



GRANT OF ENVIRONMENTAL RESTRICTIONS, RIGHT OF ACCESS, AND EASEMENT

THIS GRANT OF ENVIRONMENTAL RESTRICTIONS, RIGHT OF ACCESS, AND EASEMENT ("Grant") is made this ____ day of _____, 2016, by Maiden Lane LLC, a Vermont limited liability company with its principal place of business located in Burlington, Vermont, its successors and assigns ("Grantor"), for the benefit of the State of Vermont, Agency of Natural Resources, and any successor agencies ("Agency of Natural Resources" or "Grantee").

WITNESSETH:

WHEREAS, Grantor owns certain property measuring ± 0.43 acres located at 237 North Winooski Avenue, in the City of Burlington, in Chittenden County, Vermont (the "Parcel"), as more particularly described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Parcel has been issued SMS Site #2013-4364 by the Agency of Natural Resources as a result of the presence of polycyclic aromatic hydrocarbons (PAHs), total petroleum hydrocarbons (TPH), and metals detected in soils on-site, and Tetrachloroethene (PCE) detected in deep soil gas in excess of the Vermont Vapor Intrusion Screening Values for deep soil gas; and

WHEREAS, Grantor has redeveloped the Parcel so that it is used for a mixture of commercial and residential purposes; and

WHEREAS, the Grantor has cooperated with the Agency of Natural Resources to study and evaluate conditions on the Parcel associated with prior commercial uses, and Grantor has performed certain activities on the Parcel and constructed certain improvements to the Parcel (the "Corrective Actions") with the prior written approval of the Agency of Natural Resources (as indicated by Notice of Approved Corrective Action dated June 20, 2014) and with the expectation that the Agency of Natural Resources would issue a Certificate of Completion for the Parcel upon the completion thereof (as indicated by Brownfields Reuse and Liability Limitation Act Determination of Eligibility dated February 10, 2014 to Hot Eats, Cool Treats, LLC n/k/a Maiden Lane LLC); and

WHEREAS, the Corrective Actions consist of the removal of ± 710 cubic yards of soil from the Parcel following the excavation of a building foundation, elevator pit, utilities, drainage system, and landscaping, and the installation and operation of a passive vapor intrusion mitigation system, which, if necessary, and upon prior notification to the Agency, may be converted to an active sub-slab depressurization system, all as summarized on the plan entitled "Corrective Action Plan", prepared by KAS Environmental Science & Engineering dated May 14, 2014, a copy of which is attached hereto as Exhibit B and made a part hereof, and which also indicates the portion of the Parcel on which the Corrective Actions were performed; and

WHEREAS, it is the purpose of this instrument to convey certain real property rights to the Grantee, being the easements, rights of access, obligations, covenants and use restrictions set forth below, which will run with the Parcel in perpetuity, which are necessary with respect to those portions of the Parcel on which the Corrective Actions were performed to ensure that the Corrective Actions remain in effect and to ensure that future activities on the Parcel do not interfere with the Corrective Actions, or in any way increase the ecological, human, or environmental risks at the Parcel; and

WHEREAS, these environmental restrictions, rights of access and easement are required under the terms of the Certificate of Completion entered into between Grantor and Grantee with respect to the Parcel,

dated _____, 2016, a true and correct copy of which is attached hereto as Exhibit C and made a part hereof; and

WHEREAS, the Grantor agrees that these environmental restrictions, right of access and easement will run with the Parcel in perpetuity.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and in the Certificate of Completion, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged by the Grantor and Grantee, the Grantor, on behalf of itself, by these presents does hereby GIVE, GRANT, BARGAIN, SELL, CONVEY AND CONFIRM unto the Grantee, and its authorized representatives, successors and assigns, and with WARRANTY, COVENANTS forever, the following easements, rights of access, obligations, covenants and use restrictions with respect to the Parcel:

1. Easement Rights of Access.

a. Subject to the terms and conditions of Section 1(b), Grantor grants to Grantee the perpetual right and easement and right of access in, on, upon, to, through, over and under the Parcel for the following purposes:

- i. monitoring and oversight of all aspects of the Corrective Actions;
- ii. verifying any data or information submitted by Grantor or its agents to the Agency of Natural Resources;
- iii. assessing the need for, planning, or implementing additional response actions at or near the Parcel;
- iv. determining whether the Parcel is being used in a manner that is prohibited or restricted by this Grant;
- v. enforcing the rights of Grantees to the Parcel and the covenants of the Grantor set forth herein; and
- vi. all other activities necessary to implement, construct, operate or maintain the Corrective Actions.

b. By its acceptance of this Grant, Grantee acknowledges that the Parcel has been developed with one building that includes both residential dwelling units and commercial space, and agrees that (i) except in the event of an emergency, including the existence of an actual or potential threat to human health or the environment, Grantee shall not exercise its rights hereunder in a manner that will or may be disruptive to the residents or tenants of the Parcel without first providing Grantor with at least ten (10) calendar days prior written notice of the actions that it desires or intends to take, (ii) in exercising its rights hereunder, Grantee will not unreasonably interfere with the rights, use and enjoyment of the Parcel by Grantor and the residents or tenants of the Parcel, (iii) Grantee will repair and restore any damage to the Parcel caused by the exercise of its rights hereunder to the condition that existed prior to Grantee's exercise of its rights hereunder, and (iv) Grantee will indemnify and hold Grantor and the residents or tenants of the Parcel harmless from and against loss or damage from property damage or personal injury to the extent caused directly by the acts of Grantee or its agents in the exercise of Grantee's rights hereunder.

2. Restricted Uses and Activities. By its acceptance of this Grant, Grantee approves the use of the Parcel for the construction and operation of one building that includes both residential dwelling units and commercial space that may be used, without limitation, for restaurant, office or retail uses. Subject to the foregoing approval, Grantor makes the following covenants and agrees to permanent use restrictions and obligations on behalf of Grantor, its successors and assigns, for the benefit of Grantee, its authorized representatives, successors and assigns, which covenants, restrictions and obligations shall run with and bind the Parcel in perpetuity:

- a. Grantor shall comply with all federal, state, and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants on or from the Parcel;
- b. Grantor shall not use the Parcel, conduct any activities on the Parcel, or allow uses or activities to be conducted on the Parcel that would:
 - i. unreasonably interfere with any investigations of the environmental conditions at the Parcel;
 - ii. cause or exacerbate contamination of the Parcel or contamination of off-site properties; or
 - iii. pose or present any risk to the implementation, construction, operation, or maintenance of the Corrective Actions.
- c. Grantor shall not take or authorize any of the following activities or actions on the Parcel without the prior express written consent from the Grantee:
 - i. Construction, substantial improvement, or stabilization of buildings or any work on the foundations of buildings;
 - ii. Plowing, tilling, ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials;
 - iii. Construction activities which will materially change hydrogeologic conditions or will likely cause migration of contaminated groundwater; or
 - iv. Any other use that may impact or adversely affect the implementation, construction, operation, and maintenance of the Corrective Actions.
- d. Grantor shall not block piping or concrete slab penetrations associated with building vapor mitigation systems and shall operate the building vapor mitigation systems in accordance with the requirements set forth in the Certificate of Completion.

3. Enforcement.

- a. The Grantee shall be entitled to enforce the terms of this Grant by resort to specific performance or other legal process, including enforcement in the courts of the State of Vermont.
- b. The Grantor agrees that a violation of this Grant will constitute irreparable harm and entitle Grantee to injunctive relief.

- c. All reasonable costs and expenses of Grantee, including, but not limited to, reasonable attorneys' fees incurred in any enforcement action shall be borne by the Grantor or its successors in interest or assigns if Grantee prevails in any such action.
- d. All remedies available hereunder shall be in addition to any and all remedies at law or in equity, including but not limited to federal and state hazardous waste management statutes. Nothing in this Grant shall be construed to limit or otherwise affect the Agency of Natural Resources' rights of entry and access provided by law or regulation.
- e. Enforcement of the terms of this Grant shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise their rights under this Grant shall not be deemed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this Grant.
- f. Grantee shall be entitled to recover monetary damages for violations of the terms of this Grant, or for any injury to the response actions.
- g. Grantee shall be entitled to recover damages for injury to the public health and welfare or to the environment protected by this Grant.

4. Severability. The provisions of this Grant are severable. If any provision of this Grant is invalid, or if any application of this Grant to any circumstance is invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

5. Provisions to Run With the Parcel in Perpetuity. The environmental restrictions, rights of access, easements, obligations and covenants, granted in this instrument shall run with the Parcel, and any portion thereof, in perpetuity, and shall be binding on the Grantor, the Grantor's agents, successors and assigns, and shall inure to the benefit of the Grantee and its authorized representatives, successors and assigns.

6. Incorporation into Leases. Grantor hereby agrees to incorporate the terms and provisions of this Grant, in full or by reference, into all leases, licenses, occupancy agreements, or any other instrument of transfer by which a right to use the Parcel, or any portion thereof, is conveyed.

7. Termination.

- a. This Grant may be modified, or terminated in whole or in part only upon written agreement between the Grantor, its successors or assigns, and the Grantee, signed by the Grantee and recorded in the land records in the City of Burlington.
- b. The Grantee may terminate this Grant, in whole or in part, at such time or times, if ever, when the Grantee, in its sole reasonable discretion, determines that termination is necessary or that the purposes for which these environmental restrictions, right of access and easement were created have been achieved.

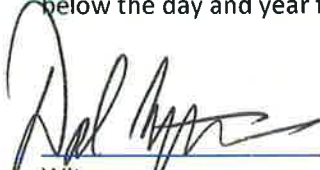
8. Miscellaneous Rights and Obligations.

- a. Nothing contained herein shall give or grant to the public a right to enter upon or to use the Parcel or any portion thereof where no such right existed in the public immediately prior to the execution of this Grant.
- b. If Grantor or its successors and assigns become delinquent in payment of property taxes or assessments such that a lien against the Parcel is created, the Grantee shall have the right to take actions as may be necessary to protect the Grantee's interest in the Parcel and to assure the continued enforceability of the rights granted herein.
- c. Grantor does further covenant and represent that the Grantor is seized of the Parcel in fee simple and warrants that it has good right and title to grant and convey the interests granted herein, and that the Parcel is free and clear of any and all encumbrances except as set forth on Exhibit D attached hereto and made a part hereof, that Grantor shall warrant, defend, and indemnify against all lawful claims whatever except as aforesaid, and that Grantee and its successors and assigns shall have the use of and enjoyment all of the benefits derived from and arising out of this Grant.
- d. Grantee shall be entitled to record this Grant, or to record a notice making reference to the existence of this Grant, in the Land Records for the City of Burlington as may be necessary to satisfy the requirements of the Record Marketable Title Act, 27 V.S.A. Chapter 5, Subchapter 7, including 27 V.S.A. §§ 603 and 605.
- e. The parties hereto recognize and agree that the benefits of the environmental restrictions, easement, and right of access granted and imposed herein are in gross and are assignable by Grantee, subject to notice to Grantor and recording of the assignment in the Land Records for the City of Burlington.

TO HAVE AND TO HOLD the easements, rights of access, obligations, covenants and use restrictions set forth above unto the said Grantee Agency of Natural Resources of Vermont, its authorized representatives, successors and assigns forever.

Signature Page to Follow

IN WITNESS WHEREOF, the Grantor, Maiden Lane LLC, has caused this Grant to be executed and sealed below the day and year first above written.



Witness

Maiden Lane LLC
By: 

Erik J. Hoekstra, Manager

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, Vermont this 17 day of JULY, 2016, personally appeared Erik J. Hoekstra, Manager and Duly Authorized Agent of **Maiden Lane LLC**, to me known, and he acknowledged this instrument by him signed and sealed, to be his free act and deed and the free act and deed of **Maiden Lane LLC**.

Before me, 

Notary Public

Notary Commission issued in Chittenden County
My commission expires: 2/10/19

Exhibit A
Property Description

Being all and the same lands and premises conveyed by Warranty Deed from Kathryn E. Goguen to Maiden Lane LLC dated July 29, 2014 and recorded on July 31, 2014 in Volume 1254 at Page 754 of the Burlington Land Records, and being more particularly described therein as follows:

Being the lands and premises identified as "Kathryn E. Goguen, 0.43 Ac.±" on a boundary survey entitled "Plat of Survey, Kathryn E. Goguen Property, No. 237 North Winooski Ave., Burlington, VT" prepared by Warren A. Robenstien, L.S. dated March 27, 2014 and recorded in Map Slide 504D of the City of Burlington Land Records.

Being a portion of the lands and premises conveyed by Warranty Deed from Nina P. Keller a/k/a Pearl Nina Keller to Nina P. Keller and Kathryn E. Goguen dated February 13, 1984 and recorded in Volume 302 at Page 385 of the Burlington Land Records, being all of the lands and premises conveyed thereby except for the lands and premises conveyed by: (1) Warranty Deed from Nina P. Keller and Kathryn E. Goguen to Alec D. Stephens dated April 8, 1985 and recorded in Volume 315 at Page 636 of the Burlington Land Records, (2) Warranty Deed from Nina P. Keller and Kathryn E. Goguen to David B. Valley and Marion B. Valley dated May 1, 1987 and recorded in Volume 362 at Page 549 of the Burlington Land Records and (3) Quit Claim Deed from Kathryn E. Goguen to Keith Westcott dated July 29, 2014 and recorded contemporaneously with this Warranty Deed in [Volume 1254 at Page 753 of] the City of Burlington Land Records.

Meaning to include and convey all of the lands and premises conveyed by Quit Claim Deed from Allen F. Gear, Trustee to Reconvey, to Nina P. Keller and Kathryn E. Goguen, as joint tenants with rights of survivorship, dated October 29, 1986 and recorded in Volume 345 at Page 453 of the City of Burlington Land Records, together with the lands and premises conveyed by Quit Claim Deed from Keith Westcott to Kathryn E. Goguen dated July 25, 2014 and recorded contemporaneously with this Warranty Deed in [Volume 1254 at Page 752 of] the City of Burlington Land Records.

Reference is made to a Vermont Certificate of Death filed in the Burlington Land Records which indicates that Pearl Nina Keller died on June 2, 2003.

Reference is made to the aforementioned instruments and to the deeds and records referenced therein for a more complete description of the property.

Exhibit B

**Plan entitled "Corrective Action Plan", prepared by KAS Environmental Science & Engineering
dated August 19, 2015.**

Attached

Exhibit C
Certificate of Completion
Attached

Exhibit D

Existing Encumbrances

1. Easement Deed from Nina P. Keller and Kathryn E. Goguen to the City of Burlington, acting by through its Electric Department, dated May 9, 1996 and recorded in Volume 544 at Page 609 of the Burlington Land Records.
2. Terms and conditions of the following Zoning Permits issued by the City of Burlington: Zoning Permit 86-521; Zoning Permit 14-0499CA; Zoning Permit No. 15-0800CA; and Zoning Permit No. 16-0069CA issued July 24, 2015.
3. State of Vermont Land Use (Subdivision) Permit No. EC-4-0894 dated February 15, 1985.
4. State of Vermont Wastewater System and Potable Water Supply Permit #WW-4-4203 dated April 24, 2014 and recorded in Volume 1254 at Page 101 of the City of Burlington Land Records.
5. State of Vermont Land Use Permit 4C1266 dated May 14, 2014 and recorded in Volume 1247 at Page 660 of the City of Burlington Land Records.
6. State of Vermont Land Use Permit 4C1266-1 dated April 17, 2015 and recorded April 20, 2015 in Volume 1273 at Page 642 of the City of Burlington Land Records.
7. 2011 Vermont Residential Building Energy Standards (RBES) Certificate dated June 16, 2015 and recorded in Volume 1279 at Page 279 of the City of Burlington Land Records.

MSK

MURPHY
SULLIVAN
KRONK

ATTORNEY'S REPORT ON RECORD TITLE

RECORD OWNER:

Maiden Lane LLC

PROPERTY DESCRIPTION:

Land and premises known as and numbered 237 North Winooski Ave., Burlington, Vermont and more particularly described on Exhibit A attached hereto and made a part hereof. The Property was formerly numbered 229-233 North Winooski Ave.

The following report on the record title of the Record Owner to the above-described Property is based on an examination of the appropriate records of the City of Burlington, Vermont. This examination was conducted at the request of Maiden Lane LLC, a Vermont limited liability company, in connection with its grant of a first mortgage to TD Bank, N.A. to secure a loan in the amount of \$4,086,000. This report is for the sole use of Maiden Lane LLC, TD Bank, N.A. and Vermont Attorneys Title Insurance Corporation. This report is for the sole use of the aforementioned parties and is not transferable and is not for use in connection with any transaction other than described above. This report is addressed solely to matters affecting record title to the Property. In providing it, we have assumed that at the time of our examination of title, all documents theretofore delivered to the municipal clerk had been correctly and completely indexed in the general indices, that all oral statements made to us by governmental officials with respect to the status and content of public records were correct and complete for the period searched.

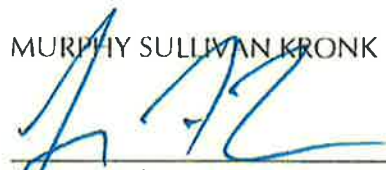
The Property is described in Exhibit A and is subject to those matters disclosed in Exhibits B, C and D, and subject to the limitations set forth in Exhibit E.

This Report refers to and applies only so far back as July 22, 1947, and is effective down to December 9, 2015 at 8:00 a.m.

DATED at Burlington, in the County of Chittenden, and State of Vermont, this 18 day of December, 2015.

MURPHY SULLIVAN KRONK

By:



Jeremy Farkas, Esq.
75 College Street
Burlington, VT 05401
(802) 861-7000

EXHIBIT A

PROPERTY DESCRIPTION, EASEMENTS AND
COVENANTS BENEFITING THE PROPERTY

Being all and the same lands and premises conveyed by Warranty Deed from Kathryn E. Goguen to Maiden Lane LLC dated July 29, 2014 and recorded on July 31, 2014 in Volume 1254 at Page 754 of the Burlington Land Records, and being more particularly described therein as follows:

Being the lands and premises identified as "Kathryn E. Goguen, 0.43 Ac.±" on a boundary survey entitled "Plat of Survey, Kathryn E. Goguen Property, No. 237 North Winooski Ave., Burlington, VT" prepared by Warren A. Robenstien, L.S. dated March 27, 2014 and recorded in Map Slide 504D of the City of Burlington Land Records.

Being a portion of the lands and premises conveyed by Warranty Deed from Nina P. Keller a/k/a Pearl Nina Keller to Nina P. Keller and Kathryn E. Goguen dated February 13, 1984 and recorded in Volume 302 at Page 385 of the Burlington Land Records, being all of the lands and premises conveyed thereby except for the lands and premises conveyed by: (1) Warranty Deed from Nina P. Keller and Kathryn E. Goguen to Alec D. Stephens dated April 8, 1985 and recorded in Volume 315 at Page 636 of the Burlington Land Records, (2) Warranty Deed from Nina P. Keller and Kathryn E. Goguen to David B. Valley and Marion B. Valley dated May 1, 1987 and recorded in Volume 362 at Page 549 of the Burlington Land Records and (3) Quit Claim Deed from Kathryn E. Goguen to Keith Westcott dated July 29, 2014 and recorded contemporaneously with this Warranty Deed in [Volume 1254 at Page 753 of] the City of Burlington Land Records.

Meaning to include and convey all of the lands and premises conveyed by Quit Claim Deed from Allen F. Gear, Trustee to Reconvey, to Nina P. Keller and Kathryn E. Goguen, as joint tenants with rights of survivorship, dated October 29, 1986 and recorded in Volume 345 at Page 453 of the City of Burlington Land Records, together with the lands and premises conveyed by Quit Claim Deed from Keith Westcott to Kathryn E. Goguen dated July 25, 2014 and recorded contemporaneously with this Warranty Deed in [Volume 1254 at Page 752 of] the City of Burlington Land Records.

Reference is made to a Vermont Certificate of Death filed in the Burlington Land Records which indicates that Pearl Nina Keller died on June 2, 2003.

Reference is hereby made to the aforementioned plans and instruments, the records thereof and the references therein in further aid of this description.

EXHIBIT B

EASEMENTS AND COVENANTS
AFFECTING THE PROPERTY

The Property is or may be benefited and/or burdened by the following easements, agreements and rights-of-way:

1. Easement Deed from Nina P. Keller and Kathryn E. Goguen to the City of Burlington, acting by through its Electric Department, dated May 9, 1996 and recorded in Volume 544 at Page 609 of the Burlington Land Records, and being described therein as follows: "This easement and right-of-way is for aerial lines, commencing at BED Pole#34 located in the city right-of-way, on the northerly side of the street commonly known as North Winooski Ave.; contiguous to GRANTOR'S southerly property boundary; thence proceeding in a northwesterly direction for a distance of one hundred and thirty four (134) feet more or less, to where a utility pole, anchor and guy wire are to be placed. Said easement is to be ten (10) feet in width, five (5) feet on each side of the center line of constructed aerial line. The location of the easement is depicted on the sketch attached hereto and made a part hereof."
2. Terms and conditions of a Notice of Approved Corrective Action Plan for the Former Q-Tee's Property, 237 North Winooski Avenue, Burlington, VT – SMS Site #2013-4364 filed by the Vermont Department of Environmental Conservation dated June 20, 2014 and recorded on June 20, 2014 in Volume 1251 at Page 51 of the City of Burlington Land Records.
3. Matters depicted on a survey entitled "Plat of Survey Kathryn E. Goguen Property 0.13 Ac+/-" prepared by Warren A. Robenstein dated March 27, 2014 and recorded July 28, 2014 at Plat 504D of the City of Burlington Land Records.
4. Declaration of Maiden Lane Condominium made by Maiden Lane LLC, dated October 13, 2015 and recorded October 13, 2015 in Volume 1289 at Page 693 of the City of Burlington Land Records, as amended by First Amendment to Declaration of Maiden Lane Condominium dated recorded December 2, 2015 in Volume 1294 at Page 359 of the City of Burlington Land Records.
5. Site Plan entitled, "Condominium Site Plan, Maiden Lane Condominium, 237 North Winooski Ave., Burlington, VT," prepared by Civil Engineering Associates, Inc., dated August 27, 2015 and recorded October 13, 2015 in Map Slide 515B of the City of Burlington Land Records.
6. Plan entitled, "Basement and Second Floor Unit Areas," Sheet No. SK-19, prepared by Scott + Partners Architecture, dated July 10, 2015 and recorded October 13, 2015 in Map Slide 515C of the City of Burlington Land Records.
7. Plan entitled, "Third Floor Unit Areas," Sheet No. SK-20, prepared by Scott + Partners Architecture, dated July 10, 2015 and recorded October 13, 2015 in Map Slide 515D of the City of Burlington Land Records.
8. Plan entitled "Commercial Space Area," Sheet No. SK-22, prepared by Scott + Partners Architecture, dated July 10, 2015 and recorded October 13, 2015 in Map Slide 516A of the City of Burlington Land Records.

9. 2011 Vermont Residential Building Energy Standards (RBES) Certificate dated June 16, 2015 and recorded in Volume 1279 at Page 279 of the City of Burlington Land Records.

EXHIBIT C

ENCUMBRANCES TO BE DISCHARGED/REMARKS

1. MUNICIPAL CHARGES:

- a. Assessed Valuation: \$2,368,500. The Property is identified by the City of Burlington as Parcel No. 044-3-147.000, SPAN No. 114-035-15131. The City of Burlington Assessor indicates that the Property measures ± 0.43 acres.
- b. Taxes: Taxes for the tax year running from July 1, 2015 through June 30, 2016 are \$60,618.64, payable in four equal installments of \$15,154.66 due on August 12, 2015, November 12, 2015, March 12, 2016 and June 12, 2016. All taxes due on or before the date of this report have been paid.
- c. Delinquent Taxes: None.
- d. Water & Sewer Assessments: None.
- e. Electricity liens: None of Record.
- f. Other Municipal Liens or Assessments: None of Record.

2. MORTGAGES AND RELATED DOCUMENTS: The Property is subject to the following undischarged mortgages and security interests of record:

- a. Commercial Mortgage from Maiden Lane LLC to Mascoma Savings Bank, fsb dated July 29, 2014 and recorded on July 31, 2014 in Volume 1254 at Page 756 of the Burlington Land Records.
- b. Collateral Assignment of Rents and Leases from Maiden Lane LLC to Mascoma Savings Bank, fsb dated July 29, 2014 and recorded on July 31, 2014 in Volume 1254 at Page 764 of the Burlington Land Records.
- c. Second Mortgage Deed from Maiden Lane LLC to Vermont Community Loan Fund, Inc. dated July 29, 2014 and recorded on July 31, 2014 in Volume 1254 at Page 769 of the Burlington Land Records.
- d. Subordination of Mortgage from the Vermont Community Loan Fund to Mascoma Savings Bank, fsb dated July 29, 2014 and recorded on July 31, 2014 in Volume 1254 at Page 773 of the Burlington Land Records.
- e. Mortgage Deed from Maiden Lane LLC to Vermont Economic Development Authority dated August 1, 2014 and recorded on August 1, 2014 in Volume 1255 at Page 60 of the Burlington Land Records.
- f. Subordination of Mortgage from Vermont Economic Development Authority to Mascoma Savings Bank, fsb dated August 1, 2014 and recorded on August 19, 2014 in Volume 1256 at Page 477 of the Burlington Land Records.

3. ATTACHMENTS and LIENS: None of record.
4. LEASE LAND RENT: None of record.
5. REMARKS/COMMENTS:
 - a. The addressees should become familiar with the terms and conditions of the documents referenced herein.
 - b. We have assumed that marketable record title to the Property was conveyed by Warranty Deed from Joseph M. Perell and Louis A. Perelman, Trustees u/t/a of Isaac E. Perelman dated January 5, 1939, to M. D. Perelman and Bessie F. Perelman dated June 3, 1947 and recorded on July 22, 1947 in Volume 129 at Page 31 of the Burlington Land Records.

The Property may also include a portion of the lands and premises conveyed by Warranty Deed from Joseph M. Perell and Louis A. Perelman, Trustees u/t/a of Isaac E. Perelman dated January 5, 1939, to M. D. Perelman and Bessie F. Perelman dated August 11, 1947 and recorded on August 19, 1947 in Volume 129 at Page 80 of the Burlington Land Records.

EXHIBIT D

LAND USE MATTERS

Except as specifically set forth below, we have not determined whether all necessary regulatory permits and approvals for the current or proposed use of the Property have been issued, or whether the current or proposed use of the Property is in violation of any issued permits or approvals. Further, we have not determined if there is an absence of a permit or a violation of a permit, whether such absence or violation may be subject to an enforcement action or whether such enforcement action would be subject to the statute of limitations set forth in Act 46, codified in 24 V.S.A. §4454.

Subject to the assumptions, qualifications and explanation of methodology and scope set forth below, including without limitation the disclaimer set forth below, we conclude the following.

1. Current Use of the Property: We understand that this parcel is improved with a building that contains twenty-eight residential units and one commercial/restaurant unit.
2. Municipal Zoning And Subdivision:
 - a. The Property is not subject to any zoning permits, notices of zoning permit, or notices of zoning permit violations of record.
 - b. A Property Activity Summary with respect to the Property dated December 14, 2015 and generated by the City of Burlington's website, indicates that except for Zoning Permit No. 16-0069CA, which authorized the installation of a sculpture at the front of the building, all zoning permits issued for the Property have been either been closed and a final Certificate of Occupancy has been issued, or the permit has been reviewed and no further action is required. Specifically, the Property Activity Summary indicates that the Property is subject to and benefited by Zoning Permit/COA Approval 14-0499CA dated January 21, 2014 issued to "demolish the existing building and construct new building for 28 residential units and 1 commercial unit" and Zoning Permit/COA Approval 15-0800CA dated February 20, 2015, a "Minor amendment to previous permit to add second stair bulkhead for rooftop deck egress."
 - c. The Property Activity Summary additionally indicates that the following building permits remain open: Excavation Permit No. 14-193397 issued September 10, 2014, Excavation Permit No. 15-210250 and Excavation Permit No. 15-211912 issued July 22, 2015.
 - d. The records maintained by the Burlington Planning and Zoning Department indicate that the Property is additionally subject to the terms and conditions of Burlington Zoning Permit 86-521 issued by the Burlington Acting Zoning Administration to "redelineate the boundary line between 237 No. Winooski and 42 Decatur St." with an appeal expiration date of November 15, 1986.
3. State Subdivision & Wastewater System and Potable Water Supply Permits: The Property is

subject to and benefited by the terms and conditions of the following permits:

- a. State of Vermont Land Use (Subdivision) Permit No. EC-4-0894 dated February 15, 1985, which was issued in connection with the Dairy Queen restaurant that was formerly located on the Property.
 - b. State of Vermont Wastewater System and Potable Water Supply Permit #WW4-4203 dated April 24, 2014 and recorded July 25, 2014 in Volume 1254 at Page 101 of the City of Burlington Land Records, approving the removal of a fast food restaurant and the construction of a new building with twenty-eight residential units and a sixty seat restaurant served by municipal water supply services and wastewater disposal services.
4. Act 250: The Property is subject to the terms and conditions of the following:
- a. State of Vermont Land Use Permit 4C1266 dated May 14, 2014 and recorded in Volume 1247 at Page 660 of the City of Burlington Land Records, which authorized the demolition of an existing restaurant and construction of a three-story, mixed use building with 28 residential units and approximately 1,494 s.f. of restaurant space.
 - b. State of Vermont Land Use Permit Amendment 4C1266-1 dated April 17, 2015 and recorded April 20, 2015 in Volume 1273 at Page 642 of the City of Burlington Land Records, approving the construction of a stair bulkhead to the roof to provide a second means of egress from the rooftop terrace.

ASSUMPTIONS, QUALIFICATIONS AND EXPLANATION OF METHODOLOGY AND SCOPE

In *Hunter Broadcasting, Inc. v. City of Burlington*, 164 Vt. 391(1995), the Vermont Supreme Court held that an absence of a state subdivision permit was an encumbrance on title to real estate. Further, the Vermont Supreme Court in *Bianchi v. Lorenz*, 166 Vt. 555 (1997) held that an encumbrance on title exists when it can be determined from the municipal records that a property is in violation of local zoning laws at the time of the conveyance and the violation substantially impairs the purchaser's use and enjoyment of the property.

However, in Act 46 of the Acts of the 1999 Vermont Legislature (the Bianchi II Act) effective May 26, 1999, the majority decision of the Bianchi case was overruled to the limited extent that the absence of a zoning or similar permit or a certificate of occupancy or similar certificate for land development prior to April 27, 1998 would not be an encumbrance on title and would not affect the marketability of title. Further Act 46 provides for a statute of limitations on certain municipal land use violations and if the municipality is prevented from enforcing a violation then such violation will not be an encumbrance on title and will not affect marketability of title. Further, Act 46 provides for a limited amnesty for violations of the State subdivision permit requirements under certain circumstances, which amnesty minimizes the effect of the Hunter decision.

Although Section 8 of Act 46, now codified in 27 V.S.A. § 612, provides that an absence of a municipal land use permit does not create an encumbrance on title or affect the marketability of title, we note the absence or violation of a municipal land use permit may subject the owner of a

property to an enforcement action unless such enforcement action is subject to a statute of limitations as established in Section 7 of Act 46, now codified in 24 V.S.A. § 4454.

Further, we note that it has not been determined whether an encumbrance on title may be created by the absence or violation of permits other than a municipal land use permit or a state subdivision permit.

We note that the violation of municipal land use regulations exposes one to an enforcement action under 24 V.S.A. § 4451, including the loss of the right to use the property and fines of up to \$100 per day. Additionally, violations of most state land use regulations are subject to the Uniform Environmental Law Enforcement provisions codified at 10 V.S.A. chapters 201 and 211. Specifically, 10 V.S.A. § 8001 et seq. and 8221 provides for enforcement of permits relating to Act 250, Air Quality, Stormwater, Water Quality, Public Water Supply, Dams, Stream Alterations, Underground Storage Tanks, Solid Waste, and others. Under these provisions, ANR or the Environmental Court may enjoin use of the property, mandate remedies, and/or impose fines up to \$50,000 per day per violation.

This report does not address whether the absence or violation of any permit creates an encumbrance on title which may affect the use of the Property or may subject the owner to an enforcement action. For your informational purposes only, we note that we found the permits (if any) and reached the conclusions set forth above, which may affect the Property. We further note that to the extent that we reached conclusions as to whether any permits or approvals are or were required for the Property, we relied upon the methodologies described below in reaching those conclusions.

1. STATE SUBDIVISION/WASTEWATER PERMITS

We have reviewed the Land Records for evidence that the Property's potable water supply and/or wastewater system has "failed" since January 1, 2007, as such term is understood with reference to Sections 1-201 (24) and (25) of the Vermont Environmental Protection Rules, effective September 29, 2007 (the "EPR"). Upon discovery of evidence of any such failure, we have made inquiry of and, to the extent available, examined the records indexed in the Land Records, in the office of the applicable Vermont Agency of Natural Resources Regional Engineer, and/or on the website maintained by the Vermont Agency of Natural Resources, Department of Environmental Conservation, Wastewater Management Division (collectively, the "Filing Locations"), to determine whether such permit(s) were in fact issued, and if so, whether there is evidence of compliance with any conditions of such permit(s) that establish ongoing reporting requirements or require that certificates of inspection or other written certifications be filed to establish compliance with the terms of such permit(s).

We have reviewed the Land Records for evidence of whether an action was taken with respect to the Property after January 1, 2007 for which permit is required under Section 1-303 of the EPR. Upon discovery of evidence that one or more of such permits were required, we have made inquiry of and, to the extent available, examined the records indexed in the Filing Locations to determine whether such permit(s) were in fact issued, and if so, whether there is evidence of compliance with any conditions of such permit(s) that establish ongoing reporting requirements or require that certificates of inspection or other written certifications be filed to establish compliance with the terms of such permit(s).

We have reviewed the Land Records for evidence of whether the Property is subject to an existing permit issued under the EPR or under a predecessor regulatory scheme, and if so, whether such permit or permits contain conditions that establish ongoing reporting requirements. Upon discovery of any existing permit applicable to the Property, we have made inquiry of and, to the extent available, examined the records indexed in the Filing Locations, to determine whether there is evidence of compliance since January 1, 2007 with any conditions of such permit(s) that establish ongoing reporting requirements.

2. ACT 250 PERMITS

We have reviewed the land records for evidence that the Property is a part of a "development," as that term is defined in 10 V.S.A. §6001(3) or a "subdivision" as that term is defined in 10 V.S.A. §6001(19), subject to the limitation that we have not reviewed the Land Records of other towns with respect to development activities outside the boundaries of the town or city where the Property is located, and we have not reviewed the Land Records for development activities by any "person," as that term is defined in 10 V.S.A. §6001(14) other than the specific persons whose names appear in the chain of title to the Property after 1968, with respect to the following limited matters:

- a. Whether the Property is now or was required to have a permit pursuant to 10 V.S.A. Chap. 151 (State Land Use and Development Law) ("Act 250");
- b. If an Act 250 permit was required, whether such Act 250 permit was issued;
- c. If an Act 250 permit was issued, whether the terms of the permit required written certifications or other documents to be filed with the district commission; and
- d. Whether there are notices of violations in the District Environmental Office file.

3. STORMWATER

We have reviewed the land records for evidence that a Stormwater Permit pursuant to 10 V.S.A. Ch. 47 and the Stormwater Management Rule was required.

4. MUNICIPAL LAND USE MATTERS

The City of Burlington has adopted zoning and subdivision regulations, and requires Certificates of Occupancy.

5. FLOOD HAZARD MAP

We have not performed any investigation as to whether the Property is located within a flood zone.

DISCLAIMER: In rendering the foregoing reports we are relying upon the matters contained in the land records or the other municipal or state records which we have researched and the documents provided to us, such as purchase and sale agreements. Except to the extent specifically identified above, the undersigned has not undertaken any investigation whatsoever with respect to whether the Property and each component thereof as originally constructed or

subsequently modified, with or without permits, was in compliance with or continues to be in compliance with the provisions of the permits identified above or the applicable laws, rules and regulations, ordinance and orders. The permits identified above include numerous findings of fact, conclusions of law, exhibits, plans and other documents related to and referenced in the permits and the permits contain technical requirements to be satisfied prior to, during and after construction, many of such matters can only be determined by a physical inspection of the Property. The undersigned did not conduct such a physical inspection, nor is such inspection part of the title examiner's obligation. A full review of all those matters requires knowledge and skills in engineering, architecture and other professions outside of the legal profession. The undersigned states no opinion and makes no report or certification with respect to such matters. If you require additional information regarding the permits, or the status of the Property regarding compliance with the permits, you should contact the undersigned or your own counsel to discuss additional procedures and investigations which may be available at extra cost.

EXHIBIT E

EXCEPT TO THE EXTENT OTHERWISE SPECIFICALLY SET FORTH IN THE REPORT ON RECORD TITLE, **NO REPORT IS PROVIDED AS TO:**

1. Any instrument recorded prior or subsequent to the period of examination specified in this Report on Record Title.
2. Rights or claims of parties in possession not shown of record.
3. Mechanics' or Materialmen's, or state, federal, or other liens not recorded.
4. The application or effect of any laws, ordinances, bylaws, rules, regulations or plans of the United States, the State of Vermont or any subdivisions, agencies or departments thereof relating to zoning, land use (including Act 250), building restrictions, or environmental matters, including any matters which would lead to an action, injunction or other enforcement proceeding to abate or remove a hazard to human health or public safety or to abate or remove an undue environmental impact.
5. The status of lease land rents.
6. Whether the property contains or is located within an area designated as a federal flood hazard zone, a wetland, or public waters.
7. Matters which would be disclosed by a physical examination, environmental audit, or an accurate survey of the property, including in particular, but without limitation: public highway easements, easements appurtenant to adjacent lands arising from any subdivision of lands without provision for adequate access thereto, the availability or adequacy of public or private utilities and services; the description or physical location of the boundaries of and improvements on the property, and the acreage of the property; rights, easements, rights of way, encroachments and other rights enjoyed by nature of use, permission or otherwise which rights have not been created by instruments properly recorded in deed records of town clerk.
8. Special assessments or liens, if any, not shown of record.
9. Defects in title resulting from any untrue, inaccurate, misleading or ambiguous statements contained or referred to in any recorded documents or public records, the public records indices, the Vermont Property Transfer Tax Returns, or Act 250 Disclosure Statements.
10. Matters contained in records of the town clerk which are not deed records, including the records relating to the laying out of highways; records of probate, bankruptcy or other courts; the records of births, marriages, divorces or deaths; or the records of the formation, existence, registration or status of any entity which is a party to any document affecting title to the property.
11. The existence of any lien for Federal Estate or Will Taxes for which no record notice is required.

12. Any right of claim, including but not limited to any right of possession or claim for damages relating to the land, whether or not of record, by or on behalf of any Indian, Indian Nation or Indian Tribe or other Aboriginal people.
13. No inquiry or investigation has been conducted, and no certification or representation is made, concerning any activities which could or might result in forfeiture of a right, title and interest in the premises to the United States of America for any violation under the Comprehensive Drug Abuse Prevention Control Act of 1970, as amended, or to any other party pursuant to bankruptcy, insolvency or fraudulent conveyances or similar laws.

IN WITNESS WHEREOF, the undersigned has set its hand and seal this 23 day of March, 2016.

TD Bank, N.A.

By: _____

Name: Robert Maynes

Title: ~~Vice President, Commercial Lending~~

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS

At Burlington this 23 day of March, 2016, Robert Maynes, Vice President, Commercial Lending of TD Bank, N.A. personally appeared, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of TD Bank, N.A.

Before me, Kathy L. Murray

Notary Public

Commission Expires: February 10, 2019



SUBORDINATION OF SECURITY INSTRUMENTS

KNOW ALL PERSONS BY THESE PRESENTS THAT for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned duly authorized agent of **TD Bank, N.A.**, does hereby SUBORDINATE to the operation of (1) the Mortgage and Security Agreement from Maiden Lane LLC to TD Bank, N.A. dated December 30, 2015 and recorded in Volume 1296 at Page 740 of the City of Burlington Land Records and (2) the Assignment of Leases and Rents from Maiden Lane LLC to TD Bank, N.A. dated December 30, 2015 and recorded in Volume 1297 at Page 1 of the City of Burlington Land Records (together, the "Security Instruments") ONLY the rights and easements granted or to be granted by Grant of Environmental Restrictions, Right of Access, and Easement made by Maiden Lane LLC for the benefit of the State of Vermont, Agency of Natural Resources, and any successor agencies (the "Grant").

The subordination of the Security Instruments effected by this instrument is as if the Grant had been executed, delivered and recorded in the City of Burlington Land Records prior to the execution, delivery and recording of the Security Instruments. This instrument shall serve only to subordinate the lien of the Security Instruments to those rights contained in the Grant, but shall not otherwise impair, diminish or alter the provisions and rights held by the undersigned under the Security Instruments, all of which shall remain in full force and effect as security for the payment of all amounts secured by, and the performance of all obligations required under, the Security Instruments. In amplification of, but not by way of limitation, of the foregoing (i) in the event the undersigned, its successors or assigns should foreclose the Security Instruments, it or they will not name the grantees of the Grant, or their respective successors or assigns, as defendants or otherwise seek to terminate their rights under the Grant, and (b) in the event the undersigned, its successors or assigns should obtain title to the real property that is subject to the Security Instruments, whether by legal proceeding or voluntary transfer from the mortgagor, it or they will not disturb the grantees of the Grant, or their respective successors and assigns, in their exercise of their rights under the Grant. The subordination effected by this Subordination of Security Instruments shall be binding on the undersigned, its successors and assigns.

Signature Page to Follow

SUBORDINATION OF MORTGAGE

KNOW ALL PERSONS BY THESE PRESENTS THAT for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned duly authorized agent of **Vermont Economic Development Authority**, does hereby SUBORDINATE to the operation of the Mortgage Deed from Maiden Lane LLC to Vermont Economic Development Authority dated August 1, 2014 and recorded in Volume 1255 at Page 60 of the City of Burlington Land Records (the "Mortgage") ONLY the rights and easements granted or to be granted by Grant of Environmental Restrictions, Right of Access, and Easement made by Maiden Lane LLC for the benefit of the State of Vermont, Agency of Natural Resources, and any successor agencies (the "Grant").

The subordination of the Mortgage effected by this instrument is as if the Grant had been executed, delivered and recorded in the City of Burlington Land Records prior to the execution, delivery and recording of the Mortgage. This instrument shall serve only to subordinate the lien of the Mortgage to those rights contained in the Grant, but shall not otherwise impair, diminish or alter the provisions and rights held by the undersigned under the Mortgage, all of which shall remain in full force and effect as security for the payment of all amounts secured by, and the performance of all obligations required under, the Mortgage. In amplification of, but not by way of limitation, of the foregoing (i) in the event the undersigned, its successors or assigns should foreclose the Mortgage, it or they will not name the grantees of the Grant, or their respective successors or assigns, as defendants or otherwise seek to terminate their rights under the Grant, and (b) in the event the undersigned, its successors or assigns should obtain title to the real property that is subject to the Mortgage, whether by legal proceeding or voluntary transfer from the mortgagor, it or they will not disturb the grantees of the Grant, or their respective successors and assigns, in their exercise of their rights under the Grant. The subordination effected by this Subordination of Mortgage shall be binding on the undersigned, its successors and assigns.

Signature Page to Follow

IN WITNESS WHEREOF, the undersigned has set its hand and seal this th 16 day of March, 2016.

Vermont Economic Development Authority

By: Louise Anair
Louise Anair, Its duly authorized agent

STATE OF VERMONT
COUNTY OF WASHINGTON, SS

At Montpelier this 16th day of March, 2016, Louise Anair, duly authorized agent of Vermont Economic Development Authority personally appeared, and she acknowledged this instrument, by her sealed and subscribed, to be her free act and deed and the free act and deed of Vermont Economic Development Authority.

Before me, Mariah Miller
Notary Public
Commission Expires: February 10, 2019

SUBORDINATION OF MORTGAGE

KNOW ALL PERSONS BY THESE PRESENTS THAT for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned duly authorized agent of **Vermont Community Loan Fund, Inc.**, does hereby SUBORDINATE to the operation of the Second Mortgage Deed from Maiden Lane LLC to Vermont Community Loan Fund, Inc. dated July 29, 2014 and recorded in Volume 1254 at Page 769 of the City of Burlington Land Records (the "Mortgage") ONLY the rights and easements granted or to be granted by Grant of Environmental Restrictions, Right of Access, and Easement made by Maiden Lane LLC for the benefit of the State of Vermont, Agency of Natural Resources, and any successor agencies (the "Grant").

The subordination of the Mortgage effected by this instrument is as if the Grant had been executed, delivered and recorded in the City of Burlington Land Records prior to the execution, delivery and recording of the Mortgage. This instrument shall serve only to subordinate the lien of the Mortgage to those rights contained in the Grant, but shall not otherwise impair, diminish or alter the provisions and rights held by the undersigned under the Mortgage, all of which shall remain in full force and effect as security for the payment of all amounts secured by, and the performance of all obligations required under, the Mortgage. In amplification of, but not by way of limitation, of the foregoing (i) in the event the undersigned, its successors or assigns should foreclose the Mortgage, it or they will not name the grantees of the Grant, or their respective successors or assigns, as defendants or otherwise seek to terminate their rights under the Grant, and (b) in the event the undersigned, its successors or assigns should obtain title to the real property that is subject to the Mortgage, whether by legal proceeding or voluntary transfer from the mortgagor, it or they will not disturb the grantees of the Grant, or their respective successors and assigns, in their exercise of their rights under the Grant. The subordination effected by this Subordination of Mortgage shall be binding on the undersigned, its successors and assigns.

Signature Page to Follow

IN WITNESS WHEREOF, the undersigned has set its hand and seal this 21st day of March, 2016.

Vermont Community Loan Fund, Inc.


By:



Paul Hill, Jr., Its duly authorized agent

STATE OF VERMONT
COUNTY OF WASHINGTON, SS

At Montpelier this 21st day of March, 2016, Paul Hill, Jr., duly authorized agent of Vermont Community Loan Fund, Inc. personally appeared, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of Vermont Community Loan Fund, Inc.

Before me, 
Notary Public

Commission Expires: February 10, 2019

Commissioner's Office

One National Life Drive, Main 2 [phone] 802-828-1556

Montpelier, VT 05620-3520 [fax] 802-828-1541

Certificate of Completion
Applicant – Maiden Lane, LLC
SMS #2013-4364
Former Q-Tee's
237 North Winooski Ave.
Burlington, Vermont

Legal Description of Property Subject to Certificate of Completion	1
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Legal Description of Property Subject to Certificate of Completion

This Certificate of Completion is for the Former Q-Tee's property, SMS Site #2013-4364, located at 237 North Winooski Avenue, Burlington, VT. The property subject to this Certificate of Completion is detailed in the Burlington Land Records Volume #1254 Page #754.

Site History

The site consists of one parcel totaling 0.43 acres in size, and was redeveloped to include a three-story mixed-use residential structure totaling approximately 25,000 ft², including 28 residential units and 1,500 ft² of retail space. Prior to redevelopment, the site included a restaurant that was originally constructed in 1945, with an addition added in 1964; the restaurant ceased operation in late 2013. Historical research indicates that the property was initially developed sometime between 1894 and 1900, and prior to the construction of the restaurant was utilized primarily for residential purposes.

History and Ownership of the Site in the Brownfield Reuse and Environmental Liability Limitation Program

Hot Eats, Cool Treats LLC submitted an application to the Brownfields Reuse and Environmental Liability Limitation Act (BRELLA) Program as a prospective purchaser of the former Q-Tee's property located at 237 North Winooski Avenue, Burlington. The BRELLA application was signed on December 31, 2013. A determination of eligibility was granted on February 10, 2014. On July 25, 2014, the Vermont Department of Environmental Conservation (VT DEC) was notified that Hot Eats, Cool Treats LLC was granted a name change to Maiden Lane LLC. Maiden Lane, LLC purchased the property on July 29, 2014.

Site Investigation Activities

The Vermont Department of Environmental Conservation (VTDEC) has received the following reports regarding site investigation activities:

- *Phase I Environmental Site Assessment Report* – November 12, 2012 – KAS, Inc.
- *Brownfields Phase II Environmental Site Assessment* – September 1, 2013 – KAS, Inc.

- *Corrective Action Plan/Analysis of Brownfields Cleanup Alternatives* – May 14, 2014 – KAS, Inc.
- *Corrective Action Plan Completion Report* – September 1, 2015 – KAS, Inc.
- *Completion Report Addendum* – November 6, 2015 – KAS, Inc.
- *Sub-Slab Depressurization Vacuum Testing* – February 12, 2016 – KAS, Inc.

The VT DEC has reviewed these reports and determined that site investigation and remediation activities are complete. During site investigation activities, polycyclic aromatic hydrocarbons (PAHs), total petroleum hydrocarbons (TPH), and metals were detected in soils on-site. Tetrachloroethene (PCE) was detected in deep soil gas samples collected across the site; two of the samples contained PCE in excess of the Vermont Vapor Intrusion Screening Values for deep soil gas.

Corrective Action and Remedial Activities

Remediation activities intended to address the above mentioned contaminants were completed between August 2014 and July 2015. The following activities were completed in response to the approved Corrective Action Plan:

- Demolition of the existing on-site building.
- Following demolition, excavation and disposal of approximately 947.56 tons of PAH and metal contaminated soil that was unsuitable for reuse on-site as fill.
- Construction of a barrier cap over all areas of the property not covered by the new building footprint. The cap consists of clean soil overlying an indicator fabric, and in some areas, pavement.
- Installation of a passive vapor barrier in the building basement and elevator shaft, as well as the installation of a passive sub-slab depressurization (SSD) system throughout the portions of the building that are below grade. Subsequent ambient air and soil gas sampling of the sub-slab piping system indicated the presence of multiple VOCs, including PCE in excess of the indoor air and shallow soil gas Vapor Intrusion Screening Values.
- Per the Completion Report Addendum, the conversion of the passive SSD system to an active system, and subsequent testing to ensure proper system functioning.

Subsequent to the completion of corrective action activities, the following environmental issues remain on-site:

- PCE concentrations ranging from 210 $\mu\text{g}/\text{m}^3$ in shallow soil gas to 5,800 $\mu\text{g}/\text{m}^3$ in deep soil gas.
- Multiple PAHs in excess of the residential Soil Screening Values (SSVs) in shallow and deep site soils.
- Heavy metals in varying concentrations below the residential SSVs, as well as arsenic ranging in concentrations from 1.9 to 13 mg/kg in shallow and deep soils.
- TPH concentrations ranging from 26 mg/kg to 480 mg/kg in shallow soils, and from 26 mg/kg to 170 mg/kg in deep soils.

Based on the findings in the above referenced reports, the VT DEC has determined that no further investigation, abatement, removal, remediation, or monitoring activities are required to adequately protect human health and the environment. This decision is supported by the following findings:

- The planned redevelopment of the site will not cause, contribute to, worsen, or delay any releases or threatened releases on hazardous materials on the site.

- The releases that are not abated, removed, or remediated do not pose an unacceptable risk to human health and the environment, and applicable remediation standards are met.

The VT DEC may require that these issues be addressed should future site redevelopment activities disturb these remaining areas of concern.

Long Term Operating, Maintenance and Reporting

While in operation, the SSD system will be inspected periodically and monitored on an annual basis to ensure that system performance objectives are met. Maiden Lane, LLC may choose to conduct periodic sub-slab sampling of PCE, to determine if it is possible to switch one or both of the SSD systems from active to passive operation. No switch of any of SSD system from active operation to passive operation may occur without prior notification and consent of the Agency.

The integrity of the existing asphalt surface, or any other future barrier intended to prevent direct contact with remaining impacted soil, will be inspected annually and maintained on an as-needed basis.


Land Use Restriction

A deed restriction, titled *Grant of Environmental Restriction, Right of Access and Easement* from Maiden Lane, LLC to the State of Vermont Agency of Natural Resources (ANR) will be placed on this site and recorded in the City of Burlington Land Records. To ensure compliance with the deed restriction, an annual inspection of the site must be completed and a report submitted to the VT ANR by October 1st of each year. The annual report must include the results of all site monitoring and maintenance activities previously described.

All deed restriction requirements must be complied with as a condition to receiving the benefits of this Certificate of Completion.

Certificate of Completion

The rights, obligations, covenants, and restrictions granted in this Certificate of Completion shall run with the land, and any portion thereof, and shall be binding on the Agency of Natural Resources and successor Agency, and shall inure to the benefit of Maiden Lane, LLC and its authorized representatives, successors and assigns. *All required assessment has been completed at this site and no further active remediation is required, with exception of the requirements in Land Use Section of this document and deed restriction document.* As required by the Program, this Certificate of Completion shall be recorded in the Burlington Land Records for this property. Once recording is complete, the protection from liability provided in 10 V.S.A. § 6641, et. al. is in effect.

Signed:  Date: 5/26/16

Alyssa Schuren, Commissioner
Department of Environmental Conservation

Received for Record at City of Burlington, VT
On 07/27/2016 At 1:43:00 pm



