damage by repeated sudden force, such as certain parts of door frames, moldings, or baseboards.” *Id.* § 27-2056.2(5).

^{††} Underlying defect” shall mean “a physical condition in a dwelling or dwelling unit that is causing or has caused paint to peel or a painted surface to deteriorate or fail, such as a structural or plumbing failure that allows water to

14. The Act was recently amended to include a provision directing that one investigation for the presence of lead-based paint in every dwelling be completed by an EPA-certified inspector or assessor using an “x-ray fluorescence analyzer.” *Id.* § 27-2056.4(a-1). Owners are required to come into compliance within one year after a child under the age of six comes to reside in a dwelling or within five years of the effective date, whichever is sooner.

15. Owners are required to provide the results of an annual investigation to the tenant in writing, provide a copy of any report “received or generated by an investigation” to the tenant, and keep a copy of any such report for at least ten years from the date of such report. *Id.* § 27-2056.4(f). *See also* 28 R.C.N.Y. § 11-04(b), (c)(1) (the record of the investigation shall “include the location of such inspection and the results of such inspection for each surface”).

16. Owners are required to ascertain whether a child under six resides in a dwelling by two means. First, owners are required to provide a notice to tenants at the signing of a lease, including a renewal lease, inquiring as to whether a child under the age of six resides or will reside in the dwelling (“Lease Notice”). NYC Admin. Code § 27-2056.4(d)(1). *See also* 28 R.C.N.Y. § 11-03(a)(1).

17. Additionally, each year between January 1 and January 16, owners of buildings constructed prior to January 1, 1960 must deliver a notice (“Annual Notice”) to all occupants inquiring as to whether a child under the age of six resides in the dwelling. NYC Admin. Code § 27-2056.4(e)(1). *See generally* 28 R.C.N.Y. § 11-03(b).

18. The Annual Notice must be delivered to tenants by first class mail; by hand; enclosed with the January rent bill (if the bill is sent between December 15 and January 16); or in

intrude into a dwelling or dwelling unit.” *Id.* § 27-2056.2(15).

conjunction with an Annual Notice pertaining to window guards. NYC Admin. Code § 27-2056.4(e)(2).

19. If a tenant does not respond to the Annual Notice by February 15 and the owner does not “otherwise have actual knowledge” as to whether a child under the age of six resides there, the owner must “at reasonable times and upon reasonable notice” inspect the tenant’s dwelling to determine whether a child under six resides there and “when necessary, conduct an investigation in order to make that determination.” *Id.* § 27-2056.4(e)(3)(i).

Turnover

20. Upon turnover of the tenants in any dwelling in an building constructed prior to January 1, 1960, owners must:

- (1) remediate all lead-based paint hazards and any underlying defects, when such underlying defects exist;
- (2) make all bare floors, window sills, and window wells in the dwelling unit smooth and cleanable;
- (3) provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all doors and door frames; and
- (4) provide for the removal or permanent covering of all lead-based paint on all friction surfaces on all windows, or provide for the installation of replacement window channels or slides on all lead-based painted friction surfaces on all windows.

Id. § 27-2056.8(a).

21. After an owner has completed work upon turnover, a lead-contaminated dust clearance test must be performed by a third party (neither the owner nor the individual or company that performed the turnover work). *Id.* §§ 27-2056.11(a)(3), 2056.11(b), 28 R.C.N.Y. §§ 11-06(b)(2)(iii), (3)(ii), (4), and (g)(3).

22. Owners must certify compliance with the turnover provisions in a notice provided to a new tenant upon signing a lease. 28 R.C.N.Y. § 11-05(d).

FINDINGS

Kleiner Holdings

23. Sixteen of Kleiner's buildings are subject to the requirements of The New York City Childhood Lead Poisoning Prevention Act Local Law 1 ("Buildings Subject to Local Law 1").

24. Kleiner are the registered owners/managing agent of the subject premises, and thus an "owner" of the buildings as defined by Multiple Dwelling Law § 4(44) and under the Act. *See* NYC Admin. Code § 27-2004(45).

25. A list of Kleiner's Buildings Subject to Local Law 1 ("Buildings Subject to Local Law 1 Roster") is attached as part of Exhibit 1, the Demand Letter issued by the City of New York on May 14, 2021.

26. Kleiner shall update its Buildings Subject to Local Law 1 Roster on January 1, 2022 and January 1, 2023.

Lease Notices

27. Kleiner's new and renewal leases include Lease Notices attached as riders to the leases.

28. Many of Kleiner's tenants have not completed the Lease Notice.

29. When a tenant indicates on a Lease Notice in a new lease that a child under the age of six will reside in the dwelling, Kleiner has been unable to maintain complete records from 2011 to present verifying that it records that information.

Annual Notices

30. Kleiner did not routinely distribute Annual Notices to its tenants as required by the Act.

31. Tenants did not always respond to Annual Notices.

32. When tenants did not respond to Annual Notices, Kleiner did not inspect each dwelling or conduct an investigation to ascertain if a child under the age of six resided in each dwelling, as required by the Act, or did not maintain documentation confirming that Kleiner had done so.

Annual Investigation

33. Kleiner did not consistently conduct annual investigations of all dwellings where a Lease Notice or an Annual Notice indicated that a child under the age of six resided there, as required by the Act, or was unable to provide Law documentation confirming that it had done so.

34. Because Kleiner was unable to determine whether children under the age of six resided in the dwellings that did not return Annual Notices or complete Lease Notices, Kleiner did not do annual investigations of those dwellings. Kleiner did not report the dwelling units to DOHMH.

35. Kleiner failed to consistently conduct the required annual investigation including for peeling paint throughout the dwelling, "chewable surfaces," deteriorated subsurfaces," "friction surfaces," and "impact surfaces," as required by the Act, or failed to maintain the documentation confirming that it had done so.

36. In 2021, Kleiner developed and submitted to Law for its review an annual investigation checklist to ensure that annual investigations included and documented the investigation of chewable surfaces, deteriorated subsurfaces, friction surfaces, and impact

surfaces, as well as peeling paint. Following that submission to Law in 2021, Kleiner has been using the annual investigation checklist in the ordinary course of its lead paint compliance.

37. If Kleiner created work orders to remediate peeling paint following annual investigations, Kleiner showed the work orders to the tenants and asked tenants to sign them once the work was complete. However, Kleiner did not consistently notify tenants of the results of annual investigations if a work order was not created, as required by the Act, or failed to maintain documentation confirming that it did so. Kleiner also failed to maintain documentation confirming it had conducted required dust wipe tests and failed to maintain documentation confirming it had provided tenants with those dust wipe test results.

Turnover

38. Kleiner failed to consistently perform the mandated rehabilitation of the dwellings or failed to maintain records containing enough detail about the turnover work to demonstrate that all its turnovers from 2011 to the present complied with the Act's requirements.

39. Kleiner has not consistently certified in Lease Notices that it has complied with the turnover requirements, as required by the rules promulgated under the Act, *see* 28 R.C.N.Y. § 11-05.

Code Violations

40. Multiple City agencies have issued code violations against the buildings that are subject to this Agreement. Those violations are collected in Schedule A to this Agreement.

Incurred Penalties

41. Penalties imposed on the Defendants include the penalties listed in Schedule B. (This does not include penalties imposed by DOB that have not been imposed by the Environmental Control Board.)

Purpose of Agreement

42. Kleiner enters this Agreement in settlement of the violations asserted by Law, and described above and listed in Schedule A to avoid the time and expense of litigation.

43. Law enters into this Agreement with Kleiner to resolve the deficiencies described above, and to develop a reporting process with Kleiner that will ensure continued compliance.

THEREFORE, Law is willing to accept this Agreement in lieu of commencing an action to enforce the New York City Childhood Lead Poisoning Prevention Act based on the conduct described above from May 14, 2011 to present and violations written by City agencies.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

INJUNCTIVE RELIEF

44. Kleiner shall comply with the Lead Poisoning Prevention Act, and with all applicable rules and regulations implementing the Act and expressly agrees and acknowledges that any future violations of the Act also violated this Agreement, and that Law thereafter may commence a civil action or proceeding.

A. Leases

45. If a prospective or current tenant indicates in a Lease Notice that a child under the age of six resides or will reside in the dwelling, Kleiner shall record this information in the database that it maintains for dwellings ("Kleiner Database") within 30 days.

46. If a prospective or current tenant returns a lease or renewal lease to Kleiner without completing the Lease Notice, Kleiner (or its third party vendor) shall make three attempts via telephone or e-mail within 30 days to reach the tenant to request that the tenant complete and return the Lease Notice and document those attempts. Kleiner (or its third party vendor) shall also send the request via certified mail and inform the tenant that the law requires the occupant to inform the owner in writing if a child under six comes to reside in the dwelling.

B. Annual Notices

47. Kleiner shall comply with the Act's requirements regarding Annual Notices.
NYC Admin. Code § 27-2056.4(e).

48. Kleiner shall post reminders to complete the Annual Notice in two public-viewable areas of each building, one of which shall be the lobby, from January 1 to March 1 each year. Kleiner shall provide an affidavit asserting these reminders were posted as required.

49. To satisfy Section 27-2056.4(e)(3)(i)'s requirement that an "owner shall at reasonable times and upon reasonable notice inspect that occupant's dwelling unit to ascertain the residency of a child of applicable age and, when necessary, conduct an investigation in order to make that determination," Kleiner or its agents/third party vendors shall contact the tenant via telephone or e-mail to request completion of the notice two times before March 1, when Kleiner has telephone or e-mail contact information for the tenant, and when Kleiner or its agents/third party vendor does not have such information, use other reasonable means to satisfy this

requirement. To satisfy Section 27-2056.4(e)(3)(i)'s requirement that "between February sixteenth and March first of that year, the owner has made reasonable attempts to gain access to a dwelling unit to determine if a child of applicable age resides in that dwelling unit," Kleiner or its agents/third party vendor shall visit the tenant's dwelling two times to request completion of the notice before March 1. Kleiner shall also document the attempts made to contact the tenant.

50. If a tenant fails to return the Annual Notice form, Kleiner may record the presence of a child under six in the unit based on either a verbal response from the tenant, or Kleiner's actual knowledge. The verbal response should be documented at the time of the verbal response, indicating a verbal response was given, who provided the verbal response and to whom the verbal response was made, and must be maintained in whatever signed document Kleiner uses to record Annual Notice responses.

51. By March 1 each year, Kleiner shall record in the Kleiner Database whether a child under six resides in each dwelling managed by Kleiner and how it made that determination (e.g., Lease Notice, Annual Notice, actual knowledge, tenant's verbal or written response, or inspection dwelling).

C. Unit Rosters

52. By July 1, 2022, July 1, 2023, and July 1, 2024, Kleiner shall prepare a "Unit Roster" for each building identified in its Regulated Building Roster and any other regulated building that Kleiner manages. The Unit Roster shall state whether a child under the age of six resides in each dwelling in the building, subject to the following:

- a. Kleiner may state whether or not a child under the age of six resides in an dwelling based (1) a Lease Notice completed by the tenant within the past 12 months; (2) an Annual Notice completed by the tenant within the last 3 months;

(3) the actual knowledge of any employee of Kleiner as stated in writing; (4) an inspection of the dwelling by Kleiner employee within the last 3 months; (5) the tenant's verbal statement within the last 3 months as recorded in the Kleiner Database pursuant to paragraph 50 above.

- b. Kleiner may state that it does not know whether a child under the age of six resides in an dwelling only if all of the following requirements are met: (1) the tenant has not completed a Lease Notice within the last 12 months; (2) the tenant has not completed an Annual Notice in within the last 3 months; (3) no employee of Kleiner has actual knowledge whether a child under six resides in the dwelling; and (4) Kleiner was unable to obtain the tenant's verbal or written statement or inspect the tenant's dwelling within the last 12 months. Kleiner must also submit notification of lack of knowledge to the Department of Health and Mental Hygiene at the following address:

Department of Health and Mental Hygiene – Healthy Homes
125 Worth Street, 6th Floor CN5
New York, New York 10007

D. Annual Investigations and Remediation

53. Kleiner shall comply with the Act's requirements regarding conducting Annual Investigations. *See* NYC Admin. Code § 27-2056.4(a). Kleiner shall also comply with the Act's requirement directing that one investigation for the presence of lead-based paint in every dwelling using an "x-ray fluorescence analyzer" be completed by an EPA certified inspector or risk assessor. The investigation must take place within five years of the effective date of the law, or by August 9, 2025, or within one year if a child under the age of 6 comes to reside in the unit, whichever is sooner. *See id.* § 27-2056.4(a-1).

54. The terms of this Section D, Annual Investigation and Remediation, shall not apply to Exempt Units or Exempt Common Areas.

55. By July 1, 2022, July 1, 2023, and July 1, 2024, Kleiner shall perform Annual Investigations of all dwellings on the current Unit Roster where a child under the age of six resides.

56. Kleiner's Annual Investigations shall include an Annual Investigation of the common areas of all buildings where a child under the age of six resides.

57. Kleiner shall ensure that every person who conducts Annual Investigations for Kleiner takes the training course, <https://apps.hud.gov/offices/lead/training/visualassessment/h00101.htm>, annually before conducting any Annual Investigations and document that each person has done so by providing an affidavit per paragraph 73(e) below.

58. For each Annual Investigation, Kleiner shall complete the "Annual Inspection for Lead-Based Paint Hazards" form attached as Exhibit 2 and provide a copy of that form to the tenant.

59. For each investigation using an x-ray fluorescence analyzer ("XRF"), Kleiner shall complete the "Annual Investigation Using an X-ray Fluorescence Analyzer" form attached as Exhibit 3. Kleiner shall notify the occupant of the XRF test results in writing, provide a copy of the report generated by the EPA certified contractor to the tenant and provide a copy of the completed "Annual Investigation Using an X-ray Fluorescence Analyzer" form to the tenant. Sufficient documentation of providing the foregoing to the occupant could include a written acknowledgement of receipt from the occupant, a copy of an email sent to the occupant

providing the documents, a mailing receipt to the occupant, or an affidavit from Kleiner that the documents were provided.

60. If Kleiner claims an inability to gain access to a dwelling for an Annual Investigation or the XRF Investigation, it must create and maintain a record that includes a statement describing the attempt made to gain access and the reason why access could not be gained. The attempt made to gain access may include, but is not limited to, providing written notice to the tenant via certified or registered mail, or first class mail with proof of mailing informing the tenant of the necessity to access the dwelling to perform the investigation. These records must be kept for a period of ten years from either the date of completion of the investigation or from the date of the last attempt to gain access. These records must be made available to HPD and/or Law upon request. These records must also be made available to the tenant upon request.

61. For all dwellings where Kleiner has identified a lead-based paint hazard during an inspection, Kleiner shall remediate the hazard within 90 days of the Annual Investigation provided that the tenant provides sufficient access to the unit to perform the necessary work within the 90 day period. If the tenant does not provide access to the unit, or if for some other commercially reasonable reason the work is not able to be completed within 90 days, Kleiner shall remediate the hazard expeditiously and document the reasons for their inability to perform the work within 90 days, and the steps that they take to perform the work was expeditiously as possible. All lead abatement work performed pursuant to this paragraph shall be performed by a firm certified to perform lead abatement pursuant to NYC Admin. Code § 27-2056.11. 28 R.C.N.Y. § 11-06, and the regulations issued by the United States Environmental Protection Agency, subpart L of part 745 of title 40 of the Code of Federal Regulations. All remediation

work performed pursuant to this paragraph shall be performed by a firm certified to perform lead remediation pursuant to NYC Admin. Code § 27-2056.11, 28 R.C.N.Y. § 11-06, and the regulations issued by the United States Environmental Protection Agency, subpart E of part 745 of title 40 of the Code of Federal Regulations.

62. For all work performed that will disturb lead-based paint or paint of unknown lead content in a dwelling where a child age six or under resides, or in the common area of a building where such dwelling unit is located, lead dust clearance testing shall be conducted once the work is completed in accordance with NYC Admin. Code § 27-2056.11, 28 R.C.N.Y. § 11-06, and the regulations issued by the United States Department of Housing and Urban Development, subpart R of part 35 of title 40 of the Code of Federal Regulations. All dust clearance testing performed pursuant to this paragraph shall be performed by a firm certified to perform lead abatement pursuant to NYC Admin. Code § 27-2056.11, 28 R.C.N.Y. § 11-06, and the regulations issued by the United States Department of Housing and Urban Development, subpart R of part 35 of title 40 of the Code of Federal Regulations. Where the work is being performed to comply with a notice of violation or order to correct concerning a violation of lead safe work practices, the dust clearance test results shall be filed with HPD and a copy of the test results shall be provided to the tenant of the dwelling or tenants of the building (where the violation occurred in a common area).

63. As required by the Act, Kleiner shall retain records of all remediation work (including dust clearance testing), Annual Investigations and XRF Investigations for a period of ten years. *See* NYC Admin. Code § 27-2056.17.

E. Turnovers

64. Kleiner shall comply with the Act's turnover requirements, NYC Admin. Code 27-2056.8, including the requirements that turnover work be performed in accordance with Act's safe work practices, *see id.* § 27-2056.11.

65. The terms of this Section E, Turnovers, shall not apply to Exempt Units unless the unit was exempted using testing performed at the 0.5 mg/cm² level.

66. For each turnover, Kleiner shall complete the turnover form attached as Exhibit 4. Kleiner may complete an electronic version of this form; however, the form must be signed.

67. Upon completion of turnover work, a lead-contaminated dust clearance test that complies with the applicable standard set forth in New York City, N.Y., Rules, Tit. 24, Health Code, § 173.14 (e)(I)(1)(iv), shall be performed by a third party (neither Kleiner nor the individual or company that performed the turnover work may perform the test).

68. Kleiner shall retain records of all turnover work as required by the Act for a period of ten years. *See* NYC Admin. Code § 27-2056.17.

69. As required by the rules promulgated under the Act, Kleiner shall certify that it complied with the Act's turnover requirements in a notice provided upon signing a lease with a turned over dwelling's new tenant. *See* 28 R.C.N.Y. § 11-05(d).

F. Open HPD Lead Violations

70. Kleiner shall resolve all lead-based paint hazard violations and will provide all removal documents to HPD, within 180 days from the date of the execution of this Agreement. Once complete documents are submitted, time will not continue to accrue until HPD returns or rejects Kleiner's submissions. Once documentation is accepted by HPD, Kleiner will work with HPD to arrange for access to the necessary dwellings for physical verification.

71. For all open lead-based paint hazard violations with order number 614 listed in Schedule A, Kleiner shall provide all required documentation to show that turnover abatement work has been completed or that all door, door frame, or window friction surface contain no lead-based paint. Kleiner shall provide all required documentation for turnover abatement work that has already been completed within the same timeframe as the documentation in paragraph 70. For all open lead-based paint hazard violations with order number 618, 619 and 620 listed in Schedule A, Kleiner shall provide all documentation required under 28 R.C.N.Y. § 11-12(d)-(i) (“Additional Audits”) to HPD on September 1, 2023, September 1, 2024, and September 1, 2025. Namely, the Annual Notice, Annual Inspection, XRF Testing, Remediation and Turnover records as follows. The September 1, 2023 submission shall include all documentation required to be kept pursuant to Local Law 1 for the one-year period prior to submission. The September 1, 2024 and September 1, 2025 submissions should also include the documentation created for the year prior to submission. Upon receipt of all documents for all three years, HPD may, in its discretion, dismiss the violations with order number 618, 619 and 620 listed in Schedule A for that building.

G. Recordkeeping and Reporting

72. Kleiner shall maintain the following records for ten years following the date of their creation and provide them to Law within 30 days upon request by e-mail or letter, or such other time as Kleiner and Law may agree:

- a. The Kleiner Database.
- b. All Lease Notices, whether or not completed, in new and renewal leases and when a tenant did not complete a Lease Notice, all documents showing the

attempts to reach the tenant to request that the tenant complete the Lease Notice as required by Paragraph 46;

- c. All Annual Notices and when a tenant did not complete an Annual Notice, all documents showing the attempts to contact the tenant and visit the tenant's dwelling as required by Paragraphs 49 and 50;
- d. All documents showing that persons conducting Annual Investigations took the training course, as required by Paragraph 57;
- e. All "Annual Inspection for Lead-Based Paint Hazards" forms and "Annual Investigation Using an X-ray Fluorescence Analyzer" forms, and all records of attempts made when these investigations could not be completed;
- f. Records of all remediation work as required by Paragraphs 61-63 and the Act, NYC Admin. Code § 27-2056.17.
- g. Records relating to the inspections of dwelling units upon turnover, pursuant to Paragraphs 64-69 and the Act, NYC Admin. Code § 27-2056.8;
- h. Records of all turnover work as required by paragraphs 64-69 and the Act, NYC Admin. Code § 27-2056.17, including but not limited to:
 - 1. Depending on the scope of turnover work, an Affidavit from the EPA-certified abatement firm (for all abatement work conducted) and/or Renovation firm (for all remediation work conducted)'s authorized agent or individual who performed the work stating that the work was performed in accordance with NYC Admin. Code § 27-2056.11(a)(3) and 28 R.C.N.Y. § 11-06; the start and completion date

of the work; the address and contact information (phone or fax) for the EPA firm that completed the work

2. A copy of the EPA certification for the abatement firm where applicable, or Renovation firm that performed the work;
3. A copy of EPA certifications of the EPA-certified Abatement Workers and Supervisors, where applicable, or Renovators who performed the work;
4. The location of the work performed in each room, including a description of such work and components of parts of the dwelling unit that were replaced OR invoices for payment for such work;
5. A copy of the State-certified laboratory analysis of all surface dust samples taken which indicates the method of preparation and analysis of the samples;
6. An Affidavit from the individual who took the surface dust samples, verifying the date the sample was taken and indicating the address/dwelling unit where the sample was taken;
7. A copy of the Certificate of Training of the individual who took surface dust samples. The Certificate of Training must be valid for the period when the dust samples were taken.

73. On September 1, 2022, September 1, 2023, September 1, 2024, and September 1, 2025, Kleiner shall submit a report to Law that provides the following information and documents for each regulated building (excluding any Exempt Units):

- a. The current Unit Roster;

- b. The number of tenants who did not complete the Lease Notice in the current lease;
- c. The number of tenants who did not complete the Annual Notice for that calendar year;
- d. For each dwelling for which an Annual Investigation was done in that calendar year:
 - i. The address, including dwelling number (or letter);
 - ii. Whether an “Annual Inspection for Lead-Based Paint Hazards” form was completed;
 - iii. Whether the tenant received that form;
 - iv. Whether the dwelling was remediated;
- e. An affidavit confirming that all persons who conducted Annual Investigations in that calendar year took the training course, as required by Paragraph 57;
- f. The address, including dwelling number (or letter), of all dwellings that were tested using an X-ray Fluorescence Analyzer in the past 12 months pursuant to the one-time X-ray Fluorescence Analyzer investigation, and whether the “Annual Investigation Using an X-ray Fluorescence Analyzer” form was completed;
- g. For each dwelling that turned over in the past 12 months:
 - i. The address, including dwelling number (or letter);
 - ii. Whether the turnover form was completed; and
 - iii. Whether the next tenant’s lease certified that Kleiner complied with the turnover requirements.

74. At the request of Law by e-mail or letter, Kleiner shall provide any additional information or documents relating to Local Law 1 within 30 days, or such other time as Kleiner and Law may agree.

H. Other violations

75. The conditions listed in Schedule A exist at the premises and are violations of the New York City Administrative Code.

76. Kleiner shall correct all Schedule A violations and any other open non-lead violations issued by HPD within the timeframe required by law as follows:

- a. For all Class-C violations shall be corrected within 24 hours,
- b. For all Class-B violations shall be corrected within 30 days, and
- c. For all Class-A violations shall be corrected within 30 days.

77. Kleiner shall correct all Schedule A violations and any other open violations issued by DOB within the timeframe required by law as follows:

- a. For all Class-1 violations shall be corrected forthwith but within no more than 14 days,
- b. For all Class-2 violations shall be corrected within 30 days, and
- c. For all Class-3 violations shall be corrected within 45 days.

78. Kleiner shall resolve all conditions that resulted in violations issued by DOHMH within 30 days.

79. Kleiner shall correct all open violations issued by FDNY within 30 days.

80. Kleiner shall correct all open violations issued by DEP within 30 days.

I. Work Requirements

81. All work shall be conducted in accordance with applicable laws, in a workmanlike fashion, and using licensed professionals as and when required by law.

82. Kleiner and its agents, including any contractors and subcontractors, shall obtain all permits necessary for repair work, and comply with all permit requirements.

83. To the extent required by law, Kleiner or its agents shall prepare tenant protection plans as required by NYC Admin. Code § 28-120.1. Such plans shall be specific and tailored to each building and describe with particularity the means and methods to be employed to safeguard the health and safety of the occupants of said building throughout construction.

84. Kleiner and its agents shall at all times comply with the notice requirements of 28 R.C.N.Y. § 25-101.

85. If Kleiner cannot obtain access to a unit that requires correction of an open violation, Kleiner shall provide to Law an affidavit from one or more persons with personal knowledge attesting that they attempted to obtain access as provided for under 28 R.C.N.Y. § 25-101 at a reasonable time and in a reasonable manner on at least two occasions to correct the violating condition, and that the tenant either would not agree to provide access or agreed to provide access but subsequently refused to allow Kleiner or its agents entry at the agreed upon time to correct the violating condition. Such affidavit(s) shall be submitted to Law within 5 business days of the applicable timeframe to correct.

86. For purposes of this Agreement, the term "correct" shall mean completing any required repair or other action, submitting any required documentation to clear the violation, including filing certifications of correction of the violation with the appropriate City agency, and

requesting reinspection by the issuing agency when required. "Correct" does not itself include the reinspection by the agency.

J. Office of Administrative Trials and Hearings Penalties

87. Kleiner shall within 60 days pay, or move to reopen, mitigate or resolve all penalties imposed upon them by City agencies as reflected in Schedule B. If the violation is reopened, Kleiner shall participate promptly in any proceedings. If the motion to reopen is denied, Kleiner shall pay the penalties within 30 days after receiving notification of the denial.

K. Lead-Based Paint Penalties

88. Kleiner shall pay a civil penalty of \$112,000 in two installments to the City of New York for all open lead-based paint violations listed in Schedule A. The installments shall be \$75,000 within 30 days of the Effective Date, and \$37,000 within 210 days of the Effective Date. The payment of civil penalties for lead-based paint violations are settled to date pursuant to the terms of this Agreement. In the event that Kleiner fails to make the above-mentioned payment or the payment is returned to the City of New York as unpayable for any reason, Kleiner agrees to pay the full civil penalty fine upon five (5) days written notice to cure to Kleiner's attorneys in the amount of \$112,000.

89. Kleiner shall make this payment to the City of New York by bank or certified check or by wire transfer pursuant to instructions provided by the City. At the time of any wire payment, Kleiner shall send notice that payment has been made to Law.

90. Notwithstanding what has been consented to in the within Agreement, all other claims for civil penalties that the City of New York or the Department of Housing Preservation

and Development may have pursuant to the Housing Maintenance Code/Multiple Dwelling Law or other laws are not settled by this Agreement, including but not limited to HPD's civil penalties claims for failure to timely correct violations, false certifications of violations and harassment, and the City of New York and HPD reserve its rights to seek such relief for those claims and/or to seek subsequent per diem civil penalties on all violations listed in Schedule A, if there is any default in performance of any of the terms hereunder.

MISCELLANEOUS

Subsequent Proceedings

91. If the Agreement is voided or breached, Kleiner agrees that any statute of limitations or other time-related defenses applicable to the subject of the Agreement and any claims arising from or relating thereto are tolled as to the breaching party from and after the date of this Agreement. In the event the Agreement is voided or breached, Kleiner expressly agrees and acknowledge that this Agreement shall in no way bar or otherwise preclude Law from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, or seeking to impose or enforce or collect any penalties related to the Agreement, against Kleiner, or from using in any way any statements, documents or other materials produced or provided by Kleiner prior to or after the date of this Agreement. In the event that Law commences an action or proceeding related to this Agreement any civil action or proceeding shall be adjudicated by the New York State Supreme Court, New York County and Kleiner irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue.

92. Nothing in this Agreement curtails the City's rights and ability to enforce laws, ordinances, and regulations, including by issuing further orders and violations. Kleiner are obligated to comply with all laws, ordinances, regulations, administrative orders, and violations.

Effects of Agreement

93. This Agreement is not intended for use by any third party in any other proceeding.

94. This Agreement is not intended, and should not be construed, as an admission of liability by Kleiner.

95. All terms and conditions of this Agreement shall continue in full force and effect on any successor, assignee, or transferee of Kleiner. Kleiner shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Agreement. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Law.

96. Nothing contained herein shall be construed as to deprive any person of any private right under the law. The terms of this Agreement do not authorize or permit anyone to evict, eject, or otherwise remove any tenant from any of the buildings subject to this Agreement and cannot be used for that purpose. Kleiner shall at all times comply with the notice requirements of 28 RCNY § 25-101. Kleiner's rights to lawfully evict, eject, or otherwise remove a tenant are not otherwise impacted by the terms of this paragraph.

97. Any failure by the Law to insist upon the strict performance by Kleiner of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and Law, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by Kleiner.

Communications:

98. All notices, reports, requests, and other communications pursuant to this Agreement must reference LM#2021-001661 and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to Kleiner, to: Richard Leff at rleff@cpc-law.com and David Kleiner at DAVID@DKCKMGT.COM, or in their absence, to the person holding the title of Managing Member.

If to Law, to: Bianca Isaias at bisaias@law.nyc.gov with a copy to Alan Kleinman at akleinma@law.nyc.gov, or in their absence, to the Division Chief, Affirmative Litigation Division.

Representations and Warranties:

99. Law has agreed to the terms of this Agreement based on, among other things, the representations made to Law by Kleiner and its counsel and Law's own factual investigation as set forth in Findings, paragraphs (23)-(43) above. Kleiner represents and warrants that neither it nor its counsel has made any material representations to Law that are inaccurate or misleading. If any material representations by Kleiner or its counsel are later found to be inaccurate or misleading, this Agreement is voidable by Law in its sole discretion.

100. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made to or relied upon by Kleiner in agreeing to this Agreement.

101. Kleiner represents and warrants, through the signatures below, that the terms and conditions of this Agreement are duly approved. Kleiner further represents and warrants that Kleiner by David Kleiner, as the signatory to this Agreement, is a duly authorized officer acting at the direction of the Members of 2723 Barnes Realty LLC, 1701 Eastburn Realty LLC, Drylawson Realty Corp., 2411 Prospect Realty LLC, 2415 Prospect Realty LLC, 2524 Grand Concourse I LLC, East 168 Realty LLC, RRW Realty Corp., 1267 Sheridan LLC, 124 E 176 Assoc. LLC, 337-341 East 146 Realty LLC, 1769 Realty Corp., 1769 Vyse LLC, 1665 Monroe Assoc. LLC, 2078 Arthur LLC, 136 W 170 LLC, 1855 Realty LLC, and 1760-1770 LLC.

General Principles:

102. The provisions of the Injunctive Relief Section shall terminate three years after the Effective Date of the Agreement. The termination of those provisions shall not affect the City's rights to enforce any provision of the Injunctive Relief Section that the City claims was violated between the Effective Date and termination date. The relief described in this Agreement resolves all of the City's claims, or potential claims, against Kleiner related to Local Law 1 prior to the Effective Date. Nothing in this Agreement shall relieve Kleiner of other obligations imposed by any applicable local, state or federal law or regulation or other applicable law.

103. Nothing contained herein shall be construed to limit the remedies available to Law in the event that Kleiner violates the Agreement after its effective date.

104. Nothing in this Stipulation and Order curtails the City's rights and ability to enforce laws, ordinances, and regulations, including by issuing further orders and violations. Defendants are obligated to comply with all laws, ordinances, regulations, administrative orders, and violations.

105. This Agreement may not be amended except by an instrument in writing signed on behalf of the Parties to this Agreement.

106. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of Law, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

107. Kleiner acknowledges that it has entered this Agreement freely and voluntarily and upon due deliberation with the advice of counsel.

108. This Agreement shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

109. The Agreement and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

110. This Agreement may be executed in multiple counterparts by the Parties hereto. All counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Agreement, all of which shall constitute one agreement to be valid as of the effective date of this Agreement. For purposes of this Agreement, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original and original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

111. The effective date of this Agreement shall be May 16, 2022.

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel of the City of New York

By: 

Bianca C. Isaias
Senior Counsel
100 Church Street, 20th Floor
New York, NY 10007
(212) 356-4050
bisaias@law.nyc.gov

David Kleiner, 2723 Barnes Realty LLC, 1701 Eastburn Realty LLC, Drylawson Realty Corp., 2411 Prospect Realty LLC, 2415 Prospect Realty LLC, 2524 Grand Concourse I LLC, East 168 Realty LLC, RRW Realty Corp., 1267 Sheridan LLC, 124 E 176 Assoc. LLC, 337-341 East 146 Realty LLC, 1769 Realty Corp., 1769 Vyse LLC, 1665 Monroe Assoc. LLC, 2078 Arthur LLC, 136 W 170 LLC, 1855 Realty LLC, and 1760-1770 LLC

By: 

David Kleiner, Member

STATE OF NEW YORK)

: ss.:

COUNTY OF KINGS)

On this 09 day of MAY in the year 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared David Kleiner, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within agreement, and acknowledged to me that he executed the within agreement, and that by his signature on the within agreement, executed the within agreement.


NOTARY PUBLIC

ARTHUR IZSAK
Notary Public State of NY
No. 01126340332
Qualified in Kings County
Comm. Expires 04/18/2024

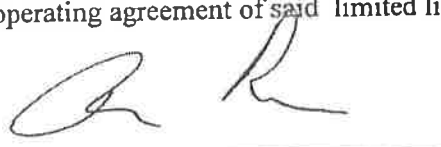
STATE OF NEW YORK)

: ss.:

COUNTY OF KINGS)

On the 09 day of MAY in the year 2022 before me personally came David Kleiner to me known, who, being by me duly sworn, did depose and say that he resides in Brooklyn, New York, that he is a Member of 2723 Barnes Realty LLC, 1701 Eastburn Realty LLC, Drylawson Realty Corp., 2411 Prospect Realty LLC, 2415 Prospect Realty LLC, 2524 Grand Concourse I LLC, East 168 Realty LLC, RRW Realty Corp., 1267 Sheridan LLC, 124 E 176 Assoc. LLC, 337-341 East 146 Realty LLC, 1769 Realty Corp., 1769 Vyse LLC, 1665 Monroe Assoc. LLC, 2078 Arthur LLC, 136 W 170 LLC, 1855 Realty LLC, and 1760-1770 LLC, the limited liability companies described in and which executed the above instrument; and that he signed his name thereto by authority of the operating agreement of said limited liability company.

Sworn to before me this
09 day of MAY, 2022


NOTARY PUBLIC

ARTHUR IZSAK
Notary Public State of NY
No. 01126340332
Qualified in Kings County
Comm. Expires 04/18/2024

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