APPLICATION FOR BOARD ACTION

DCP FORM #00, PAGE 1 of 5
(Revised March 14, 1988)

Planning Board ____ Application # Z-05-19
Zoning Board __X__ Date Filed ______
Received by ______ Hearing Date ______
Final Hearing ______

APPLICATION FOR BOARD HEARING

APPLICATION IS HEREBY MADE FOR:

1. ____ Appeal of Administrative Action Pursuant to Section C.40:55-70a (Attach Form #01)
2. ____ Appeal for Interpretation Pursuant to Section C.40:55D-70b (Attach Form #02)
3. ___X__ Application for Hearing (Attach Form #00)
4. ___X__ Relief from Zoning Requirements Pursuant to Section C.40:55D-70c (Attach Form #03)
5. ___X__ Use Variance Pursuant to Section C.40:55D-70d (Attach Form #04)
6. ____ Conditional Use Authorization Pursuant to Section C.40:55D-67 (Attach Form #05)
7. ____ Approval of Subdivision (Attach Form #06)
8. ____ Final Approval of Major Subdivision (Attach Form #07)
9. ___X__ Preliminary Approval of Site Plan (Attach Form #08)
10. ___X__ Final Approval of Site Plan (Attach Form #09)
11. ____ Direction to Issue a Building Permit Pursuant to Section 602 or 604 of the Elizabeth Development Control Ordinance
12. ___X__ Hearing Application Checklist (Attach Form #18)

NOTE: IF AN APPLICATION FOR DEVELOPMENT HAS BEEN SUBMITTED FOR THIS PROPERTY WITHIN THE LAST TEN YEARS, PLEASE PROVIDE THE FOLLOWING INFORMATION:

<table>
<thead>
<tr>
<th>DATE OF APPLICATION</th>
<th>TYPE OF DEVELOPMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Submitted on 8/9/17 (later withdrawn)</td>
<td>Use variance for parking</td>
</tr>
<tr>
<td>2007</td>
<td>Hotel and associated parking</td>
</tr>
<tr>
<td>Memorialized 5/14/98</td>
<td>Application to permit used car storage for sale at auction</td>
</tr>
<tr>
<td>Memorialized 8/10/95</td>
<td>Conversion of existing building for auto auction use</td>
</tr>
</tbody>
</table>
APPLICATION FOR BOARD ACTION

DCP FORM #00, PAGE 2 of 5
(Revised March 14, 1988)

APPLICATION FOR BOARD HEARING (con’t)

Application # Z-05-19
Date Filed
Received by
Hearing Date
Final Hearing

PROJECT’S GENERAL INFORMATION

PROPERTY:
Address 703 & R 703-727 Spring Street; 729-763 Meadow Street
Owner (s) Spring Street Development Corp.; Narayanswarupdasji LLC
Address (es) 101 Clinton Street, Apt. 5C, Brooklyn, NY 11201
34 Simpson Ave., Edison, NJ 08817
Date of Purchase TBA Property Tax Account # 8-1699.D; 8-1299.A

APPLICANT:
Name Spring Street Development Corp.
Address 101 Clinton Street, Apt. 5C, Brooklyn, NY 11201
Contact Person Justin Dimare
Telephone (212) 372 2083

PROPOSED OWNERSHIP STATUS*:
Proprietorship Partnership Corporation X
Lesseec Contingent Purchaser (Explain)
Other (Explain)

PROJECT’S ATTORNEY:
Name Corey Klein, Esq.
Firm Sills, Cummis & Gross, P.C.
Address One Riverfront Plaza, 1037 Raymond Blvd., Newark, NJ 07102
Telephone (973) 643-6989

PROJECT’S ARCHITECT: N/A

PROJECT’S ENGINEER:
Name Gerry Gesario, PE
Firm Jarmel Kizel Architects and Engineers, Inc.
Address 42 Okner Parkway, Livingston, NJ 07039
New Jersey License # GE0382255
Telephone (973) 994 9669

PROJECT’S LAND SURVEYOR:
Name
Firm
Address
New Jersey License #

*Note: If the applicant is not the proprietor, then the applicant is required to submit a letter signed by the property owner, authorizing the filling and processing of this application (attach Form #13). Corporations and partnerships must attach Form #14. CORPORATIONS MUST BE REPRESENTED BY AN ATTORNEY.
APPLICATION FOR BOARD ACTION  Planning Board Application #  Z-05-19
DCP FORM #00, PAGE 3 of 5  Date Filed Received by
(Revised March 14, 1988)  Zoning Board X Hearing Date Final Hearing

APPLICATION FOR BOARD HEARING (cont’d)

PHYSICAL DEVELOPMENT INTENT

Property Description
Address  703 & R 703-727 Spring Street; 729-763 Meadow Street
Owner (s)  Spring Street Development Corp.

Property Tax Account # 8-1299.D; 8-1299.A  Zoning - MRC and H-C
Lot Area 4.67 acres and 3.64 acres  Tract Area 4.67 acres and 3.64 acres

FRONTAGE:  STREET  LINEAR FEET

<table>
<thead>
<tr>
<th>STREET</th>
<th>LINEAR FEET</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spring Street</td>
<td>36.56</td>
</tr>
<tr>
<td>U.S. Rt 1&amp;9 / Meadow Street</td>
<td>514</td>
</tr>
<tr>
<td>North Avenue</td>
<td>246</td>
</tr>
</tbody>
</table>

STRUCTURES:

<table>
<thead>
<tr>
<th>INTENT*</th>
<th>STORIES</th>
<th>CONSTRUCTION TYPE</th>
<th>USE**</th>
<th>FLOOR AREA (Sq. Ft.)</th>
<th>EFF.</th>
<th># OF BR / UNIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>C</td>
<td>1</td>
<td>MASONRY</td>
<td>***</td>
<td>-14,100</td>
<td>N/A</td>
<td>1  2  3  4  5</td>
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<tr>
<td>C</td>
<td>1</td>
<td>MASONRY</td>
<td>***</td>
<td>-5,600</td>
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<tr>
<td>C</td>
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<td>***</td>
<td>-5,300</td>
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<td>C</td>
<td>1</td>
<td>MASONRY</td>
<td>***</td>
<td>-4,124</td>
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<tr>
<td>C</td>
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<td>***</td>
<td>-3,970</td>
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<td>***</td>
<td>-3,080</td>
<td>N/A</td>
<td>1  2  3  4  5</td>
</tr>
</tbody>
</table>

*Note: Definition of Intent
A: Addition to Existing
B: New Construction
C: Existing to Remain
D: To Be Demolished

**Note: Definition of Use Type
R: Residential
C: Commercial
W: Warehousing
M: Manufacturing
A: Accessory
I: Institutional
O: Office

***NOTE: USE TYPE FOR EACH BUILDING PROVIDED IN ATTACHED STATEMENT OF PRINCIPAL POINTS

BUILDING LOTS  (Please complete if property is to be subdivided):

<table>
<thead>
<tr>
<th>LOT AREA (Sq. Ft.)</th>
<th>LOT FRONTAGE (Sq. Ft.)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
CERTIFICATION FOR EXEMPTION FROM SITE PLAN APPROVAL  (Please complete for projects other than one or two family residence):

YES  NO

1. ____  X  Will the development require conditional use authorization ?

2. ____  X  Will the project involve a use requiring screening ?

3. X  ____  Does the lot width exceed 80 feet and will there be a change of use from one Schedule II Category to another ?

4. ____  X  Will the building construction or reconstruction cover more than 300 square feet ?

5. X  ____  Will the lot have 5 or more parking stalls and will stalls, aisles or driveways be established, altered or eliminated ?

6. X  ____  Will the development involve the removal of soil exceeding 1 foot in depth ?

7. ____  X  Will 5,000 square feet or more of residential open space be provided ?

Note: A Yes response to one or more of the above questions indicates the need for a site plan review or, a certification from the City Engineer, City Planner and Zoning Administrator that improvements meet the criteria for exemption from site plan hearing requirements.
APPLICATION FOR BOARD ACTION
DCP FORM #00, PAGE 5 of 5
(Revised March 14, 1988)

Planning Board
Zoning Board X

APPLICATION FOR BOARD HEARING (con't)

Present Use Category: **W**
Principal Use (s): Auto-related services, such as vehicle sales, servicing and washing
Major Accessory Use (s): N/A

Proposed Use Category: **Z**
Principal Use (s): Logistics center
Major Accessory Use (s): N/A

USE:
Describe the PRESENT USE of the property including both indoor and outdoor activities:
Auto auction sales in accordance with resolution of approval dated 5/14/98

Describe the PROPOSED USE of the property including both indoor and outdoor activities:
Amazon Logistics Center (see attached Argument in Support of Variances for details)

REQUIRED ATTACHMENTS:

<table>
<thead>
<tr>
<th>YES</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>X</td>
</tr>
<tr>
<td>Is a new public street right-of-way proposed? If yes, please attach description.</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>X</td>
</tr>
<tr>
<td>Are off-tract facilities proposed? If yes, please attach description.</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
</tr>
<tr>
<td>Are there any deed restrictions which affect the subject property in effect or contemplated? If yes, please attach description.</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>X</td>
</tr>
<tr>
<td>Is the subject property located in “A” Flood Hazard Area? If yes, please attach copy of necessary permit or waiver.</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>X</td>
</tr>
<tr>
<td>Is the subject property within 500 feet of a tidal water body? If yes, please attach a copy of the necessary permit or waiver.</td>
<td></td>
</tr>
</tbody>
</table>

I hereby depose and say that all the statements contained in these papers submitted herewith are true and correct. I also authorize City Officials and Board members to have physical access to the property and any structures on the property as necessary for the purpose of gathering information relevant to this application.

Debbie Disakias
NOTARY PUBLIC
DATE: 4/11/2019

APPLICANT'S SIGNATURE
DATE: 4/11/2019

STAMP OF NOTARY PUBLIC
DEBBIE DISAKIAS
Commission # 2400353
State of New Jersey
My Commission Expires September 14, 2020
d. Disclosure Information

Is applicant and/or owner of corporation or partnership
And does the application involve variances to construct
A multiple dwelling of 25 or more family dwellings? If
Yes, submit disclosure of all stockholders holding 10%
Or more stock or partners within 10% or greater interest
In the partnership pursuant to N.J.S.A. 40:55D-48.1 et
Seq. (Form #14)

Yes      No

NOTES:

"1" Union County Planning board, Attn: Union County Department of Engineering and Planning,
Union County Administration Building, Elizabeth Plaza, Elizabeth, N.J. 07207

"2" New Jersey Department of Transportation, 1035 Parkway Avenue, PO Box 101, Trenton, N.J.
08625
Request is hereby made pursuant to Section C.40:55D-70d of the New Jersey Municipal Land Use Law to the Board for permission to operate a **parking lot in connection with a logistics use** in the **MRC and H-C Zones**, which is specifically prohibited by the Development Control Ordinance of the City of Elizabeth.

1. Arguments must be submitted in support of the requested "Use Variance". On a separate sheet, describe reasons why the requested use variance should be granted by the Board.

2. **Public Hearing Notification Information**
   Notice shall be given by the applicant at least ten (10) days prior to the date of the hearing to the following parties where applicable. Notice shall be by personal service or certified mail. An affidavit of proof of service demonstrating compliance with this requirement shall be filed with the city agency holding the hearing at least two (2) days prior to the date of the hearing.

   Yes or No
   a) Is the subject property located within two hundred feet (200') of any municipal boundary? If yes, City Clerk of adjacent municipality and County Planning Board shall be notified of hearing by applicant. (Note #1). **X**
   b) Is the subject property adjacent to an existing or proposed county road or adjoining other county land? If yes, County Planning Board shall be notified of hearing by applicant. (Note #1). **X**
   c) Is the subject property adjacent to a state highway? If yes, applicant shall notify the Commissioner of Transportation of the hearing. (Note #2). **X**

   **THE APPLICANT SHALL NOTIFY ALL PROPERTY OWNERS LOCATED IN THE STATE AND WITHIN TWO HUNDRED (200) FEET IN ALL DIRECTIONS OF PROPERTY IN QUESTION.**
Note #1: If the subject property is located within two-hundred (200) feet of a municipal boundary, or if the subject property is adjacent to a county road or land, the applicant should file Form #15 and submit it to:

Union County Planning Board  
Union County Department of Engineering & Planning  
Union County Administrative Building  
Elizabethtown Plaza  
Elizabeth, NJ 07201

Note #2: If the subject property is located adjacent to a state highway or property, the applicant should file Form #15 and submit it to:

New Jersey Department of Transportation  
1035 Parkway Avenue  
P.O. Box 101  
Trenton, NJ 08625
Application is hereby made for final approval of the proposed site plan for the land hereinafter more particularly described.

1. Date of preliminary approval: _______. Date of any extensions granted (attach documentation): N/A. Preliminary site plan approval pursuant to N.J.S.A. 40:55D-49, expire three years from the date of preliminary approval. The applicant may apply to the reviewing Board for extensions for additional periods of at least one (1) year but not to exceed a total extension of two (2) years.

2. a. Drainage Plan Jarmel Kizel Arch. & Eng. 973-994-9669
   b. Paving Plan Jarmel Kizel Arch. & Eng. 973-994-9669
   c. Utility Plan Jarmel Kizel Arch. & Eng. 973-994-9669
   d. Landscaping Plan Jarmel Kizel Arch. & Eng. 973-994-9669
   e. Sign Plan N/A
   f. Lighting Plan Jarmel Kizel Arch. & Eng. 973-994-9669
   g. Elevation Drawing N/A

3. Does the final plan follow exactly the plan granted preliminary approval in regard to development plans, area covered, and other details? (Yes or No) ____. If not, indicate material changes (attach copy if necessary).

4. Have all conditions of preliminary approval been met? (Yes or No) ____. Attach evidence of compliance if not included on plans. If conditions have not been met, specify reasons.

5. Person to whom final approved plan is to be issued:
   Name: Corey Klein, Esq.
   Address: c/o Sills, Cummis & Gross, P.C.
   One Riverfront Plaza, 1037 Raymond Blvd.
   Newark, NJ 07102
   Phone: 973-643-6989

   Check One:
   Applicant will pick up ______
   Documents should be mailed ______
APPLICATION FOR BOARD ACTION
Planning Board _X_
DCP FORM #13, PAGE 1 of 1
(Revised March 14, 1988)
Zoning Board ___

OWNER'S CONSENT FORM

I, NARAYANSWARUPDASJI LLC, AM THE OWNER OF THE PREMISES KNOWN AS 729-763 MEADOW STREET, TAX ACCOUNT NUMBER 8-1299.A FOR WHICH AN APPLICATION OF DEVELOPMENT HAS BEEN SUBMITTED BY SPRING STREET DEVELOPMENT CORP., OWNER _____ / LESSEE _______ / CONTINGENT PURCHASER _______ / OTHER _____ X (EXPLAIN) AN AFFILIATE OF LESSEE WHICH INVOLVES PAVING A DRIVEWAY OVER THE LOT TO CONNECT 703 R 703-727 SPRING STREET WITH NORTH AVENUE AND PERMITTING DELIVERY VEHICLES AND OTHER PERMITEES AND INVITEES TO TRAVERSE THE SITE AND REQUIRES THE GRANTING OF PRELIMINARY AND FINAL SITE PLAN APPROVAL, USE VARIANCE APPROVALS, AND BULK VARIANCE APPROVALS

I HEREBY CERTIFY THAT I HAVE READ THE APPLICATION AND GRANT PERMISSION TO THE APPLICANT TO PROCEED BEFORE THE PROPER BOARD. I FURTHER CERTIFY THAT I AM AWARE THAT THE ENTIRE PROPERTY IS SUBJECT TO THE ACTIONS OF THE REVIEWING BOARD WHICH MAY AFFECT THE PROPERTY RIGHTS OF MYSELF OR MY SUCCESSORS, AND THAT, AS THE OWNER OF SAID PROPERTY, I AM ULTIMATELY RESPONSIBLE FOR COMPLYING WITH ANY AND ALL CONDITIONS IMPOSED BY THE REVIEWING BOARD.

I FURTHER CERTIFY THAT I AM AWARE THAT INFORMATION REGARDING THE APPLICATION AND ANY PROSPECTIVE CONDITIONS OF APPROVAL WILL BE AVAILABLE FOR PUBLIC INSPECTION FOR TEN (10) DAYS PRIOR TO THE HEARING AND THAT THE ACTUAL DECISION CONTAINING THE CONDITIONS IMPOSED WILL BE AVAILABLE FOR PUBLIC INSPECTION NOT LATER THAN TEN (10) DAYS AFTER SAID HEARING. INFORMATION IS AVAILABLE DURING NORMAL BUSINESS HOURS AT THE OFFICE OF THE DIVISION OF ZONING AND LAND USE CONTROL, 50 WINFIELD SCOTT PLAZA, 4th FLOOR, ELIZABETH, NEW JERSEY 07201.

[Signature]

NOTARY PUBLIC

[Signature]

STAMP OF NOTARY PUBLIC

[Stamp]

OWNER'S SIGNATURE

DATE: 9/20/15
APPLICATION FOR BOARD ACTION
DCP FORM #13, PAGE 1 of 1
(Revised March 14, 1988)

OWNER’S CONSENT FORM

I, SPRING STREET DEVELOPMENT CORP., AM THE OWNER OF THE PREMISES KNOWN AS 703 & R 703-727 SPRING STREET, TAX ACCOUNT NUMBER 8-1699.D FOR WHICH AN APPLICATION OF DEVELOPMENT HAS BEEN SUBMITTED BY SPRING STREET DEVELOPMENT CORP., OWNER / LESSEE / CONTINGENT PURCHASER / OTHER (EXPLAIN)

WHICH INVOLVES LEASING OF THE SITE TO AMAZON LOGISTICS FOR USE IN CONNECTION WITH LOGISTICS OPERATIONS, ENVIRONMENTAL CAPPING AND PAVING, IMPROVEMENTS TO THE PARKING AREA, RECONFIGURATION OF PARKING SPACES AND IMPROVEMENTS TO DRAINAGE AND LANDSCAPING AND REQUIRES THE GRANTING OF PRELIMINARY AND FINAL SITE PLAN APPROVAL, USE VARIANCE APPROVALS, AND BULK VARIANCE APPROVALS

I HEREBY CERTIFY THAT I HAVE READ THE APPLICATION AND GRANT PERMISSION TO THE APPLICANT TO PROCEED BEFORE THE PROPER BOARD. I FURTHER CERTIFY THAT I AM AWARE THAT THE ENTIRE PROPERTY IS SUBJECT TO THE ACTIONS OF THE REVIEWING BOARD WHICH MAY AFFECT THE PROPERTY RIGHTS OF MYSELF OR MY SUCCESSORS, AND THAT, AS THE OWNER OF SAID PROPERTY, I AM ULTIMATELY RESPONSIBLE FOR COMPLYING WITH ANY AND ALL CONDITIONS IMPOSED BY THE REVIEWING BOARD.

I FURTHER CERTIFY THAT I AM AWARE THAT INFORMATION REGARDING THE APPLICATION AND ANY PROSPECTIVE CONDITIONS OF APPROVAL WILL BE AVAILABLE FOR PUBLIC INSPECTION FOR TEN (10) DAYS PRIOR TO THE HEARING AND THAT THE ACTUAL DECISION CONTAINING THE CONDITIONS IMPOSED WILL BE AVAILABLE FOR PUBLIC INSPECTION NOT LATER THAN TEN (10) DAYS AFTER SAID HEARING. INFORMATION IS AVAILABLE DURING NORMAL BUSINESS HOURS AT THE OFFICE OF THE DIVISION OF ZONING AND LAND USE CONTROL, 50 WINFIELD SCOTT PLAZA, 4TH FLOOR, ELIZABETH, NEW JERSEY 07201.

NOTARY PUBLIC
DATE: 9/25/19

OWNER’S SIGNATURE
DATE: 9/25/19

STAMP OF
COPPER FLEA, ESC.
ATTORNEY AT LAW
STATE OF NEW JERSEY

6119769 v2
PURSUANT TO THE REQUIREMENTS OF NEW JERSEY STATUTE 40:55D-48.1 ET SEQ., I, Joseph Dimare, President of SPRING STREET DEVELOPMENT CORP., HEREBY CERTIFY THAT THE FOLLOWING IS A TRUE AND COMPLETE LIST OF THE NAMES AND ADDRESSED OF ALL INDIVIDUALS WHO OWN TEN PERCENT (10%) OR MORE STOCK OR OTHER INTEREST IN SPRING STREET DEVELOPMENT CORP., WHICH IS THE OWNER OF THE PROPERTY LOCATED AT 703 & R 703-727 SPRING STREET FOR WHICH AN APPLICATION HAS BEEN FILED WITH THE CITY OF ELIZABETH PLANNING BOARD ___ / ZONING BOARD ___. I FULLY UNDERSTAND THAT FAILURE TO DISCLOSE ANY AND/OR ALL OWNERSHIP PARTIES WITH TEN PERCENT (10%) OR MORE INTEREST IN THE CORPORATION / PARTNERSHIP OR DELIBERATELY MISREPRESENTING ANY FACTS THEREON IS SUFFICIENT GROUNDS FOR DISAPPROVAL OF THE APPLICATION BY THE BOARD AND CAN RESULT IN A FINE AS PROVIDED FOR BY THE STATUTE.

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>INTEREST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estate of Joseph DiMare</td>
<td>255 Mechanic St., Red Bank, NJ</td>
<td>100%</td>
</tr>
</tbody>
</table>

NOTE: If Additional Space is Required, please attach separate sheet
ARGUMENT IN SUPPORT OF VARIANCES

The within Application involves a request for preliminary and final site plan approval, use variance approvals, and bulk variance approvals in connection with the leasing of the site to Amazon Logistics for use in connection with its logistics operation located elsewhere in the City of Elizabeth. The site is located at 703 & R 703-727 Spring Street also identified as Block 8, Lot 1699.D on the tax maps of the City of Elizabeth and property located at 729-763 Meadow Street also identified as Block 8, Lot 1299.A on the tax maps of the City of Elizabeth ("Property"). The site had previously been used as vehicle storage for an auto auction.

Spring Street Development Corp. (hereinafter, the "Applicant") is the owner of 703 & R 703-727 Spring Street and 729-763 Meadow Street is owned by Narayanswarupdasji LLC. The Applicant proposes to lease the Property to Amazon Logistics. Amazon Logistics proposes to use the site in connection with, but as a separate component of, its customer fulfillment operations located elsewhere in the Elizabeth. The Property will operate as follows: delivery drivers will arrive at the site, park their personal vehicles, retrieve keys and a fuel card from a dispatcher, pick up delivery vans and leave the Property. Then, after completing the day’s deliveries, delivery drivers will return the vans to the site, where they will remain parked overnight until they are again retrieved by the drivers for deliveries the next day. All of this activity will occur on 703 & R 703-727 Spring Street and 729-763 Meadow Street will be used merely as a driveway to provide access between 703 & R 703-727 Spring Street and North Avenue.

The Applicant further proposes to install an environmental cap at 703 & R 703-727 Spring Street and pave the site in connection and compliance with a Consent Order Embodying Settlement and Remediation Agreement Amendment with NJDEP, both of which are attached hereto. The
Applicant will further improve the parking area, reconfigure parking spaces and improve drainage and landscaping at the Property.

The Applicant is requesting a use variance pursuant to N.J.S.A. 40:55D-70(d)(1) to permit the use at 703 & R 703-727 Spring Street as described herein. Similarly, a use variance is requested to permit 729-763 Meadow Street to be used solely as a driveway to provide access to 703 & R 703-727 Spring Street from North Avenue.

In addition, to the use variance, the Applicant is seeking the following variances pursuant to N.J.S.A. 40:55D-70(c) for 703 & R 703-727 Spring Street:

1. From Section 17.36, Schedule 1 B to permit lot frontage of 37.56 feet along Spring Street where minimum of 50 feet is required in the MRC Zone;
2. From Section 17.36, Schedule 1 B to permit impervious coverage of 95.9 percent where the maximum impervious coverage permitted in the MRC zone is 75 percent;
3. From Section 17.36.190(c)(7) to permit impervious coverage of 95.9 percent where the maximum impervious coverage permitted in the H-C zone is 80 percent; and
4. From Section 17.36.190(c)(6) to permit the site to continue to have no open space where 20 percent open space is required in the H-C Zone.

The Applicant also is seeking the following variances pursuant to N.J.S.A. 40:55D-70(c) for 729-763 Meadow Street:

5. From 17.36.110(G)(1) to permit a floor area ratio (FAR) of zero percent at 729-763 Meadow Street where a minimum (FAR) of eleven (11) percent is required.
The Applicant further requests the following design waivers from the Ordinance:

1. From Section 17.32.060(c)(3) of the Ordinance, pursuant to N.J.S.A. 40:55D-52(b), to permit parking immediately adjacent to a side or rear property line where a three foot setback from a side or rear property line is required; and

2. From Section 17.32(d) of the Ordinance, pursuant to N.J.S.A. 40:55D-52(b), to permit there to be no ten-foot safety island between the end of a parking bay and a driveway aisle where such a safety island is required.

The existing structures will remain at the site. However, as an alternative to the site plan as submitted to the Board, the Applicant will propose demolishing approximately 32,050 square feet of the existing buildings at 703 & R 703-727 Spring Street, which if pursued, would require a request for an additional variance from 17.36.110(G)(1) pursuant to N.J.S.A. 40:55D-70(c) to permit a floor area ratio (FAR) of 2.03 percent where a minimum (FAR) of eleven (11) percent is required.

The Property is well situated for the proposed use and is typified by unique site characteristics that render the site particularly suited for the proposed use.

The proposed development's impacts to surrounding property is negligible. The use is consistent with the site's industrial history and its location. The site's configuration, including a lack of frontage, as well as environmental constraints, creates a hardship in which bulk variances are necessary for the site to be developed. As such, the granting of variance relief for those being requested is warranted in this development context.
COLE, SCHOTZ, MEISEL, FORMAN & LEONARD  
A PROFESSIONAL CORPORATION  
25 MAIN STREET  
HACKENSACK, NEW JERSEY 07602-0800  
(201) 489-3000  
(201) 489-1536 Telecopier  

ATTORNEYS FOR Plaintiffs, Metal Powder & Chemical Works, Inc., Werner Rosenbaum, Walter Hecht and Anne Hecht  

METAL POWDER & CHEMICAL  
WORKS, INC., a New Jersey corporation; WERNER ROSENBAUM; WALTER HECHT; and ANNE HECHT,  

Plaintiffs,  

v.  

HITCHINGS & CO.; BURNHAM BOILER CORPORATION; BURNHAM CORPORATION; E.C. INDUSTRIES, INC., successor in-interest to ELECTRO-COATINGS, INC. and U.S. METAL COATING CO., INC.; JOSEPH DIMARE d/b/a SPRING STREET PLAZA AND COMPANY; JOHN DOES 1-10; ABC CORPORATIONS 1-20 FEDERAL INSURANCE COMPANY; CHUBBS & SONS, INC.; INSURANCE COMPANY OF NORTH AMERICA; and INSURANCE COMPANY DOES 1-20,  

Defendants.  

and  

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY  
DOCKET NO. UNN-L-4892-94  

Civil Action  

CONSENT ORDER EMBOYING SETTLEMENT
BURNHAM CORPORATION,

Defendant/Third-Party Plaintiff,

v.

ELIZABETH IMPROVEMENT COMPANY, MAJESTIC KNITTING MILLS, INC., MARTIN LANE CO., INC., U.S. METAL COATINGS CO., INC. ELECTRO-COATINGS, INC., E.C. INDUSTRIES, INC., JOHN DOES 11-25, XYZ COMPANIES 1-30,

Third-Party Defendants.

and

OBRON ATLANTIC CORPORATION,

Defendant/Third-Party Plaintiff,

v.

THE CINCINNATI INSURANCE COMPANY,

Third Party Defendant.

THIS MATTER, having been opened to the Court by Cole, Schotz, Meisel, Forman, P.A. (Thomas J. LaConte, Esq. and Daniele Cervino, Esq. appearing), attorneys for plaintiffs, Metal Powder and Chemical Works, Inc., Werner Rosenbaum, Walter Hecht and Ann Hecht; Garrity, Graham, Favetta & Flynn, P.C.
(Anthony J. Marino, Esq. appearing), attorneys for Defendants, Burnham Boiler Corporation and Burnham Corporation; Haggerty, Donohue & Monaghan (Walter E. Monaghan, Esq. appearing), attorneys for Defendant, E.C. Industries, Inc., successor in interest to Electro-Coatings and U.S. Metal Coatings Co., Inc.; St. John & Wayne, LLC (Bruce S. Edington, Esq. appearing), attorneys for Defendant, Joseph DiMare d/b/a Spring Street Plaza & Company and Spring Street Development Corporation, upon application of said parties for the entry of a Consent Order embodying the terms of a settlement placed on the record in open court on September 11, 2000 pursuant to which said parties amicably resolved, with the exception stated herein, all the disputes between and among them, and all counsel having set forth on the record the consent of their respective clients to the terms hereof, and for good cause shown;

IT IS, on this ___ day of ___ , 2000,

ORDERED as follows:

1. Defendant, E.C. Industries, Inc. (hereinafter "E.C.") shall remediate any and all chromium contamination at the 701 Spring Street, Elizabeth, New Jersey (hereinafter the "Spring Street Site") to the standards dictated by the New Jersey Department of

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Environmental Protection (hereinafter "DEP") to the end that a No Further Action Letter is issued by the DEP with respect to chromium contamination. In connection therewith, E.C. shall enter into an Administrative Consent Order ("ACO") (or Remediation Agreement) with the DEP declaring E.C. the Lead Ordered Party with respect to the remediation of chromium contamination and pay all DEP fees associated with chromium contamination.

2. In order to secure the obligations of E.C. with respect to future chromium contamination remediation, certain insurance carriers for E.C. shall create a fund of $550,000 which shall be held in escrow by Arcadis, Geraghty & Miller, environmental consultants to E.C., in a federally-insured, blocked account specifically and exclusively for the benefit of the cleanup of chromium contamination at the Spring Street Site (hereinafter the "Fund").

3. All parties to this action shall cooperate in the creation of an Escrow Agreement for the Fund with terms designed to protect the Fund from the claims of any potential bankruptcy trustee for E.C. or
creditors of E.C. and thereby preserve the Fund for its specific intended purpose of paying for the cost of future chromium remediation at the Site.

4. Withdrawals from the Fund shall be made exclusively by Arcadis, Geraghty & Miller to discharge the cost of chromium contamination pursuant to the terms and conditions of the environmental Escrow Agreement. Upon presentation of proper invoices for chromium remediation, 85% of said invoices shall be paid out of the Fund and the balance of 15% shall be paid by E.C. The obligation of E.C. to contribute 15% of the amount of said invoices shall commence five months after the entry of this Consent Order. Until such time, the full amount of the invoices for chromium contamination remediation shall be paid out of the Fund.

5. In the event chromium remediation costs exhaust the Fund, E.C. shall be responsible to pay any and all additional chromium remediation costs until a No Further Action Letter is issued by the DEP as hereinabove stated.
6. On a quarterly basis, Arcadis, Geraghty & Miller shall provide a report to all counsel for the parties to this Consent Order specifying all invoices received for chromium remediation, disbursements made from the Fund, and a summary of remedial actions taken within the reporting period.

7. Defendant, Burnham Corporation (hereinafter “Burnham”) shall remediate the historic fill on the Spring Street Site by installing an engineering control (also known as a “cap”) pursuant to standards dictated by the DEP to the end that a No Further Action Letter is issued by the DEP with respect to historic fill contamination. In connection with the remediation of historic fill and installation of the cap, Burnham shall enter into an Administrative Consent Order (or Remediation Agreement) with the DEP declaring Burnham the Lead Ordered Party with respect to the remediation of historic fill. The cap shall not consist of a vegetative cover, or interfere with the continued commercial use of the entire site.

8. While Burnham shall install the cap to DEP standards in the approximately 10,000 square foot area in front
of Building No. 6 where chromium plating operations formerly took place and where a chromium plume now exists, Burnham shall not be obligated to pay the cost of installing the cap on that portion of the Site (hereinafter the "chromium area"). The cost of installing the cap on that portion of the site shall be borne 50% by E.C. (up to a maximum contribution of $15,000), the balance by Joseph DiMare and Werner Rosenbaum, Walter Hecht and Anne Hecht on a 50/50 basis. In the event DiMare fails to contribute his share, said share shall be borne by E.C.

9. Burnham shall be responsible for cap monitoring and maintenance obligations and associated reporting to the DEP throughout the Site, including that chromium area as described in paragraph 8 above. With respect to the chromium area, while Burnham shall be responsible for cap monitoring, maintenance and reporting, Burnham shall not be responsible for any treatment or remediation of chromium or the cost thereof, except as guarantor of E.C.'s obligations as provided herein.
10. Burnham shall guarantee the performance of E.C. with respect to future remediation of chromium contamination, should E.C. fail to perform hereunder.

11. Burnham shall pay to Plaintiffs, through their counsel, within thirty days of the entry of this Consent Order, the sum of $50,000.00 to offset the cost of future remediation of volatile organic compounds ("VOCs") as defined herein.

12. Within thirty days of the entry of this Consent Order, E.C. shall pay to Plaintiffs, through their counsel, the sum of $103,000.00 and Burnham shall pay to Plaintiffs, through their counsel, the sum of $300,000.00 as the contribution of those parties to offset past remediation costs at the Site. Of that sum, Plaintiffs shall pay to Defendant, Joseph DiMare (hereinafter "DiMare"), through his counsel, the sum of $111,500.00, of which (a) the sum of $43,000.00 shall be retained by counsel for DiMare to satisfy legal fees incurred by DiMare in this action, (b) the sum of $55,000.00 shall be held in escrow by DiMare's counsel, the firm of St. John & Wayne, as security for the payment of DiMare's share of the cost of
future remediation of VOCs and other contaminants not fully within the aforesaid categories of chromium remediation or historic fill remediation (hereinafter collectively referred to as "VOC remediation") and (c) the balance of $13,500.00 shall be released to DiMare.

13. The cost of future VOC remediation of the Site shall be shared equally by Plaintiffs and DiMare. The $50,000.00 to be paid to Plaintiffs by Burnham for future remediation of VOCs shall be utilized prior to the 50/50 cost sharing arrangement set forth above. After the aforesaid $50,000.00 is exhausted, future VOC remediation costs shall be funded one-half by Plaintiffs and one-half via disbursements out of the DiMare escrow account retained by St. John & Wayne. In the event the DiMare escrow account for VOC remediation is exhausted prior to complete remediation of VOCs, Plaintiffs and DiMare shall pay any remaining VOC remediation costs on a 50/50 basis. In the event future VOC remediation is accomplished and a No Further Action Letter regarding VOC contamination is issued before exhaustion of the
escrow account, any remaining balance shall be released to DiMare.

14. DiMare shall issue a covenant not to sue and dismiss with prejudice Plaintiffs in connection with his claim for diminution of the market value of the Spring Street Site. The diminution of value claim against E.C. and Burnham shall not be affected by and shall survive this settlement. DiMare shall further release Plaintiffs from any claim to any portion of any insurance proceeds obtained by Plaintiffs for remediation costs at the Spring Street Site and any claim to be further compensated in the event the DEP forgives repayment of any portion of the innocent party grant proceeds paid by the DEP on behalf of Plaintiffs.

15. Plaintiffs shall dismiss their claim against DiMare based upon breach of contract related to non-payment of past remediation costs and any other claims.

16. The parties to this Consent Order shall execute a Stipulation of Dismissal with prejudice and without costs as to all claims by and between them with the exception of the diminution of value claim of DiMare.
which shall survive as to E.C. and Burnham only.
This Consent Order and the Stipulation of Dismissal shall be without prejudice to the declaratory judgment action of Plaintiffs against the Defendant insurance carriers which action shall survive the settlement embodied herein.

17. The entry of this Consent Order shall constitute a site release by Plaintiffs and DiMare of E.C. and Burnham.

18. Any party to this Consent Order, upon motion to the Court, may seek the entry of judgment to enforce any and all obligations set forth herein.

19. Consent to the entry of the settlement embodied in this Consent Order represents the compromise of disputed claims and is not an admission of liability or the abandonment of meritorious claims on the part of any party hereto.

20. The obligations set forth herein are binding upon the parties hereto as well as their heirs, successors and assigns.

[Signature]

LAWRENCE WEISS, J.S.C.

A copy of this Order shall be served on all counsel of record within seven (7) days of the date of this Order.
RE: Remediation Agreement Amendment In the Matter of Metal Powder & Chemical Works, Inc.
ISRA Case # E86962

Dear Ms Cervino:

Enclosed are two (2) originals of each of the above referenced Remediation Agreement Amendments already signed by the Department. Please sign both originals and return one (1) original of each Amendment to the Department.

Please note the following terms found in the Remediation Agreement Amendment(s):

1. The effective date of the Remediation Agreement Amendment(s) shall be the date that the last Responsible Person signs the Remediation Agreement Amendment(s) subject to the conditions specified in Paragraph 26 of the Remediation Agreement Amendment(s);

2. One original Remediation Agreement Amendment(s) shall be returned to the Department within five (5) business days of the effective date of the Remediation Agreement Amendment(s); and

3. If the Remediation Agreement Amendment is not signed and returned to the Department within thirty (30) calendar days from the date signed by the Department, the Remediation Agreement Amendment(s) shall become null and void.

Should you have any questions regarding this matter, please contact Comfort Caulker at (609) 633-1437.

Sincerely,

[Signature]

Tom Layke, Supervisor
Bureau of Fund Management, Compliance & Recovery

New Jersey is an Equal Opportunity Employer
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IN THE MATTER OF
THE ELIZABETH SITE
METAL POWDER & CHEMICAL WORKS, INC.
AND JOSEPH DIMARE D/B/A SPRING STREET DEVELOPMENT

ISRA Case #E86962

This Amendment is issued and entered into pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection, (hereinafter the "NJDEP") by N.J.S.A. 13:1D-1 et. seq., and the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et. seq., and duly delegated to the Assistant Director within the Division of Responsible Party Site Remediation pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. The property that is the subject of this Amendment was operated by Metal Powder & Chemical Works, Inc. and owned by Jose DiMare d/b/a Spring Street Development Corporation ("DiMare"). It is located at 701 Spring Street and is designated as Block 16990, Lot 8 on the tax maps of the City of Elizabeth, Union County, New Jersey (hereinafter the "Elizabeth industrial establishment"). The Standard Industrial Classification ("SIC") number which best describes the operations at the Elizabeth industrial establishment is 3399.

2. Metal Powder & Chemical Works, Inc. entered into a Remediation Agreement formerly known as an Administrative Consent Order with NJDEP effective December 16, 1986, (the "MPCW RA"), ISRA Case # 86962. The MPCW RA allowed Metal Powder & Chemical Works, Inc. to complete the transfer of the Elizabeth industrial establishment to Obron Corporation prior to the completion of the ISRA requirements. Operations ceased at the Elizabeth industrial establishment on or June 30, 1987.

3. Walter Hecht, Anne Hecht and Werner Rosenbaum, sole shareholders of Metal Powder & Chemical Works, Inc. (the "Shareholders") entered into an Amendment to the MPCW RA with NJDEP effective October 2, 1987 (the "First Amendment"). The First Amendment allowed the shareholders of Metal Powder & Chemical Works, Inc. to transfer the real property at the Elizabeth industrial establishment to Joseph DiMare prior to completion of all ISRA requirements. The MPCW RA and the First Amendment are hereinafter collectively referred to as the MPCW RA.

4. The purpose of this Amendment is to reflect the remediation of the remaining contamination at the Elizabeth industrial establishment as specified under the litigation settlement in the Superior Court of New Jersey Law Division, Union County Docket No. UNN-L-4892-94 entered on October 10, 2000. In accordance with the litigation settlement, Burnham Corporation ("Burnham") will remediate the contamination associated with the historic fill, EC Industries, Inc. will remediate the contamination associated with chromium and Metal Powder & Chemical Works, Inc. and Joseph DiMare (to be known jointly as "Metal Powder/DiMare") will remediate contamination associated with volatile organics in the ground water at the Elizabeth industrial establishment.

5. Burnham, EC Industries, Inc. and Metal Powder/DiMare have requested that NJDEP prepare an Amendment to the MPCW RA to incorporate the remediation of the remaining contamination at the Elizabeth industrial establishment as specified under the litigation settlement in the Superior Court of New Jersey Law Division, Union County Docket No. UNN-L-4892-94.
AGREEMENT

1. The provisions of this Amendment to the MPCW RA ("Amendment") shall become part of the MPCW RA. The MPCW RA as amended, shall remain in full force and effect.

2. Paragraph 5 of the MPCW RA shall be amended to include the following:

D. Lead Responsible Person for chromium contamination at the Elizabeth industrial establishment:

- Name: EC Industries, Inc.
- Business: A Delaware corporation
- Address: 3220-A Sacramento Street
  Berkeley, CA 94702
- Telephone No. (510) 450-9790

Should EC Industries, Inc. fail to remediate the chromium contamination at the Elizabeth industrial establishment, then Burnham Corporation will be responsible for remediating the chromium contamination at the Elizabeth industrial establishment.

Lead Responsible Person for historic fill at the Elizabeth industrial establishment:

- Name: Burnham Corporation
- Business: A New York corporation
- Address: 1241 Harrisburg Avenue
  P.O. Box 3205
  Lancaster, PA 17604
- Telephone No. (717) 293-5805

Lead Responsible Persons for volatile organics contamination at the Elizabeth industrial establishment:

- Name: Metal Powder & Chemical Works, Inc.
- Business: A New Jersey corporation
- Address: c/o Werner Rosenbaum
  275 Central Park West, #7
  New York, New York 10024
- Telephone No. (212) 787-2236

- Name: Joseph DiMare
- Address: 247 Bay 11 Street
  Brooklyn, New York 11228
- Telephone No. (718) 331-3737

3. Burnham, EC Industries, Inc. and Metal Powder/DiMare agree to remediate the contamination at the Elizabeth industrial establishment in accordance with each of their respective divided responsibilities agreed to in the litigation settlement and to each submit additional information outlined in NJDEP's April 19, 2001 letter as it relates to their particular respective agreed-upon area of responsibility. Additionally, Burnham, EC Industries, Inc. and Metal Powder/DiMare each agree to submit all subsequent information required and in accordance with N.J.A.C. 7:26E as it relates to their respective agreed-upon particular area of responsibility.
4. If at any time that this Amendment is in effect the NJDEP determines that the requirements of N.J.A.C. 7:26E are not being achieved or that additional remediation is required to protect the public health and safety or the environment, Burnham, EC Industries, Inc. and Metal Powder/DiMare each shall conduct such additional remediation as the NJDEP directs insofar as it relates to each of their respective agreed-upon particular areas of responsibility.

5. The NJDEP will consider a request for an extension of time to perform any requirement under this Amendment, provided that any extension request is submitted to the NJDEP fourteen (14) calendar days prior to any applicable deadline to which the extension request refers.

II. Remediation Funding Source

6A. Burnham shall establish and maintain a remediation funding source in a form pursuant to N.J.A.C. 7:26C-7 in the amount of $178,000.00. If Burnham chooses, and the Department approves in writing, an innovative remedial action technology, unrestricted use or limited restricted use remedial action for all or part of the remedial action, Burnham is not required to maintain a remediation funding source for the cost of implementing the innovative remedial action technology, unrestricted use or limited restricted use remedial action.

6B. EC Industries, Inc. shall establish and maintain a remediation funding source in a form pursuant to N.J.A.C. 7:26C-7 in the amount of $550,000.00. If EC Industries, Inc. chooses, and the Department approves in writing, an innovative remedial action technology, unrestricted use or limited restricted use remedial action for all or part of the remedial action, EC Industries, Inc. is not required to maintain a remediation funding source for the cost of implementing the innovative remedial action technology, unrestricted use or limited restricted use remedial action.

7. Upon submission of the remediation funding source and annually thereafter, Burnham and EC Industries, Inc. shall submit a remediation funding source surcharge payment in an amount equal to one percent of the required amount of the remediation funding source. Burnham and EC Industries, Inc. shall submit to the NJDEP a cashier's or certified check payable to the "New Jersey Economic Development Authority" for the full amount of the remediation funding source surcharge. No surcharge is due on the amount of the remediation funding source established as self-guarantee or the amount of the remediation funding source that is established by financial assistance or a grant from the Hazardous Discharge Site Remediation Fund.

8. Whenever the remediation cost increases with regard to the historic fill or chromium contamination, either Burnham or EC Industries, Inc. as appropriate under amended Paragraph 5 of the MPCW RA shall cause the amount of the remediation funding source relating to such remediation cost increase to be increased to an amount at least equal to the new estimate within thirty (30) calendar days.

9. Whenever the remediation cost decreases with regard to the historic fill or chromium contamination, either Burnham or EC Industries, Inc. as appropriate under amended Paragraph 5 of the MPCW RA may file a written request to NJDEP to decrease the amount in the remediation funding source. If NJDEP approves, Burnham or EC Industries, Inc. may decrease the remediation funding source upon receipt of NJDEP's written approval to the person who established the remediation funding source and to the person or institution providing the remediation funding source.

10. NJDEP shall return the remediation funding source established upon Burnham and/or EC Industries, Inc. submission of a substitute remediation funding source or upon NJDEP's issuance of a no further action letter for the Hudson industrial establishment.

11. In the event that NJDEP determines that Burnham and/or EC Industries, Inc. have failed to perform any of its obligations under this Remediation Agreement or ISRA, NJDEP shall notify each nonperforming party in writing of the obligation(s) with which it has not complied and the nonperforming party shall revise and resubmit the required information within a reasonable period of time not to exceed thirty (30) calendar days or longer as authorized by NJDEP from receipt of such notification. If the nonperforming party fail to revise and resubmit the required information within the schedule established above, NJDEP may perform the remediation in place of the
By entering into this Amendment, Burnham, EC Industries, Inc. or Metal Powder/DiMare neither admits to any fact, fault or liability under any statute or regulation concerning the condition of the Site nor waives any rights or defenses with regard to the site except as specifically provided in this Amendment.

Nothing in this Amendment shall be construed to limit, restrict or prohibit any person(s) responsible for conducting the remediation of the Elizabeth industrial establishment from implementing any applicable ISRA compliance options in accordance with N.J.A.C. 7:26B-5 to satisfy the requirements of ISRA.

If at any time that this Amendment is in effect the NJDEP determines that the requirements of N.J.A.C. 7:26E are not being achieved or that additional remediation is required to protect the public health and safety or the environment, Burnham, EC Industries, Inc. and Metal Powder/DiMare each shall conduct such additional remediation as the NJDEP directs to the extent it relates to their respective agreed-upon particular area of responsibility.

By entering into this Amendment, the NJDEP does not waive its right to seek, assess or collect civil or civil administrative penalties or any other legal or equitable relief against Burnham, EC Industries, Inc. and Metal Powder/DiMare for past, present and future violations by Burnham, EC Industries, Inc. and Metal Powder/DiMare of any New Jersey environmental statutes or regulations.

The NJDEP reserves the right to require Burnham, EC Industries, Inc. and Metal Powder/DiMare each to take or arrange for the taking of any and all additional measures relating to their respective agreed-upon particular area of responsibility if the NJDEP determines that such actions are necessary to protect human health or the environment.

Burnham, EC Industries, Inc. and Metal Powder/DiMare admit that they have agreed to comply with the terms of this Amendment. Neither the entry into this Amendment nor the conduct of Burnham, EC Industries, Inc. and Metal Powder/DiMare hereunder, shall be construed as any admission of fact, fault or liability by the Burnham, EC Industries, Inc. and Metal Powder/DiMare under any applicable laws or regulations.

Except as otherwise set forth herein, by the execution of this Amendment, the NJDEP does not release any person, from any liabilities or obligations such person may have pursuant to ISRA and the ISRA regulations, or any other applicable authority, nor does the NJDEP waive any of its rights or remedies pursuant thereto.

This Amendment shall be binding, jointly and severally, on each signatory, its successors, assignees and any trustee in bankruptcy or receiver appointed pursuant to a proceeding in law or equity to the extent it relates to their respective agreed-upon particular area of responsibility. No change in the ownership or corporate status of any signatory or of the industrial establishment or site shall alter signatory's responsibilities under this Amendment.

Burnham, EC Industries, Inc. and Metal Powder/DiMare agree not to contest the authority or jurisdiction of the NJDEP to issue this Amendment; Burnham, EC Industries, Inc. and Metal Powder/DiMare further agree not to contest the terms or conditions of this Amendment except as to interpretation or application of such specific terms and conditions that are being enforced in any action brought by the NJDEP to enforce the provisions of this Amendment.
21. Burnham, EC Industries, Inc. and Metal Powder/DiMare shall provide to the NJDEP written notice of the dissolution of their corporate or partnership identity, the liquidation of the majority of their assets or the closure, termination or transfer of operations at least five (5) calendar days prior to such action. Burnham, EC Industries, Inc. and Metal Powder/DiMare shall also provide written notice to the NJDEP of a filing of a petition for bankruptcy no later than five business days after such filing. These requirements shall be in addition to any other statutory requirements arising from the dissolution of corporate or partnership identity, the liquidation of the majority of assets, or the closure, termination or transfer of operations.

22. For persons executing this Amendment on behalf of a corporate entity, Burnham, EC Industries, Inc. and Metal Powder/DiMare shall submit to the NJDEP, along with the executed original Amendment, documentary evidence in the form of a corporate resolution, that the signatory has the authority to bind Burnham, EC Industries, Inc. and Metal Powder/DiMare to the terms of this Amendment.

23. Burnham, EC Industries, Inc. and Metal Powder/DiMare expressly agree that in the event that Burnham, EC Industries, Inc. and Metal Powder/DiMare fail or refuse to perform any obligation(s) under this Amendment as determined by the NJDEP, the NJDEP shall have the right to exercise against the nonperforming party any option or combination of options available to the NJDEP under this Amendment, or any other statute.

24. Except as otherwise provided, the requirements of this Amendment shall be deemed satisfied upon the receipt by Burnham, EC Industries, Inc. and Metal Powder/DiMare of written notice from the NJDEP that Burnham, EC Industries, Inc. and Metal Powder/DiMare have demonstrated, to the satisfaction of the NJDEP, that Burnham, EC Industries, Inc. and Metal Powder/DiMare have completed the substantive and financial obligations imposed by this Amendment. Such written notice shall not relieve Burnham, EC Industries, Inc. and Metal Powder/DiMare from the obligation to conduct future investigation or remediation activities pursuant to federal, State or local laws for matters not addressed by this Amendment.

25. Compliance with the terms of this Amendment shall not excuse any Person(s) from obtaining and complying with any applicable federal, state or local permits, statutes, regulations and/or orders while carrying out the obligations imposed by ISRA through this Amendment. The execution of this Amendment shall not excuse any Person(s) from compliance with all other applicable environmental permits, statutes, regulations and/or orders and shall not preclude NJDEP from requiring that the Person(s) obtain and comply with any permits, and/or orders issued by NJDEP under the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., and the Spill Compensation and Control Act N.J.S.A. 58:10-23.11 et seq., for the matters covered herein. The terms and conditions of any such permit shall not be preempted by the terms and conditions of this Amendment if the terms and conditions of any such permit are more stringent than the terms and conditions of this Amendment. Should any of the measures to be taken by the Person(s) during the remediation of any ground water and surface water pollution result in a new or modified discharge as defined in the New Jersey Pollutant Discharge Elimination System ("NJPDES") regulations, N.J.A.C. 7:14A-1 et seq., then the Person(s) shall obtain a NJPDES permit or permit modification from NJDEP prior to commencement of said activity.

26. This Amendment shall be effective upon the execution of this Amendment by the NJDEP and Burnham, EC Industries, Inc. and Metal Powder/DiMare. Burnham, EC Industries, Inc. and Metal Powder/DiMare shall return a fully executed Amendment to the NJDEP together with the signature authorization required above within five business days from the effective date.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Date: 9/26/01

By: [Signature]
Ronald T. Corcory, Assistant Director
Responsible Party Cleanup Element
BURNHAM CORPORATION

Date: 10/17/01

By: ROBERT S. BERARD
Print Full Name Signed Above

TREAS
Title

EC INDUSTRIES, INC.

Date: __________________

By: __________________

Print Full Name Signed Above

Title

METAL POWDER & CHEMICAL WORKS, INC.

Date: __________________

By: __________________

Print Full Name Signed Above

Title

JOSEPH DIMARE

Date: __________________

By: __________________

Print Full Name Signed Above
BURNHAM CORPORATION

Date: ____________________

By: _______________________

Print Full Name Signed Above

Title

EC INDUSTRIES, INC.

Date: 12/12/01

By: [Signature]

Print Full Name Signed Above

Title

METAL POWDER & CHEMICAL WORKS, INC.

Date: ____________________

By: _______________________

Print Full Name Signed Above

Title

JOSEPH DIMARE

Date: ____________________

By: _______________________

Print Full Name Signed Above
AGREEMENT

1. The provisions of this Amendment to the MPCW RA ("Amendment") shall become part of the MPCW RA. The MPCW RA as amended, shall remain in full force and effect.

2. Paragraph 5 of the MPCW RA shall be amended to include the following:

D. Lead Responsible Person for chromium contamination at the Elizabeth industrial establishment:

Name: EC Industries, Inc.
Business: A Delaware corporation
Address: 3230 A Sacramento Street, Berkeley, CA 94702
Telephone No. (510) 450-9790

Should EC Industries, Inc. fail to remediate the chromium contamination at the Elizabeth industrial establishment, then Burnham Corporation will be responsible for remediating the chromium contamination at the Elizabeth industrial establishment.

Lead Responsible Person for historic fill at the Elizabeth industrial establishment:

Name: Burnham Corporation
Business: A New York corporation
Address: 1241 Harrisburg Avenue
P.O. Box 3205
Lancaster, PA 17604
Telephone No. (717) 293-5805

Lead Responsible Persons for volatile organics contamination at the Elizabeth industrial establishment:

Name: Joseph DiMare
Address: 247 Bay 11 Street
Brooklyn, New York 11228
Telephone No. (718) 331-3737

3. Burnham, EC Industries, Inc. and Metal Powder/DiMare agree to remediate the contamination at the Elizabeth industrial establishment in accordance with each of their respective divided responsibilities agreed to in the litigation settlement and to each submit additional information outlined in NJDEP's April 19, 2001 letter as it relates to their particular respective agreed-upon area of responsibility. Additionally, Burnham, EC Industries, Inc. and Metal Powder/DiMare each agree to submit all subsequent information required and in accordance with N.J.A.C. 7:26E as it relates to their respective agreed-upon particular area of responsibility.
AN ORDINANCE TO AMEND CHAPTER 40 OF THE CODE OF THE CITY OF ELIZABETH ENTITLED "LAND DEVELOPMENT CONTROL" FOR THE PURPOSE OF REVISING THE DEVELOPMENT APPLICATION COMPLETENESS CHECKLIST BY AMENDING SECTIONS 3 AND 83 AND REPEALING SECTIONS 91 THROUGH 93.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELIZABETH:

WHEREAS, it is intended that the requirements for a complete application be simplified and made more relevant to the review process,

SECTION 1. Chapter 40 Section 83 is hereby amended to read as follows:

§ 40-83. Incomplete applications. An application for development shall be deemed to be complete for the purpose of commencing the period within which Board action is to be taken upon submission unless the Board or the Board's designee determines that it does not fulfill the criteria for a complete application. The Board may subsequently require corrections, additions or revisions to the documents as needed to make an informed decision as to whether the application is entitled to approval.

A. Notification. The Board or the Board's designee shall have notified the applicant in writing of the deficiencies of the submitted application within forty-five (45) days of such application.

B. Waivers. The applicant may request that one or more of the completeness requirements be waived, in which event the Board or its authorized committee shall grant or deny the request within forty-five (45) days.

C. Checklist. All applicants shall be provided with the criteria for a complete application which shall serve as a checklist.

D. Criteria for basic application documents shall be as follows.

(1) All development applications shall include the following documents.

- [X] (a) Completed application forms with original signature of the applicant or an authorized representative and notarized;
- [X] (b) Evidence of payment of required fees;
- [X] (c) Disclosure Statement of all ownership interests pursuant to N.J.S.A. 40:55D-48, et seq.;
- [X] (d) A development proposal containing the minimum elements as required and specified herein (The approving authority may, at its discretion, require building elevation drawings with specifications of facade materials);
(2) In addition, Final Major Subdivision and Site Plan applications shall include the following documents.

(a) A statement as to the fulfillment of all conditions imposed by preliminary approval to which is appended a certified copy of the approving resolution;
(b) Completed engineering plans;
(c) A statement as to the installation of required improvements indicating whether the improvements have been installed, or that guarantees have been posted, or that guarantees are to be a condition of approval to which is appended the certifications of the Municipal Engineer or Municipal Clerk as appropriate;
(d) Certification showing all current tax/water rents paid.

(3) In addition, applications for other than Final Subdivision and Final Site Plan shall include the following additional documents.

(a) A statement as to the existence and nature of protective covenants and deed restrictions;
(b) A Tax Map sheet(s) showing the property in question and all properties within 400 feet;
(c) A current survey showing all property lines with dimensions and bearings and depicting existing conditions;

E. Development proposals shall contain the following minimum elements.

(1) Variances proposals shall include the following elements.
(a) Building Layout Plan; and
(b) other plans and schedules as required to demonstrate the nature of the relief sought.
(c) Zoning Schedule;

(2) Minor Subdivision proposals shall include the following elements.
(a) Zoning Schedule; and
(b) Utilities Plan;

(3) Preliminary Major Subdivision proposals shall include the following elements.
(a) Zoning Schedule;
(b) Proposed property lines with dimensions and bearings;
(c) Building Layout Plan;
(d) Drainage Schedule;
(e) Drainage Plan;
(f) Utilities Plan; and
(g) for areas within the public rights-of-way:
   [1] Pavement Plan;
   [2] Lighting Schedule;
   [3] Landscape Schedule;
(4) Preliminary Site Plan proposals shall include the following elements.

- Zoning Schedule;
- Building Layout Plan;
- Drainage Schedule;
- Drainage Plan;
- Utilities Plan;
- Pavement Striping Schedule;
- Pavement Plan;
- Lighting Schedule;
- Landscape Schedule;
- Landscape Plan.

F. Proposal elements shall be prepared in accord with the format and content specifications for plans and schedules as follows. Schedules shall clearly note items which are variances from zoning requirements or exceptions from design standards.

(1) Sheets for any drawing subject to site plan or subdivision approval shall conform to the following specifications:

- All engineering drawings shall have individual sheets folded to fit within an 8-1/2 × 11 inch area.
- All preliminary site plans, subdivision sketch plats and plot plans shall be submitted on standard 8-1/2 × 11 inch sheets.
- Maps to be recorded with the county shall be on a sheet size meeting one of four standards:
  - 11) eight and one-half by thirteen (8-1/2 × 13) inches;
  - 12) thirty by forty-two (30 × 42) inches;
  - 13) twenty-four by thirty-six (24 × 36) inches;
  - 14) or fifteen by twenty-one (15 × 21) inches;
- A title block shall contain:
  - title of proposal;
  - Name and address of applicant;
  - Name, address and seal of architect/engineer/surveyor;
  - Date prepared with revision dates and descriptions;
- Orientation shall be provided by
  - graphic scale,
  - numeric scale;
  - north arrow; and
  - key map with reference to all streets within three thousand (3,000) feet at a scale of not more than 2,500 feet to the inch to be provided on at least one sheet of any set;

(2) Zoning Schedules shall be titled and arranged in columns describing limits, proposed conditions, and compliance/variance status for:

- Building Height;
- Front street setback;
(c) Rear street setback;
(d) Property line setback;
(e) Building coverage;
(f) Parking;
(g) Loading;
(h) any other code requirements;

(3) Building Layout Plan drawings shall be titled and keyed to a legend depicting:
(a) Building lines with setback dimensions and heights;
(b) Building projection lines with dimensions, heights or clearances;
(c) New construction;
(d) Reconstruction;
(e) Demolition;

(4) Drainage Schedules shall be titled and arranged in columns describing:
(a) Runoff coefficient and limit;
(b) design storm frequency;

(5) Drainage Plan drawings shall be titled and keyed to a legend depicting:
(a) Drainage areas with discharge points and flow direction;
(b) Open and piped interconnections between areas;
(c) Location and height of terraced and bermed areas;
(d) Depth of sheet flow in pedestrian areas for design storm shown in one inch contours;
(e) Utilities Plan Drawings shall be titled and keyed to a legend depicting:
(f) Water service, hydrants and meters;
(g) Sanitary sewer service;
(h) Gas service and meters;
(i) Electric service and transformers;
(j) Heating fuel tanks;

(6) Pavement Striping Schedules shall be titled and arranged in columns describing:
(a) Parking stall category (resident, employee, customer-short term, customer-long term, wheelchair accessible)
(b) Parking stall width;
(c) Stall angle;
(d) Stall depth and overhang depth;
(e) Pedestrian aisle width along side of stalls;
(f) Driveway aisle width;

(7) Pavement Plan drawings for vehicular areas shall be titled and keyed to a legend depicting:
(a) Curbing with type of material;
(b) Driveway aprons and driveways within public rights-of-way with pavement type;
(c) Parking stalls, aisles and driveways outside public rights-of-way with pavement type;
(d) Sight distance triangle minimums for intersections of vehicular drives with streets, parking aisles, walls, building corners and walks.

(B) Lighting Schedules shall be titled and arranged in columns describing:
(a) Functional area (parking/pedestrian area, driveway/aisle intersections, pedestrian hazards, building entry, loading dock);
(b) Level (peak, off-hour, late-night security);
(c) Minimum point illumination;
(d) Maximum uniformity ratio of average illumination to minimum;
(e) Maximum uniformity ratio of maximum illumination to minimum;
(f) Fixture type (Flood, spot, cut-off [minimum 81 degree]);
(g) Height limit for fixtures;

(9) Landscape Schedules shall be titled and arranged in columns describing:
(a) Planting type (deciduous, coniferous, tree, shrub, groundcover)
(b) Minimum planting size;
(c) Planting condition (bare root, balled, canned)

(10) Landscape Plan drawings shall be titled and keyed to a legend depicting:
(a) Building entrances and exits;
(b) Walks, patios and other paved surfaces showing material type;
(c) Outdoor storage enclosures for refuse and recyclables;
(d) Exterior utilitarian appurtenances which require visual screening (air conditioners, transformers, meters, etc.);
(e) Fences and walls with height and function (screening, security, or delineative and classified as decorative or utilitarian);
(f) Other landscape structures (patios, walks; pools)
(g) Existing trees over eighteen (18) inches' caliper;
(h) Shade tree canopy drip line at maturity;
(i) Screen planting areas with height at maturity;
(j) Ground cover planting areas;
(k) Decorative planting beds;

F. Engineering Plan drawings shall contain the following
(1) For any street improvements: plans, cross sections and center-line profile;
(2) For any public utilities: plans and profiles with any easements delineated;
(3) For any pavement: profiles and material specifications;
(4) For any drainage facilities: contours or spot elevations, profiles and specifications including pipe sizes, invert elevations and capacity,
(5) For any exterior lighting: location, mounting, fixture type and specifications for wattage and isofootcandle pattern;

(6) For any walls or fences: profiles and specifications;

(7) For any planting: expanded planting schedule, including quantity, common and botanical name, height or caliper at time of planting, root condition, seasonal restrictions on installation; specifications for installation including profiles; and mixture for seeding.

SECTION 2. Chapter 40 Section 3 is hereby amended to delete the definition "Complete Application".

SECTION 3. Chapter 40 Sections 40-91 through 40-93 are hereby repealed in their entirety.

SECTION 4. Applications filed prior the effective date of this ordinance and not found to be incomplete prior to action by the Planning Board, Zoning Board or City Council shall not be governed by the provisions of this ordinance.

SECTION 5. All ordinances or parts of ordinances inconsistent with the provisions of this ordinance shall be and are hereby, to the extent of such inconsistency, repealed.

SECTION 6. If any portion or clause of this ordinance is declared invalid for any reason whatsoever, same shall not affect the validity or constitutionality of any other part or portion of this ordinance.

SECTION 7. The effective date of this ordinance shall be twenty (20) days after its final passage by City Council and approval by the Mayor and publication and filing with the Union County Planning Board and in the manner provided by law.