

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel

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July 6, 2015

SENT VIA FIRST CLASS MAIL

Mr. Dale Desnoyers, Esq.
Allen & Desnoyers, LLP
90 State Street
Suite 1009
Albany, NY 12208

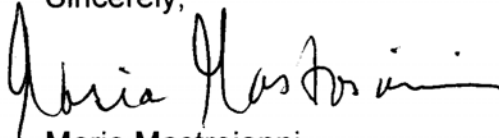
RE: Farmingdale Commons, LLC
Order on Consent and Administrative Settlement
Index No. W1-1185-14-08
Site Name: Farmingdale Plaza Cleaners
Site No. 130107

Dear Mr. Desnoyers:

Enclosed for your files is the fully executed Order on Consent and Administrative Settlement referencing Farmingdale Commons, LLC and the Farmingdale Plaza Cleaners site located at 450 Main Street, Farmingdale, New York.

If you have any further questions or concerns relating to this matter, please contact attorney Alali Tamuno at 914-428-2505.

Sincerely,



Maria Mastroianni
Legal Assistant
Bureau of Remediation, Section A
Office of General Counsel

cc: Farmingdale Commons, LLC
c/o Alexander Oppen
The Oppen Group
65 Harristown Rd., Ste. 308
Glen Rock, NJ 07452



Department of
Environmental
Conservation

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Settlement
For the Reimbursement of Administrative
Costs for Inactive Hazardous Waste Disposal
Site, Under Article 27, Title 13, and
Article 71, Title 27 of the
Environmental Conservation Law
of the State of New York
by

Farmingdale Commons, LLC
Settling Respondent.

**ORDER ON CONSENT
and
ADMINISTRATIVE
SETTLEMENT**

Index # W1-1185-14-08

Site # 130107

WHEREAS,

1. A. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law of the State of New York ("ECL") and the New York State Finance Law ("SFL") and such laws provide the Department authority to enter into this Order on Consent and Administrative Settlement (the "Order").

B. The Department is responsible for carrying out the policy of the State of New York to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by Article 1, Title 3 of the ECL.

C. The Department also asserts that it has the authority, *inter alia*, to provide for the prevention and abatement of all water, land, and air pollution. *See, e.g.*, ECL 3-0301.1.i.

D. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13, ECL Article 71, Title 27, and ECL 3-0301 and Section 97-b of the SFL, and resolves Farmingdale Commons, LLC's (the "Settling Respondent") liability to the State under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") 42 U.S.C. § 9601 *et seq.*, to the extent set forth herein. Accordingly, to the extent set forth in Subparagraph XVI.E, pursuant to CERCLA § 113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B), Settling Respondent may seek contribution from persons who are not parties to this Order.

E. The Commissioner of the New York State Department of Environmental Conservation is the designated Trustee for Natural Resources in accordance with applicable state and federal law.

F. 6 NYCRR 375-2.11(c)(1)(ii) authorizes the Department to expend money of the hazardous waste remedial fund provided for at SFL section 97-b to pay for the cleanup or

restoration to its original state of any area where contaminants were disposed of or possessed unlawfully contrary to ECL 27-0914. 6 NYCRR 375-2.11(c)(1)(iii) authorizes the Department to expend moneys of the hazardous waste remedial fund provided for as SFL section 97-b to pay for site identification, classification, and investigation activities including, but not limited to testing, analyses, and record searches and the Department's related administrative activities.

2. Farmingdale Commons, LLC ("Settling Respondent") is the secured creditor and prospective purchaser through foreclosure of that property identified on the Nassau County Department of Assessment Land and Tax Map as Section 49, Block 102, Lots 245, 250 and 269 (the "Property"). The Farmingdale Plaza Cleaners, Site # 130107 located at 450 Main Street, Village of Farmingdale, Town of Oyster Bay, Nassau County, New York is a portion of the Property (hereinafter the "Site"). Operable Unit 01 ("OU-1") addresses on-Site contamination. Exhibit "A" is a map of the Site showing its general location.

3. The Site is currently listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* with a Classification "2" pursuant to ECL 27-1305.

4. Settling Respondent is a domestic limited liability company with an address c/o The Oppen Group, 65 Harristown Road, Suite 308, Glen Rock, New Jersey, 07452. Settling Respondent maintains that neither it, nor its members, officers, or directors have any relationship to other persons that have liability for the Site, other than the contractual arrangement for purchase of the Site or foreclosure of the site.

5. Pursuant to the legal authorities stated herein, the Department has, and anticipates the need to spend additional monies of the hazardous waste remedial fund for the implementation of a Remedial Program,¹ including the investigation and remediation of hazardous wastes and/or substances identified on or in proximity to the Site. These expenditures are authorized by and in conformance with relevant and applicable state and federal law.

6. The Department alleges for purposes of this Order only that Settling Respondent is liable for the reimbursement of the Department's administrative response costs (including any legally accrued interest) for the investigation and remediation of hazardous wastes and/or substances existing on the Site in accordance with applicable state and federal law.

7. Settling Respondent denies any liability for the reimbursement of the Department's administrative response costs for this Site. Furthermore, Settling Respondent, in entering into this Order, does not admit any liability or fault with respect to any matter arising out of or relating to the Site.

8. The goals of this Order are for (i) Settling Respondent to grant, in accordance with the March 2012 Record of Decision (the "ROD") for OU-1 of the Site, an institutional control in the form of an Environmental Easement to run with the land in favor of the State which complies

¹ As the term is defined in 6 NYCRR §375-1.2(ap).

with the requirements of ECL Article 71, Title 36, and 6 NYCRR 375-1.8(h)(2); (ii) Settling Respondent to continue the operation, maintenance, monitoring, inspection, and reporting of any physical and mechanical components of the Soil Vapor Extraction ("SVE") system that has been operating at the Site since in or about 2011 in accordance with the March 2012 ROD for OU-1 of the Site²; (iii) Settling Respondent shall develop and implement a Site Management Plan ("SMP") in accordance with the ROD for OU-1 of the Site; (iv) Settling Respondent to provide the Department, any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to the remedial program at the Site, and any agent, consultant, contractor, or other person so authorized in writing by the Commissioner, an irrevocable right of access at all reasonable times to the Site and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by Settling Respondent, for the purposes of performing and overseeing response actions at the Site under applicable federal and State law; (v) Settling Respondent shall exercise due care at the Site with respect to the Covered Contamination and comply with all applicable local, State, and federal laws and regulations, information requests and administrative subpoenas; (vi) the Department to release and covenant not to sue the Settling Respondent for the investigation and remediation of the Site and for the reimbursement of Site related response costs upon the execution of this Order; and (vii) the Department to provide Settling Respondent with contribution protection provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and/or any other applicable federal or state law for matters addressed by this Order.

9. Settling Respondent consents to the Department's issuance of this Order without an admission or finding of liability of any kind. The parties recognize that the implementation of this Order will expedite the cleanup of the Site, and that this Order is mutually acceptable, fair, reasonable, and in the public interest.

10. Solely with regard to the matters set forth herein, the Settling Respondent hereby waives any right to a hearing as may be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms. Settling Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order, and agrees not to contest the validity of this Order or its terms.

NOW, having considered this matter and being duly advised, **IT IS ORDERED THAT:**

² Settling Respondent may request that, for the long-term, a DEC-approved alternative system to the SVE system to mitigate all impacts of vapor intrusion under the entire building footprint and within the building structure from Covered Contaminants in the soils and groundwater beneath and around the on-Site building be installed. If approved, the DEC-approved alternative system shall be incorporated into and become an enforceable part of this Order.

I. Site Specific Definitions

Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations, or amendments thereto. The following terms shall have the following meaning:

A. The Site: A portion of the real property identified on the Nassau County Department of Assessment Land and Tax Map as Section 49, Block 102, Lots 245, 250 and 269 located at 450 Main Street, Village of Farmingdale, Town of Oyster Bay, Nassau County, New York. Exhibit "A" is a map of the Site showing its general location.

B. Covered Contamination: Any release, as that term is defined in 6 NYCRR § 375-1.2(am), on or under the Site or that has or is emanating from the Site of hazardous waste, as that term is defined in 6 NYCRR § 375-1.2(w), which occurred prior to the effective date of this Order.

C. Site Management Plan: a Work Plan whose objective is to identify and implement the institutional and engineering controls required for the Site, as well as any necessary monitoring and/or operation and maintenance of the remedy.

II. Work to be Performed in lieu of Settlement Payment

A. Operation, Maintenance and Monitoring of the SVE System or any alternative system approved by the Department- Settling Respondent will undertake at its cost and expense the operation, maintenance, monitoring, inspection, and reporting requirements for the SVE system that has been operating at the Site since in or about November 2011 in accordance with the ROD for OU-1 of the Site; provided, however, Settling Respondent may request modification or termination of requirements as provided in Subparagraph II.C of this Order below. At such time approved by the Department, the Settling Respondent will undertake at its cost and expense the dismantling or modification of the SVE system to a Department-approved alternative system.

B. Submission/Implementation of a SMP- Settling Respondent shall submit to the Department for approval a SMP in accordance with OU-1 of the Site within sixty (60) Days after the effective date of this Order. Settling Respondent shall implement the SMP in accordance with the Department-approved SMP. A Professional Engineer must stamp and sign the SMP.

C. Modifications to the SMP- Settling Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary.

D. Submission of Final Reports and Annual Reports- The Site requires site management; therefore Settling Respondent shall submit an annual report in accordance with the schedule in the Department-approved SMP. Such annual report shall be signed by a Professional Engineer or by such qualified environmental professional as the Department may find acceptable

and shall contain a certification as provided at 6 NYCRR Section 375-1.8(h)(3). Settling Respondent may petition the Department for a determination that the institutional and/or engineering controls may be modified or terminated. Such petition must be supported by a statement by a Professional Engineer that such controls are no longer necessary for the protection of public health and the environment or as modified, would be protective of public health and the environment. The Department shall not unreasonably withhold its approval of such petition.

E. Submission of Progress Reports- Settling Respondent shall submit quarterly written progress reports regarding the operation of the SVE system, or DEC-approved alternative system, to the persons identified in paragraph XI below commencing with the month subsequent to the approval of the SMP and ending with the date of the termination of this Order, unless a different frequency is set forth in the SMP.

III. Appropriate Care/Cooperation

Settling Respondent shall exercise appropriate care³ at the Site with respect to the Covered Contamination and shall comply with all applicable local, State, and federal laws and regulations. Settling Respondent shall cooperate fully with the Department in the implementation of any additional response⁴ actions needed to address Covered Contamination at the Site and shall not interfere with such response actions. Settling Respondent shall affirmatively ensure that any development activities on the Site are in compliance with all applicable local, State, and federal laws and regulations, including but not limited to 6 NYCRR §§ 375-1.11(d) and 375-2.11(a).

IV. Certification

Settling Respondent further represents that it is a bonafide prospective Purchaser as the term is defined in section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that it has and will continue to comply with CERCLA §§ 101(40) and 107(r)(1) during its ownership of the Site, and thus qualifies for the protection from liability under CERCLA set forth in section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Site. By entering into this Order, Settling Respondent certifies that it has not caused or contributed to the release or threatened release of a hazardous waste from or onto the Site, nor generated, transported, or disposed of, arranged for, or caused the generation, transportation, or disposal of hazardous waste from or onto the Site.

V. Environmental Easement

A. Settling Respondent shall submit to the Department for approval an Environmental Easement ("EE") to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36, and 6 NYCRR § 375-1.8(h)(2) for the Site and restricts the future use of the Site.

³ As the term is defined in 42 U.S.C. § 9601(40)(D).

⁴ As that term is defined in 42 U.S.C. § 9601(25).

B. Upon acceptance of the EE by the State, Settling Respondent shall file, and record the EE in compliance with ECL 71-3605.8.

C. Settling Respondent may petition the Department to modify or extinguish the EE filed pursuant to Subparagraph V.A at such time as it can certify that the Site is protective of human health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or other expert approved by the Department. The Department will not unreasonably withhold its consent.

VI. Access

A. Settling Respondent hereby consents, upon reasonable notice under the circumstances presented, to grant entry upon the Site by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to the hazardous wastes/substances on the Site; by any agent, consultant, contractor, or other person so authorized in writing by the Commissioner for assuring compliance with the SMP.

B. Settling Respondent shall ensure that lessees, and sublessees of the Site provide the same access.

VII. Release and Covenant Not to Sue

A. The Department and the Trustee of New York State's natural resources ("Trustee"), hereby release and covenant not to sue, and shall forbear from bringing any action, proceeding, or suit pursuant to the Environmental Conservation Law, or the State Finance Law, and from referring to the Attorney General any claim for recovery of costs incurred by the Department, against the Settling Respondent, its officers, directors, employees, agents, secured creditors and insurers, and successors and assigns who are additional signatories to this Order, for the further investigation and remediation of the Site, including but not limited to an action pursuant to Section 9607(a) of CERCLA, 42 U.S.C. § 9607(a), and for natural resource damages, based upon the release or threatened release of Covered Contamination, provided that: (a) Settling Respondent commences and implements the work to be performed under this Order specified in Subparagraphs II.A and II.B; (b) an Environmental Easement that is approved by the Department pursuant to Paragraph V is recorded on title of the Site property; (c) Settling Respondent continues to exercise appropriate care and cooperation as required in Paragraph III; (d) Settling Respondent continues to allow access as required by Paragraph VI, and (e) timely payments of the amounts specified in Paragraph XV of this Order continue to be or have been made to the Department. Nonetheless, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release and covenant not to sue shall not extend to any further investigation or remedial action the Department deems necessary:

- due to off-Site migration of petroleum;⁵

⁵ As that term is defined in Navigation Law § 172[15].

- due to environmental conditions or information related to the Site which was unknown at the time this Order was issued and which indicate that this Order cannot be implemented with sufficient protection of human health and the environment;
- due to Settling Respondent's failure to implement the Order to the Department's satisfaction; or
- due to fraud committed by Settling Respondent in entering into or implementing the Order.

Additionally, the Department and the Trustee hereby reserve all of their respective rights concerning, and any such release and covenant not to sue shall not extend to any Settling Respondent nor to any of Settling Respondent's officers, directors, employees, agents, secured creditors and insurers, lessees, sublessees, successors, or assigns who causes or allows a release or a threat of release at the Site of any hazardous waste (as that term is defined at 6 NYCRR § 375-1.2(w)) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination; nor to any of Settling Respondent's officers, directors, employees, agents, secured creditors and insurers, lessees, sublessees, successors, or assigns who are otherwise responsible under law for the remediation of the Covered Contamination independent of any obligation that party may have respecting same resulting solely from the execution of this Order on Consent and Administrative Settlement.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department or the Trustee, the one seeking the benefit of this release and covenant not to sue shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to the Covered Contamination.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance,

- if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this order shall be construed or deemed to preclude the State of New York from recovering such claim.
- except as provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or Trustee's rights (including, but not limited to, the right to recover natural resources damages) with respect to any party, including Settling Respondent.
- nothing contained in this Order shall prejudice any rights of the Department or Trustee to take any investigatory or remedial action it deems necessary if Settling Respondent fails to comply with the Order or if contamination other than Covered Contamination is encountered at the Site.
- nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

nothing contained in this Order shall be construed to affect the Department's right to terminate the Order and this "Release and Covenant Not to Sue" under the terms of the Order at any time during its implementation if Settling Respondent fails to comply substantially with the Order's terms and conditions. If the Department seeks to modify or revoke the Release and Covenant Not to Sue, it shall provide notice to the Settling Respondent as set forth in 6 NYCRR 375-1.9(e)(2). The Settling Respondent shall have 30 days after the effective date of the notice within which to cure the deficiency or seek a hearing. If the Settling Respondent or current title owner does not cure the deficiency or seek dispute resolution within such 30 day period, the release and covenant not to sue shall be modified or revoked 31 days after the effective date of the Department's notice.

This release and covenant not to sue shall be null and void, *ab initio*, in the event of fraud relating to the execution or implementation of this Order or in the event of the Settling Respondent's failure to materially comply with any provision of this Order.

Nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that: (i) Settling Respondent may have against anyone other than the Department, including but not limited to rights of contribution under § 113(f)(B)(3) of CERCLA, 42 U.S.C. § 9613(f)(B)(3); and (ii) the Department may have against anyone other than the Settling Respondent and its directors, officers, employees, agents, and servants that were not responsible under law for the development and implementation of a Remedial Program at the Site prior to the effective date of this Order, and their respective secured creditors.

B. Successors and assigns of Settling Respondent who duly execute and deliver the Consent of Additional Signatory form attached hereto as Exhibit "B" to the Department along with proof that the person executing such form is authorized to bind the party on whose behalf he/she is signing are entitled to the benefits of the Release and Covenant Not to Sue in Subparagraph VII.A.

C. The benefits of the Release and Covenant Not to Sue set forth in Subparagraph VII.A. shall survive termination of this Order pursuant to Subparagraph XII.A.

VIII. Indemnification

Settling Respondent shall indemnify and hold the Department, the State of New York, the Trustee of the State's natural resources, and their representatives and employees harmless as provided by 6 NYCRR § 375-2.5(a)(3)(i).

IX. Transfer of Ownership Interest

A. If Settling Respondent proposes to convey the whole or any part of Settling Respondent's ownership interest in the Site, or becomes aware of such conveyance, Settling Respondent shall, not fewer than forty-five (45) Days before the date of conveyance or within forty-five (45) Days after becoming aware of such conveyance, notify the Department in writing

of the identity of the transferee and of the nature and proposed date of the conveyance, and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Settlement Agreement. However, such obligation shall not extend to the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security order, lease, or any other right accruing to a person not affiliated with Settling Respondent to secure the repayment of money or the performance of a duty or obligation.

B. This Order shall apply to and be binding upon the Department, and shall apply to and be binding on the Settling Respondent, its officers, directors, employees and agents. Each signatory of a Party to this Order represents that he or she is fully authorized to enter into the terms and conditions of this Order and to legally bind such party.

C. In the event of an assignment or transfer of the Site or an assignment or transfer of an interest in the Site, the assignor or transferor shall continue to be bound by all of the terms and conditions, and subject to all the benefits, of this Order except as the Department and the assignor or transferor agree otherwise and modify this Order, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Site, the assignee or transferee must consent in writing to be bound by the terms of this Order including but not limited to the certification requirement in Paragraph IV of this Settlement Agreement in order for the release and covenant not to sue in Paragraph VII to be available to that party. The release and covenant not to sue in Paragraph VII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to the Department.

X. Reservation of Rights

A. The release and covenant not to sue set forth in Subparagraph VII.A does not pertain to any matters other than those expressly specified in Subparagraph VII.A. The Department reserves and this Order is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to: (a) claims based on a failure by Settling Respondent to meet a requirement of this Order, including but not limited to Paragraph II (Work to be Performed in lieu of Settlement Payment), Paragraph VI (Access), Paragraph III (Appropriate Care/Cooperation), and Paragraph V (Environmental Easement).

B. Except as provided in the release and covenant not to sue in Subparagraph VII.A after its issuance and except as otherwise provided in this Settlement Agreement, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or the Trustee's rights or authorities, including, but not limited to, the right to recover natural resource damages, the right to take any investigatory or remedial action deemed necessary, and the right to exercise summary abatement powers with respect to any person, including Settling Respondent.

C. Except as otherwise provided in this Order, Settling Respondent specifically reserves all rights and defenses under applicable law respecting any Departmental assertion of remedial liability and/or natural resource damages against Settling Respondent, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Settling

Respondent's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or breach of standard of care by Settling Respondent, and shall not give rise to any presumption of law or finding of fact, or create any rights, or grant any cause of action which shall inure to the benefit of any third party. Further, Settling Respondent reserves such rights as it may have to seek and obtain contribution, indemnification, and/or any other form of recovery from its insurers and from other potentially responsible parties or their insurers for past or future response and/or cleanup costs or such other costs or damages arising from the contamination at the Site as may be provided by law, including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

XI. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered as follows:

1. Communications from the Settling Respondent shall be sent to:

Brian Jankauskas
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, 12th Floor
Albany, New York 12233-7017
Brian.Jankauskas@dec.ny.gov

Note: one hard copy (double-sided) of a work plan and a report is required, as well as an electronic copy.

with copies to:

Krista Anders
Bureau of Environmental Exposure Investigation
New York State Department of Health
Empire State Plaza-Corning Tower, Room 1787
Albany, New York 12237
Kma06@health.state.ny.us

Note: one hard copy (double-sided) of a work plan and a report is required, as well as an electronic copy.

Alali M. Tamuno, Esq.
Office of General Counsel
New York State Department of Environmental Conservation
100 Hillside Avenue, Suite 1W
White Plains, New York 10603-2860
Alali.Tamuno@dec.ny.gov

Correspondence only.

2. Communications from the Department to the Settling Respondent shall be sent to:

Farmingdale Commons, LLC
c/o: The Oppen Group
65 Harristown Road, Suite 308
Glen Rock, New Jersey, 07452
Attn: Alexander Oppen

Dale A. Desnoyers, Esq.
Allen & Desnoyers LLP
90 State Street, Suite 602
Albany, NY 12207
daledesnoyers@gmail.com

XII. Termination

- A. This Order will terminate upon the following event:

The Department's written determination that Settling Respondent has completed the site management of the remedy selected in the ROD for OU-1, in which event the termination shall be effective on the 5th Day after the date of the Department's approval of the final report relating to the final phase of the remedy selected in the ROD for OU-1. Unless there is some other basis to revoke or terminate the Release and Covenant Not to Sue, the Release and Covenant Not to Sue shall survive termination of the Order based on completion of the Site Management.

B. Notwithstanding the foregoing, the provisions contained in Paragraphs VIII and XV shall survive the termination of this Order and any violation of such surviving Paragraphs shall be a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4), subjecting Settling Respondent to penalties as provided under Paragraph XIV so long as such obligations accrued on or prior to the Termination Date.

C. Should the release and covenant not to sue set forth in Subparagraph VII.A herein become null and void, *ab initio*, in the event of fraud in the execution or implementation of this Order, or in the event of Settling Respondent's failure to materially comply with any provision of this Order then neither this Order nor its termination shall affect any liability of Settling Respondent for payment of State Costs, interest, enforcement, and any and all other response costs as defined in CERCLA. As set forth in Subparagraph VII.A., if the Department seeks to modify or revoke the Release and Covenant Not to Sue, it shall provide notice to the Settling Respondent as set forth in 6 NYCRR 375-1.9(e)(2). The Settling Respondent shall have 30 days after the effective date of the notice within which to cure the deficiency or seek a hearing. If the Settling Respondent or current title owner does not cure the deficiency or seek dispute resolution within such 30 day period, the release and covenant not to sue shall be modified or revoked 31 days after the effective date of the Department's notice.

XIII. Dispute Resolution

In the event disputes arise under this Order, Settling Respondent may, within fifteen (15) Days after Settling Respondent knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR 375-1.5(b)(2). Nothing contained in this Order shall be construed to authorize Respondent to invoke dispute resolution with respect to the remedy selected by the Department in the ROD or any element of such remedy, nor to impair any right of Respondent to seek judicial review of the Department's selection of any remedy.

XIV. Penalties

A. 1. Settling Respondent's failure to comply with any term of this Order constitutes a violation of this Order, the ECL, and 6 NYCRR 375-2.11(a)(4). Nothing herein abridges Settling Respondent's right to contest any allegation that it has failed to comply with this Order.

2. Payment of any penalties shall not in any way alter Settling Respondent's obligations under this Order.

B. 1. Settling Respondent shall not suffer any penalty or be subject to any proceeding or action in the event it cannot comply with any requirement of this Order as a result of any Force Majeure Event as provided at 6 NYCRR 375-1.5(b)(4). Settling Respondent must use best efforts to anticipate the potential Force Majeure Event, best efforts to address any such event as it is occurring, and best efforts following the Force Majeure Event to minimize delay to the greatest extent possible. "Force Majeure" does not include Settling Respondent's economic inability to comply with any obligation, the failure of Settling Respondent to make complete and timely application for any required approval or permit, and non-attainment of the goals, standards, and requirements of this Order.

2. Settling Respondent shall notify the Department in writing within five (5) Days of the onset of any Force Majeure Event. Failure to give such notice within such five (5) Day period constitutes a waiver of any claim that a delay is not subject to penalties. Settling Respondent shall be deemed to know of any circumstance which it, any entity controlled by it, or its contractors knew or should have known.

3. Settling Respondent shall have the burden of proving by a preponderance of the evidence that (i) the delay or anticipated delay has been or will be caused by a Force Majeure Event; (ii) the duration of the delay or the extension sought is warranted under the circumstances; (iii) best efforts were exercised to avoid and mitigate the effects of the delay; and (iv) Settling Respondent complied with the requirements of Subparagraph XIV.B.2 regarding timely notification.

4. If the Department agrees that the delay or anticipated delay is attributable to a Force Majeure Event, the time for performance of the obligations that are affected by the Force

Majeure Event shall be extended for a period of time equivalent to the time lost because of the Force majeure event, in accordance with 375-1.5(4).

5. If the Department rejects Settling Respondent's assertion that an event provides a defense to non-compliance with this Order pursuant to Subparagraph XIV.B, Settling Respondent shall be in violation of this Order unless it invokes dispute resolution pursuant to Paragraph XIII and Settling Respondent's position prevails.

XV. Payment of State Costs

A. Deleted- not applicable

B. Within forty-five (45) Days after receipt of an itemized invoice from the Department, Settling Respondent shall pay to the Department a sum of money which shall represent reimbursement for State Costs, for work performed pursuant to this Order at or in connection with OU-1 of the Site from July 31, 2014 through and including the Termination Date, as provided at 6 NYCRR 375-1.5(b)(3).

C. Personal service costs shall be documented as provided by 6 NYCRR 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

D. Such invoice shall be sent to Settling Respondent at the following address:

Farmingdale Commons, LLC
c/o: The Oppper Group
65 Harristown Road, Suite 308
Glen Rock, New Jersey, 07452
Attn: Alexander Oppper

Dale A. Desnoyers, Esq.
Allen & Desnoyers LLP
90 State Street, Suite 602
Albany, NY 12207
daledesnoyers@gmail.com

E. Each such payment shall be made payable to the Department of Environmental Conservation and shall be sent to:

Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-7012

F. Each party shall provide written notification to the other within ninety (90) Days of any change in the foregoing addresses.

G. Settling Respondent may contest invoiced costs as provided at 6 NYCRR 375-1.5(b)(3)(v) and (vi).

XVI. Miscellaneous

A. The Settling Respondent's successor and assigns shall be bound by this Order and the terms of this Order shall inure to the benefit of the Settling Respondent and the Successors. Any change in ownership or corporate status of any Respondent including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Respondent's responsibilities under this Order.

B. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.

C. 1. The terms of this Order shall constitute the complete and entire agreement between the Department and the Settling Respondent concerning the actions required by this Order. No term, condition, understanding or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department shall be construed as relieving Settling Respondent of their obligation to obtain such formal approvals as required by this Order.

2. i. Except as set forth herein, if the Settling Respondent desires that any provision of this Order be changed, they shall make timely written application to the Commissioner with copies to the parties listed in Paragraph XI herein. The Commissioner or the Commissioner's designee shall timely respond.

ii. Changes to a time frame set forth in this Order shall be accomplished by a written request to the Department's project attorney and project manager, which request shall be timely responded to in writing.

D. 1. If there are multiple parties signing this Order, the terms "Settling Respondent" and "Respondent" shall be read in the plural where required to give meaning to this Order. Further, the obligations of Settling Respondent under this Order are joint and several and the insolvency of or failure by any Settling Respondent to implement any obligations, as required under this Order, shall not affect the obligations of the remaining Settling Respondent(s) to carry out Settling Respondent's obligations under this Order.

2. If Settling Respondent is a partnership, the obligations of all general partners, including limited partners who act as general partners, to finance and perform obligations under this Order and pay amounts owed to the Department under this Order are joint and several. In the event of the insolvency of or the failure of any of the general partners to

implement the requirements of this Order, the remaining general partners shall complete all such requirements.

3. If a party duly executes the "Consent of Additional Signatory", the terms "Settling Respondent" and "Respondent" shall be read to be inclusive of such additional signatory.

E. To the extent authorized under Section 113 of CERCLA (42 U.S.C. § 9613), New York General Obligations Law § 15-108, and any other applicable law, Settling Respondent and Successors shall be deemed to have resolved their liability, if any, to the State for purposes of contribution protection provided by CERCLA Section 113(f)(2), for "matters addressed" pursuant to and in accordance with this Order. "Matters addressed" in this Order shall mean all response actions taken by Settling Respondent to implement this Order for the Site, including but not limited to payments required under this Order, and all response costs incurred or to be incurred by any person or party in connection with the work performed under this Order, which costs have been paid by the Settling Respondent, including reimbursement or any other payment of State Costs pursuant to this Order. Furthermore, to the extent authorized under CERCLA Section 113(f)(3)(B), by entering into this administrative settlement of liability, if any, for some or all of the removal and/or response action and/or for some or all of the costs of such action, Settling Respondent are entitled to seek contribution from any person except those who are entitled to contribution protection under CERCLA Section 113(f)(2). Settling Respondent shall include the named individuals and partnerships, their officers, directors, agents, employees, successors, parents and assigns, all of whom are entitled to the full extent of protection from contribution claims or actions as provided by CERCLA Section 113(f)(2) including but not limited to rights of contribution under section 113(f)(3)(B) of CERCLA, 42 U.S.C. 9613(f)(3)(B).

F. All activities undertaken by the Settling Respondent pursuant to this Order shall be performed in accordance with the requirements of all applicable Federal and State laws, regulations and guidance documents.

G. Unless otherwise expressly provided herein, terms used in this Order which are defined in ECL Article 27, Title 13 or in regulations promulgated under such statutes shall have the meaning assigned to them under such statutes or regulations.

H. The Settling Respondent's obligations under this Order represent payment for or reimbursement of removal or response costs, and shall not be deemed to constitute any type of fine or penalty.

I. This Order shall be filed in the Office of the Nassau County Clerk at the expense of the Settling Respondent within Five (5) days of receipt of an original signed document. Proof of recording shall be provided to the Department within thirty (30) days of the actual filing.

J. This Order may be executed for the convenience of the parties thereto, individually or in combination, in one or more counterparts, each of which for all purposes shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.


K. The effective date of this Order is the 10th day after it is signed by the Commissioner or the Commissioner's designee.

DATED:

JUL 01 2015

JOSEPH J. MARTENS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION AND
TRUSTEE OF THE STATE'S NATURAL
RESOURCES

By:



Robert W. Schick, P.E., Director
Division of Environmental Remediation

CONSENT BY SETTLING RESPONDENT

Settling Respondent hereby consents to the issuing and entering of this Order on Consent and Administrative Settlement, waives Settling Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order on Consent and Administrative Settlement.

Farmingdale Commons, LLC

By: [Signature]

Title: Manager

Date: 6/15/15

STATE OF NEW ^{Jersey}~~YORK~~)

) ss:

COUNTY OF Bergen)

On the 15 day of June, in the year 2015, before me, the undersigned, personally appeared Alexander Oppen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
Signature and Office of individual
taking acknowledgement

MARITZA FUNEZ
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 2/26/2018

Exhibit “A”
Site Map

FIGURE 1 - SITE LOCATION MAP



New York State Department of Environmental Conservation
Site Location Map
Farmingdale Plaza Cleaners, Site No. 1-30-107
Farmingdale, Nassau County, New York

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