

THE LIMITED, INC.

**THREE LIMITED PARKWAY
COLUMBUS, OHIO 43230
TEL 614 415 7000**

September 18, 2002

VIA OVERNIGHT MAIL

Mr. Rob Solano
Lerner New York, Inc.
460 West 33rd Street
5th Floor
New York, NY 10001

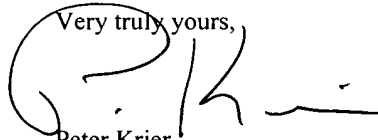
**Re: Lerner Store #7
83 Nassau Street
New York, New York 10038**

Dear Rob:

Please find attached a letter from the City of New York Department of Environmental Protection suggesting that the above referenced store had been inspected March 2, 2002 and debris from the collapse of the World Trade Center Towers was observed on the exterior surfaces of the building. The letter suggest that another inspection is scheduled for the near future, and if the store fails to pass that inspection and fails to clean up the debris, Lerner may be liable for fines of up to \$10,000.00 per day.

As we had discussed some months before, the City of New York is offering to clean the exterior of the building at no charge pursuant to the license agreement attached hereto. It would be prudent to take the time and effort to confirm that 83 Nassau Street is presently in a condition that would pass inspection. If not, I would highly recommend accepting the City of New York's offer.

If you have any questions or comments please do not hesitate to contact me at (614) 415-7320.

Very truly yours,

Peter Krier
Real Estate Attorney

PK:js

enclosures

cc: Chuck Woodworth
Jim Lee



**Department of
Environmental
Protection**

59-17 Junction Boulevard
Flushing, New York
11373-5108

**Christopher O. Ward
Commissioner**

**Robert C. Avaltroni
Deputy Commissioner**

**Bureau of
Environmental
Compliance**

Tel (718) 595-4418
Fax (718) 595-4422

September 3, 2002

TO: New York and Co.
83 Nassau Street
New York, NY 10038

RE: 83 NASSAU STREET

FINAL NOTICE

Dear New York and Co.:

I am writing with regard to 83 NASSAU STREET which was inspected by DEP on 03/02/02. During this inspection, debris from the collapse of the World Trade Center towers was observed on the exterior surfaces of the building.

You have been previously contacted with regard to participating in DEP's Lower Manhattan Building Cleaning Program. Under this program, contractors retained by DEP will clean all exterior building surfaces affected by World Trade Center debris at no cost to the building owner.

The Building Cleaning Program is now drawing to a close, and we have yet to receive a response from you regarding your participation. If you do not participate in the Program, the building will be scheduled for another DEP inspection in the near future. If that inspection shows that there is still visible debris from the World Trade Center on the exterior of the building, samples will be collected. If laboratory analysis of these samples shows that the debris is asbestos-containing material, you will then be issued a Commissioner's Order directing you to retain a contractor to clean the exterior of the building. Such cleaning would be at your expense, and failure to comply with the Commissioner's Order could result in the issuance of notices of violation carrying penalties of up to \$10,000 per day.

You are strongly urged to take advantage of the Building Cleaning Program. A blank License Agreement has been attached for your convenience. Please fill in the appropriate information and sign and return the form as soon as possible.

If you have any questions, please call 718-595-3682 during office hours, or the 24-hour Help Center at 718-DEP-HELP. Your cooperation is greatly appreciated.

Sincerely,

R. Radhakrishnan, P.E.
Director
Asbestos Control Program



(www.nyc.gov/dep)

(718) DEP-HELP

LICENSE AGREEMENT

This License Agreement made this 11 day of Oct 2002 by and between the CITY OF NEW YORK (hereinafter called "the City"/Licensee), acting by and through the Department of Environmental Protection of the City of New York (hereinafter called "DEP"), with an office at 59-17 Junction Boulevard, Corona, New York 11368-5107 and Lerner New York Inc ("Landowner/Licensor") the owner of the premises at 83 NASSAU STREET (the "Premises").

WHEREAS, the facades, roofs and setbacks ("exterior areas") of many structures in close proximity to the site of the former World Trade Center have been found to contain debris, refuse and other deposits ("the foreign material") of unknown origin;

WHEREAS, the owners of said structures are desirous of having the foreign material removed;

WHEREAS, the City believes that it is in the interest of the public to undertake a clean up of these exterior areas;

WHEREAS, the City's willingness to undertake such a cleanup should not in any way be construed as an acknowledgment or admission that the City is in any way responsible for any condition, environmental or otherwise, that may exist in or on the exterior areas or that the foreign material is a risk to the public health or safety;

NOW THEREFORE, it is hereby agreed by and between the parties to this agreement, for and in consideration of One Dollar and other good and valuable consideration, the receipt of which is hereby acknowledged,

1. **Permission to Perform Cleaning Work.** Subject to the terms and conditions hereof, Licensor hereby grants permission to Licensee and its authorized contractor(s) to perform the cleaning work on the exterior areas of the structure(s) located on the Premises, as described in the Scope of Work attached hereto as Exhibit A and made a part hereof (the "Cleaning Work").

2. **Grant of Access.** Subject to the terms and conditions hereof, Licensee and its agents, contractors and employees shall have the right, at all times while this License Agreement is in effect, to enter in and on the Premises, and to cross the Premises, with personnel, material and equipment, for the purpose of performing the Cleaning Work. It is expressly understood that the right granted under this Section 2 includes:

(a) the right to access all portions of the Premises deemed necessary by Licensee or its contractor(s) in order to properly perform the Cleaning Work, including (without limitation) roofs, parapets, window ledges, and other building exterior surfaces; and

cleaning of debris accumulations from the exterior surfaces of the structure(s) located on the Premises. Such sources shall include, but are not limited to, the Small Business Administration, private insurance, or any other local, state or federal assistance program. Licensor shall make claim for any applicable insurance coverage for these premises and shall report to Licensee any insurance settlements or other source of funding for the Cleaning Work that has been performed at Licensee's expense.

5. **Termination.** This license shall be terminable by the Licensor or Licensee on ten days written notice to the address set forth below by fax or certified mail. In the event of a default by either party, the license may be terminated immediately, without any prior notice.

6. **Waiver of Claims.** Licensor agrees that no claims or cause of action for damages shall accrue by reason of revocation or termination of this License.

7. **Term.** This license shall commence as of the latest date appearing at the end of the signature page and remain effect for a period of ninety (90) days unless or until terminated or revoked as hereinabove provided.

8. **Cleaning Work Not An Admission of Liability.** It is expressly understood and agreed by Licensor and Licensee that Licensee's performance of the Cleaning Work hereunder is not, and shall not be construed as,

(I) an admission or agreement by the Licensee that it is liable for the deposit of any dust, debris or other material in or on the Premises as a result of the events of September 11, 2001, at the World Trade Center complex, or the subsequent debris removal activity related thereto; or

(II) an admission or agreement by the Licensee that it is liable for any condition, environmental or otherwise, that may exist in or on the Premises as of the date hereof.

9. **Landmarks.** If the Premises are a designated landmark, Landowner gives its permission for DEP to file the "Application Form for Work On Designated Properties" with the New York City Landmarks Preservation Commission on Landowner's behalf.

10. **Notices:** Notices and correspondence regarding this License shall be directed by Certified Mail, Return Receipt Requested to the Licensor, at the following address:

and notices to the Licensee shall be addressed to R. Radhakrishnan, P.E., NYCDEP-ACP, 59-17 Junction Boulevard, 8th Floor, Corona, NY 11368-5643, with a copy to General Counsel, NYCDEP, 59-17 Junction Boulevard, 19th floor, Corona, New York 11368-5643.

IN WITNESS WHEREOF, the parties have caused this License Agreement to be executed and acknowledged on the day and year which first appears above.

LERNER NEW YORK
 Licensor
 By: [Signature]
 Dated: 10-7-2002

DEPUTY COMMISSIONER DEP
 Licensee
 By: [Signature]
 Dated: 10-11-02

Approved as to Form

 Acting Corporation Counsel

DATED: _____

STATE OF NEW YORK)
COUNTY OF *New York*)s.:

On this *7th* day of *October* 2002, before me personally came the individual described in and who executed the foregoing instrument and acknowledged to me that he/she resides at *450 W. 33rd St. NY, NY* and that he/she executed the foregoing instrument as the owner/licensor of the property.

Eve R. Abarca

NOTARY PUBLIC
STATE OF NEW YORK

EVE R. ABARCA
Notary Public, State of New York
No. 41-4988110
Qualified in Nassau County
Commission Expires November 4, 20*02*

STATE OF NEW YORK)
)s.:
COUNTY OF QUEENS)

On this 11 day of October 2002, before me personally came Robert C. Avaltroni and acknowledged to me that he/~~she~~ is the ~~First~~ Deputy Commissioner of the New York City Department of Environmental Protection, and that he/~~she~~ authorized to executed the foregoing instrument and that he/she did so on behalf of the City of New York pursuant to authority of law duly delegated.

Russell Pecunias
NOTARY PUBLIC
STATE OF NEW YORK

Russell Pecunias
Commissioner of Deeds,
New York City
4-6227
Term Expires December 13, 2003

EXHIBIT B

**SUPPLY and SERVICE CONTRACT
GENERAL CONDITIONS
SCHEDULE A**

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<u>Reference</u>	<u>Item</u>	<u>Requirements</u>
Section 28 of Information for Bidders	Bid Deposit or Bid Bond	<u>N/AP</u> % of Bid <u>N/AP</u> % of Bid
Article 4 of Agreement	Period of Performance	<u>120</u> Consecutive Calendar Days
Article 5b of Agreement	Partial Payment	<u>X</u> will be allowed _____ will not be allowed
Article 5.1 of Agreement	Performance Bond Payment Bond (Completion/Labor & Material)	<u>N/AP</u> % of Bid <u>N/AP</u> % of Bid
Article 6.3 of Agreement	Liquidated Damages	\$ <u>N/A</u>
Article 6.4 of Agreement	Maintenance and Guaranty Security	<u>N/A</u> % of Contract Price
Article 6.4 of Agreement	Guaranty Period	<u>N/A</u> year(s)
Article 6.5 of Agreement	Retained Percentage	<u>10</u> % of Voucher
Article 12.8 of Agreement	Subcontracting	Not to exceed <u>45</u> % of Bid

.....CONTINUED ON NEXT PAGE.

DEP Form SCHED A SUPPLY & SERVICE- March 28, 2002 (PIN#835WTCB0054)

SUPPLY and SERVICE CONTRACT
GENERAL CONDITIONS
SCHEDULE A

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Insurance indicated by (X) will be required under this contract. Insurance certificates, policies, and endorsements must be sent to the New York City Department of Environmental Protection, Agency Chief Contracting Officer, ATTN: Contract Management Office (INSURANCE), 17th Floor, 59-17 Junction Boulevard, Corona, New York 11368.

Article 6 of Agreement	Insurance
(x) Workers Compensation: Section II.B (x) Employers Liability: Section II.D () Jones Act:* Section II.E () U.S. Harbor Workers & Longshoremen's Compensation Act:* Section II.G * As respects use of tugs, barges or other marine operations under this contract.	Statutory per New York State Law without regard to jurisdiction <u>\$ 1,000,000</u> each accident
(X) Commercial General Liability CG 00 01 (ed.10/93) or equivalent. Combined Single Limit-Bodily Injury and Property Damage: Section II.A	<u>\$ 5,000,000</u> per occurrence: <u>\$ 5,000,000</u> products/completed operations aggregate <u>\$ 5,000,000</u> personal injury <u>\$ 50,000,000</u> general aggregate <u>\$ 25,000</u> per claim maximum deductible, except as approved by the CONTRACT MANAGEMENT OFFICE
X Others to be added as additional insureds: Additional insured status using ISO endorsement CG 20 10. Section II.A.3	Named Additional Insureds <u>Owners of Buildings on Which Work Is To Be Done</u> _____ _____ _____
(x) Business Auto Coverage: CA 00 01 (ed. 08/92) or equivalent Combined Single Limit - Bodily Injury and Property Damage The following coverage must be provided: () Business Auto Coverage Form: Section II.I	<u>\$ 1,000,000</u> Each Occurrence (x) Owned (x) Hired (x) Non-Owned

DEF Form SCHED A SUPPLY & SERVICE: March 28, 2002 (PIN#526WTCROOF1)

**SUPPLY and SERVICE CONTRACT
GENERAL CONDITIONS
SCHEDULE A**

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() Marine Protection and Indemnity, SP-23 or equivalent: * # _____ Section _____ II.F * As respects use of tugs, barges or other marine operations under this contract. # City as Insured by endorsement to each relevant policy.	\$ _____ per occurrence \$ _____ aggregate per year \$ _____ max deductible
() Collision Liability/Towers Liability: Section _____ II.C [Endorsed to cover dredges and dredging operations.]	\$ _____ per occurrence \$ _____ aggregate per year \$ _____ max deductible Collision Clauses Lines 188-184 inclusive as respects tugs: Collision Towers Liability Clauses 78-111 inclusive American Institute Tug Form - 2/1/78
() Ship Repairers Liability: Section _____ II.H	\$ _____ American Institute Clauses \$ _____
() Water Quality Syndicate	
() Builders Risk: Section _____ II.J	All-Risk/Completed Value \$ _____ % of Total contract amount \$ _____ % of contract store off site \$ _____ % of contract in transit/anyone storage \$ _____ % Property of City and others
() Garage Policy CA 00.05 01/87 Section II & III ¹ (See Form 25) II: Auto & General Liability III: Garage Keeper's Liability	\$ _____ per occurrence \$ _____ per aggregate \$ _____ per location \$ _____ per vehicle maximum deductible, except as approved by the CONTRACT MANAGEMENT OFFICE

...CONTINUED ON NEXT PAGE

¹Evidence of insurance as described herein shall be provided by the insurer or duly authorized agent of the garage providing maintenance on the vehicle(s) provided to the Department's Contract Management Office. It is the Contractor's responsibility to insure compliance with this provision by the garage.

SUPPLY and SERVICE CONTRACT
GENERAL CONDITIONS
SCHEDULE A

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In addition, if indicated by an (X), the following hazards must be covered:

☒ Environmental Impairment Liability Insurance Asbestos Liability [Zurich U-ASL-103B (CW)(1-98) or Equivalent] This insurance shall be provided in the name of the contractor, and each subcontractor, performing any operations involving the removal of asbestos materials.	\$ <u>2,000,000</u> general aggregate (excl products) \$ <u>1,000,000</u> products/completed operations aggregate \$ <u>1,000,000</u> each occurrence \$ <u>25,000</u> claim maximum deductible, except as approved by the CONTRACT MANAGEMENT OFFICE
☐ Contractor's Environmental Impairment Liability Insurance [Zurich U-EIL-102-A(CW)(8-92) or Equivalent] This insurance shall be provided in the name of the contractor, and each subcontractor, performing any operations involving the disruption, removal, disposal, or handling of lead or other toxic and/or hazardous materials.	\$ _____ general aggregate (excl products) \$ _____ products/completed operations aggregate \$ _____ each occurrence \$ _____ claim maximum deductible, except as approved by the CONTRACT MANAGEMENT OFFICE

) Other _____

Exhibit A**New York City Department of Environmental Protection
Bureau of Environmental Compliance****Asbestos Control Program****Building Exterior Clean-up****Scope of Work**

All work performed shall be in compliance with all applicable, relevant, and appropriate regulations, including but not limited to those of the United States Environmental Protection Agency (USEPA), the United States Department of Labor Occupational Safety and Health Administration (OSHA), the New York State Department of Labor (NYS DOL), the New York State Department of Environmental Conservation (NYS DEC), the New York State Historic Preservation Office (SHPO), the New York City Department of Sanitation (DOS), the New York City Department of Health (DOH), the New York City Landmarks Preservation Commission (NYC LPC), and the New York City Department of Environmental Protection (DEP).

Background

The DEP with assistance from representatives of the NYS DOL and US EPA performed follow-up site visits at buildings in the vicinity of the World Trade Center. The visual assessments disclosed the presence of various amounts of debris with various dispersal patterns at the building exteriors. The majority of buildings had isolated areas of debris specifically at the perimeter of the roofs, at the base of parapet walls, and in gutters. Debris was also visible at horizontal surfaces on some of the building facades. For some buildings, building facades facing the street were cleaned while the facades at the rear remained dirty.

The observed debris was characteristic of the debris from the impact of September 11, 2001. The debris appears to have reformed into a dense mass (caked). During the DEP follow-up visits, samples of the debris were collected from various roofs. The uneven dispersal identified above was also evident in the sample collection. Samples collected from various buildings indicated that some of the debris was asbestos-containing material (ACM). Based on these results and the most stringent assessment and evaluation, this material may be ACM and shall be cleaned by NYS DOL licensed contractors with DEP and NYSDOL certified workers.

Purpose

A NYS DOL licensed asbestos contractor with DEP and NYSDOL certified workers shall perform the clean-up of building roofs, setbacks, and/or building facades within the vicinity of the WTC. The scope of work for the clean-up activities is attached. The clean-up activities shall consist of collection of debris and wet cleaning/HEPA vacuuming until the surfaces are clean of visible debris.

Contract Term and Specifications

The contract shall be in force for 120 consecutive calendar days from the DEP commencement date. Services shall be directed by the DEP. Contractors shall be prepared to mobilize within 72 hours of the contract award. The DEP expects contractors to provide four to five crews with a minimum of five handlers per day at each of the areas. Multiple building roofs shall be cleaned simultaneously.

Work shall not be performed at any building found to be structurally unsound.

An ACP7 form signed by the contractor and air-monitoring firm shall be submitted directly to the DEP representative on site. The DEP shall provide notification to the NYS DOL. The size of the project, specified area, shall be indicated on the ACP7 form.. Building owners shall provide written authorization to the DEP for the work activities.

DEP will coordinate activities with building owners and other city agencies.

The sites and specific areas to be cleaned shall be determined and specified by the DEP.

The contractor shall restrict access by the public to the work area (s) during clean-up activities. Caution tape and warning signs shall be used to identify work areas. Access shall be limited to the contractor, his employees, and Federal, State or local officials.

The contractor shall provide all necessary equipment, to remove, bag, transport, and dispose collected waste. The contractor is responsible for supplying all necessary equipment.

The specific clean-up procedures for building roofs are attached. The DEP shall consider substitution of the specified methodologies only if the request is received in writing. Any substitutions must receive prior approval by the DEP.

For large asbestos clean-up projects, a partial decontamination system (changing room and shower) shall be required at an entry/exit from each work area. A remote decontamination system shall be acceptable with DEP on-site approval.

Contractor Qualifications

The contractor shall have on staff and assigned to the contract a sufficient number of properly trained and certified workers. See above.

Roof Clean-Up

Application: This procedure utilizes wet methods and careful hygiene protocol for cleaning roofs contaminated with asbestos containing material (ACM).

1. The entire roof shall be considered the work area for entry/access determinations. All abatement will be performed by NYSDOL licensed contractors with NYC DEP certified workers.

For non-gravel or stone covered roofs with localized accumulations of visible debris, the clean-up areas shall be specified ("specified area") by DEP.

For gravel/stone covered roof surfaces, the entire roof shall be included in the specified roof area for clean-up. The gravel/stone shall be taken to a clean-up staging area on the roof and washed. Water shall be collected, filtered, and discharged into the drain/sewer as applicable.

2. A changing area consisting of two adjacent step-off pads located on the roof immediately adjoining the roof entrance/exit. This area shall consist of a clean pad and a change pad. The clean pad shall be adjacent to the building interior access way (or at the point of entry to the roof for exterior access). The change pad shall be adjacent to the contaminated roof areas. Each pad (change pad and clean pad) shall consist of two layers of 10-mil reinforced plastic on the roof/access way surface and shall be large enough to facilitate changing and decontamination as described herein. A minimum of 4' x 4' is recommend, though the exact configuration will be specific to the roof.
3. Workers shall first step from the building interior (or exterior at the point of entry to the roof) directly onto the clean pad. On the clean pad, each worker shall be double suited with disposable coveralls, plastic booties, gloves, and head coverings. Rubber boots may be used instead of the plastic booties. The boots shall be wet wiped and HEPA vacuumed prior to leaving the roof. Each worker shall wear a minimum of a half-face air-purifying respirator equipped with HEPA cartridges.
4. All penetrations at the roof within 10 feet of the specified roof area included in the clean-up shall be cleaned by wet methods/HEPA vacuum and sealed with 6-mil polyethylene sheeting.
5. Roof cleanup shall begin at the entrance/exit and proceed in a path working away from the entrance/exit. Water shall be the primary engineering control to minimize the potential for fiber release.
6. Roof surfaces shall be wetted and then wet cleaned using wet wiping techniques with water, mops, rags, brushes, etc. HEPA vacuuming may also be used as alternative to or in combination with wet cleaning.
7. Throughout the procedure, all personnel entering or existing the roof shall observe the personal decontamination practices. Attention shall be paid to limiting unnecessary walking on or disturbance of material on the roof. These personal decontamination procedures shall be strictly adhered to, in order to minimize the potential for spreading contamination to the interior of the buildings.
8. Solid nonporous objects, such as metal patio furniture, plant pots, and plastic furniture cushions, shall be wet wiped with damp rags. Wooden objects such as decking shall be HEPA vacuumed, wet wiped, and lightly brushed with a bristle brush utilizing simultaneous misting and local HEPA exhaust. Woven materials shall either be disposed as ACM or bagged and removed off-site for proper laundering in accordance with 29 CFR 1901. 1001. Potted plants with visual contamination should be disposed as ACM waste unless the owner requests decontamination. Potted plants will be repeatedly rinsed, and provisions shall be made to catch the runoff water (i.e. into ACM disposal bags or by using rags and HEPA wet-vacuums).
9. After completion of the above, the specified area roof shall be carefully washed.

10. Some common outdoor spaces (i.e. alleys, yards, setbacks) may be included in this clean-up. They have been included in the quantity estimates and shall be cleaned using the same procedures as the roof clean-up.
11. Air Monitoring shall be performed by NYSIDOL, licensed a Third Party Air Monitoring firm with certified workers. The Third Party Air monitoring firm shall perform a visual inspection to confirm the absence of ACM or debris after the areas are completely dry. Clearance air monitoring shall not be required if all samples collected during the work were found to be below 70 s/mm^2 .

Building Facade Clean-up

Work shall be performed by a NYSIDOL licensed asbestos contractor with NYCDEP and NYSIDOL asbestos certified workers.

The contractor performing the cleaning should be experienced in cleaning building facades.

The clean up area shall be specified ("specified area") by DEP. The area below the facade cleaning shall be covered with a layer of polyethylene sheeting. All debris must be collected for disposal as ACM directly upon removal from the surface. (i.e. All waste must be double bagged in ACM waste labeled bags.) Running water or water runoff on the building facade is not permitted.

Building occupants shall be notified prior to the facade cleaning. Access to the street below the facade cleaning shall be restricted and marked with caution tape. Cleaning shall not be performed during wind speeds greater than 20 mph.

All HVAC systems and air conditioners shall be turned off. All windows shall be closed during the cleaning of the building. Some air conditioners and windows may require sealing with duct tape to prevent water penetration.

In cases where equipment is rigged from the roof: All clean-up activities on the roof must be completed prior to rigging equipment from the roof.

All horizontal surfaces and all windows on the facade shall be cleaned of large bulk material by wetting and hand brushing or scraping with non-metallic bristle brushes or non-metallic scrapers, by wet wiping and/ or by HEPA vacuuming from top to bottom. Only water shall be used for wet wiping and low-pressure washing. Detergents, solvents, additives, and any other chemical cleaning agents are prohibited. The removed material shall be immediately placed into containers (e.g. bags). Windows shall be wet wiped. Free running water shall not be evident during this procedure. Power for HEPA vacuums shall be supplied through ground fault interrupters.

After completion of debris removal, the specified area shall be carefully washed. A low pressure washing technique, moving from top to bottom, shall be employed to minimize water bounce-back. Facades shall be washed with a low-pressure wash not to exceed 250 psi.

At the completion of work, a visual inspection of the abated surfaces and sidewalk shall be performed to verify the absence of visible debris.

Air monitoring shall be performed by an independent NYSIDOL licensed third party air monitoring firm with certified workers.

In order to minimize disruption to the public and to the building occupants, it is recommended this work be performed during off-hours.

TO: ROB
FROM: Nelly
#7