

New York State Department of Environmental Conservation

**ACCESS AGREEMENT for TEMPORARY USE AND OCCUPANCY of PRIVATE PROPERTY for PURPOSES AUTHORIZED PURSUANT TO ARTICLE 27 of the ENVIRONMENTAL CONSERVATION LAW**

This Access Agreement ("Agreement") is made and entered into as of 2016, 2016, by and between 102 Cuttermill Rd LLC ("Owner" or "Grantor") and the New York State Department of Environmental Conservation ("Department" or "Grantee").

**RECITALS**

WHEREAS, the Grantor represents and warrants that it owns the real property located at 102 Cutter Mill Road in Great Neck, Nassau County, New York, which is identified as Section 2, Block 376, Lots 9, 10 and 12 (the "Property");

WHEREAS, the Property abuts the Stanton Cleaners Site at 110 Cutter Mill Road, which is listed on the New York State Registry of Inactive Hazardous Waste Disposal Sites (the "Registry") as Site Number 130072 with a Classification of 04 pursuant to New York Environmental Conservation Law ("ECL") § 27-1305;

WHEREAS, the Department identified contamination associated with previous releases of hazardous substances at the Stanton Cleaners Site both at the Stanton Cleaners Site and at neighboring properties;

WHEREAS, the Department is operating a remediation system at the Stanton Cleaners Site to remediate previous releases of hazardous substances at the Stanton Cleaners Site;

WHEREAS, the Department is currently performing a remediation system optimization ("RSO") on the system at the Stanton Cleaners Site;

WHEREAS, the statutory provisions at ECL § 27-1309(3)-(4) and § 27-1313(8) authorize the Department and its authorized agents to enter upon an Inactive Hazardous Waste Disposal Site and areas near such sites for purposes of inspection, sampling and testing and implementing a remedial program;

WHEREAS, in furtherance of the RSO, the Department has requested the consent of Grantor to access the Property for one or more of the purposes set forth in ECL § 27-1309(3)-(4) and § 27-1313(8), and particularly for the purpose of conducting sampling and testing of subsurface soil, soil gas and groundwater (the "Work");

*ACJ*

*ACJ* WHEREAS, The Department does not consider Grantor to be a Party that ~~may~~ <sup>is</sup> be liable for contamination migrating from the Stanton Cleaners Site;

WHEREAS, the Department is not performing the Work for the purpose of listing the Property on the Registry; and

WHEREAS, the Property will not be listed on the Registry for contamination due to hazardous substances migrating from the Stanton Cleaners Site.

NOW THEREFORE, in consideration of the terms and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee, intending to be legally bound, agree as follows:

1. Grantor hereby grants Grantee and its agents, employees, contractors and subcontractors (collectively its "Representatives") reasonable non-exclusive access to the Property for performing the Work as authorized by the ECL. This grant of access shall not convey any interest in the Property to the State of New York.
2. The Department's Representatives that will perform the Work include:
  - a. HDR, Inc. of Albany, NY as Standby Engineer;
  - b. Associated Environmental Services of Hauppauge, NY for standby direct push services;
  - c. Aquifer Drilling & Testing, Inc. of Mineola, NY for sonic drilling services; and
  - d. Radar Solutions International, Inc. of Waltham, MA for utility clearance services.
  - e. AARCO Environmental Services Corp. of Lindenhurst, NY for inspection derived waste transportation and disposal services.

The Department reserves the right to replace, remove or add Representatives to perform the Work.

3. Grantee covenants that all Work to be performed hereunder will be done at no cost or expense to the Grantor.

4. Grantee and its Representatives shall, at the conclusion of the investigation, remove all equipment and structures and restore the Property to its former condition. Further, Grantee and its Representatives shall make all reasonable efforts to not interfere with the use of the Property and to avoid or minimize any damage to the Property while performing the Work.

5. Grantor and Grantee agree that access provided under this Agreement does not include the installation of a remediation system on the Property.

6. Grantee and/or its Representatives shall notify Grantor via email, facsimile or other writing at least three (3) days prior to entering the Property to perform the Work.

7. The Grantee's Representatives have comprehensive general liability insurance for the Work on the Property. At least two (2) days in advance of entry onto the Property, Grantee and/or its Representatives shall provide Grantor copies of insurance certificates evidencing such insurance coverage. The insurance certificates shall name the Grantor as an additional insured.

8. This Agreement shall terminate upon the earlier of (1) the completion of the Work by Grantee; or (2) March 31, 2017.

9. Grantor and Grantee agree that the Agreement is not an easement and shall not be recorded in the chain of title for the Property.

10. Any notice provided for in this Agreement shall be directed to the following individuals:

For Grantor: 102 Cutttermill Rd LLC  
Attention: Alfred Sabet  
C/O The Sabet Group  
45 North Station Plaza  
Suite 315  
Great Neck, NY 11021  
Telephone No.: (212) 239-8785  
Fax No.: (212) 520-0442  
E-mail: [alfred@sabetgroup.com](mailto:alfred@sabetgroup.com)

For Grantee: David Gardner  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, NY 12233-7016  
Telephone No.: (518) 402-9813  
E-mail: [david.gardner@dec.ny.gov](mailto:david.gardner@dec.ny.gov)

11. This Agreement constitutes the entire agreement between the Grantor and Grantee and may not be modified or amended except in writing signed by both Parties.

12. This Agreement may be executed in counterparts.

13. This Agreement shall inure to the benefit of and bind the distributees, legal representatives, successors and assigns of the Parties.

14. The undersigned represent and warrant that they are duly authorized to legally bind their respective organizations to the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.


**102 CUTTERMILL RD LLC**

By:

  
\_\_\_\_\_  
Alfred Sabet  
Authorized Representative

**COMMISSIONER OF THE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION FOR  
THE PEOPLE OF THE STATE OF  
NEW YORK**

By:

  
\_\_\_\_\_  
Robert W. Schick, P.E.  
Director  
Division of Remediation