

New York State Department of Environmental Conservation
AGREEMENT
for
TEMPORARY USE AND OCCUPANCY OF PRIVATE PROPERTY
FOR PURPOSE PURSUANT TO ENVIRONMENTAL CONSERVATION LAW
ARTICLE 27

This agreement made this 3 day of April, 2009 between Nathan Hale Owners Corp. ("Nathan Hale") hereinafter referred to as "owner", and the COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR THE PEOPLE OF THE STATE OF NEW YORK, hereinafter referred to as "the Department," pursuant to the above cited law,

WITNESSETH:

WHEREAS, the owner represents as follows:

1. That the owner owns the real property hereinafter known as the "Property" or "property" located at 38 Nathan Hale Drive, Town of Huntington, Suffolk County, New York and identified on the Suffolk County tax map as Map 0400, Section 069, Block 01, Lot 020; and Dist. 0400, Sec. 070.00, Block 01.00, Lot 026.001 (38 Nathan Hale Drive is a master address for various postal addresses);
2. That said ownership consists of the following interest in said property, title to which was acquired by the owner at the time and in the manner following:

By Deed dated January 8, 1985 and filed in Liber 9722 at Page 267 in the office of the Clerk of Suffolk County, New York;
3. That said property is free and clear of all leases, tenancies, easements, contracts of sale, (except) proprietary leases of 243 tenant-shareholders; approved subleases of various apartments; usual utility easements; pending contracts of sale of shareholders.

WHEREAS, the Department has determined that the property located at 410 West Main Street, Town of Huntington, Suffolk County, New York (the "Site") is an inactive hazardous waste disposal site, as that term is defined at ECL 27-1301.2, and presents a significant threat to the public health or environment.

WHEREAS, the Department has listed the Site in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 1-52-187 with a classification "2" pursuant to ECL 27-1305.

WHEREAS, 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.

WHEREAS, the Department pursuant to ECL 3-0301.1.i, has the power *inter alia*, to provide for the prevention and abatement of all water, land and air pollution.

WHEREAS, there is an ongoing State-funded Remedial Investigation of the Site.

WHEREAS, the Department has determined that the property which is located at 38 Nathan Hale Drive, Town of Huntington, Suffolk County, New York identified on the Suffolk County tax map as Map 0400, Section 069, Block 01, Lot 020 (the "Property") is situated near the Site and that the Department must collect environmental samples on the Property, including but not limited to, groundwater, sub-surface soil, and soil vapor samples, because such sampling activity is essential to the ongoing Remedial Investigation of the Site.

WHEREAS, the Property was, or will be, entered upon and occupied by the Department, its representatives, employees, agents or contractors, for the performance of work thereon for one or more of the purposes set forth in Environmental Conservation Law Article 27, and particularly for the purpose of collecting environmental samples on the Property, including but not limited to, groundwater, sub-surface soil, and soil vapor samples on and about the Property, as part of the on-going State-funded Remedial Investigation of the Site # 1-52-187.

NOW THEREFORE, the parties hereto agree as follows:

1. This Agreement is to facilitate the entry of the Department and its Agents onto the property referenced herein to conduct activities authorized by the New York State Environmental Conservation Law. It shall not convey any interest in the subject property to the State of New York.
2. The owner will permit entry on and use of the property by the Department, its agents, employees, contractors and representatives from the date hereof until such time as the termination of this Agreement. The date for the termination of this agreement is such time as the Department concludes its investigation and remediation of the Site. Such right of entry includes the right to:
 - a. operate a work area;
 - b. remove therefrom any material excavated;
 - c. conduct air, water or soil samples or analyses;
 - d. collect and remove air, water or soil samples, including but not limited to, sub-slab, indoor and out-door air samples;
 - e. carry on any activity necessary for the completion of the investigation and remediation of the Site, including the installation of a mitigation system on the property if required, together with the rights at all times during the duration of this agreement of ingress, egress and regress by the State of New York, its employees,

agents, contractors and/or representatives for the purposes connected with the above work.

3. The owner may elect to obtain a split of the environmental samples. The owner shall inform the representatives of the Department of its election prior to the start of sampling.
4. The Department will ensure that the data obtained from the environmental sampling be provided to the owner and to its counsel, Howard Sayetta, Esq.
5. The Department covenants that all work to be performed hereunder will be done at no cost or expense to the owner; provided, however, this does not constitute a waiver of any rights the Department may have to recover such cost from any responsible party, pursuant to relevant provisions of statutory or common law.
6. The Department shall work cooperatively with the owner to ensure that the work to be conducted under this agreement is not disruptive of the owner's business and operation as a residential co-operative housing complex.
7. The Department shall hold harmless to the extent allowed by the law the owner and its directors, officers, employees, agents, servants, successors, and assigns from any environmental impacts resulting from known contamination at the time of the execution of this Agreement from the Site, provided however, that such person is not in violation of 6 NYCRR 375-1.11(b)(2) and that such person is not otherwise a responsible party for the Site.
8. Prior to the termination of this agreement, the Department, at its cost and expense, will restore the property to its former condition, shall remove, or cause to be removed, all equipment and well machinery and return the ground surface of the Property to its former condition by backfilling, reseeded and/or revegetating but not including replacement of large trees, unless the Department and the owner of the Property shall otherwise agree. The Department shall ensure that all debris stored on the property are in mutually agreed-upon locations and are removed within a reasonable time period. Heavy equipment shall not be stored on premises overnight without prior approval of Owner. Notice shall be given of any work affecting large trees.
9. The Department's contractor has comprehensive general liability insurance for the activities conducted on the Property. The Department will require that the owner be added as an additional insured and that a certificate of insurance showing the insurance is in full force and effect, and not less than thirty (30) days notice will be given to the owner prior to the cancellation be delivered to the owner. The Department will cooperate with the owner in pursuing with the insurer any claim that may arise.
10. If the Department determines that work in addition to that specified in Paragraph 2 above is required, the Department will give the owner 30 Calendar days notice of such determination and shall work cooperatively with the owner to ensure that additional work is not disruptive of the owner's business.

THIS AGREEMENT shall inure to the benefit of and bind the distributees, legal representatives, successors and assigns of the parties.

In witness whereof, this agreement has been executed as of the day and date first above written.

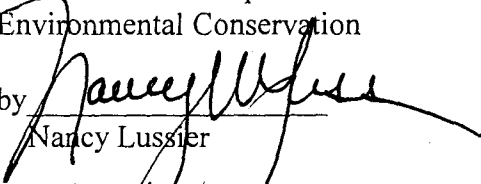
Nathan Hale Owners Corp.

by


WHITSON B. FOWLER, President

New York State Department of
Environmental Conservation

by


Nancy Lussier

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Director of MBS