

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel

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May 1, 2017

**SENT VIA FIRST CLASS MAIL AND BY
ELECTRONIC MAIL**

Mr. Frank J. Marallo, Jr.
Harris Beach, PLLC
538 Broadhollow Road
Suite 301
Melville, NY 11747
fmarallo@harrisbeach.com

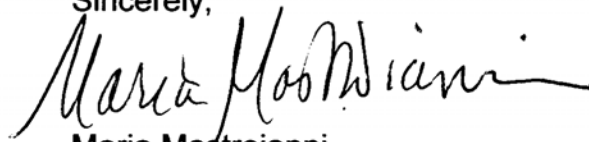
**RE: Access Agreement
Site Name: Country Cleaners
Site No.: 152187**

Dear Mr. Marallo:

Enclosed to complete your files is the fully executed Agreement for Temporary Use and Occupancy of Private Property for the site located at 406 Wet Main Street, Huntington, NY 11743 and Louhal Properties, Inc.

If you have any further questions or concerns relating to this matter, please contact Alali Tamuno at 914-428-2505 x 320.

Sincerely,



Maria Mastroianni
Legal Assistant
Remediation Bureau
Office of General Counsel

Enclosure

ec: A. Tamuno
E. Armater
C. Eigenbrodt



Department of
Environmental
Conservation

New York State Department of Environmental Conservation

**AGREEMENT for TEMPORARY USE AND OCCUPANCY of PRIVATE PROPERTY
for PURPOSE PURSUANT TO ECL SECTIONS 27-1309, 27-1313(8) AND OTHER
ECL SECTIONS**

This Agreement is between Louhal Properties, Inc., a corporation with authority to do business in New York, with a mailing address at 1144 Atlantic Avenue, Baldwin, New York, 11510 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:

- a. That the OWNER owns the real property referred to as the "Property," or some right, title or interest therein, which property is identified on the Suffolk County Tax Map as Tax Map ID # 0400 06900 0300 002000, with a street address at 406 West Main Street, Huntington, NY 11743 and shown on a map attached as Schedule "A" and being more particularly described within Appendix "A" attached hereto, and made a part hereof;
- b. That said ownership consists of the following interest in the Property: (e.g. fee title interest, title to which was acquired by the OWNER at the time and in the manner following:

By Deed dated September 30, 2008 and recorded in the Office of the Suffolk County Clerk in Liber D00012566, Page 674;
- c. That said Property is free and clear of all leases, tenancies, easements, contracts of sale, (except those leases listed on the attached Schedule B):

WHEREAS, there is an ongoing State-funded development and implementation of the selected remedy for the Country Cleaners, Site No. 152187, located at 410 West Main Street, Huntington, New York (the "Site"). The Site is listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* with a Class "2" classification indicating that the Site is a significant threat to public health or the environment, and that action is required.

WHEREAS, the DEPARTMENT issued a Record of Decision for the Site dated March 2012. The Department's selected remedy for the Site is "*In-Situ* Chemical Oxidation applied "in the on-site and near site area with *In-Situ* Bioremediation employed both in the on-site and near site area following the *In-Situ* Chemical Oxidation, and in the off-

site downgradient locations." Institutional controls and Site management are elements of the selected remedy for the Site.

WHEREAS, said Property was, or will be, entered upon and occupied by the DEPARTMENT, its representatives, employees, agents or contractors (its "Agents"), for the performance of work thereon for one or more of the purposes set forth in Environmental Conservation Law (ECL) Sections 27-1309(3)-(4) and 27-1313(8), and particularly for the purpose of conducting remedial activities as necessary to address contamination associated with the Site.

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 to conduct activities authorized by the New York State ECL. It shall not convey any interest in the Property to the State of New York.

2. A minimum 72 hours notification will be given to the OWNER prior to entry for remedial activities. For purposes of the notification requirements stated herein, the DEPARTMENT shall contact _____ at _____@_____.com (Tel No.: _____).

3. The OWNER will permit entry on and use of the Property by the DEPARTMENT and its Agents commencing from the effective date (as hereinafter defined) of this Agreement until the completion of the remedial program for the Site. Such right of entry includes the right to (the "Purposes"):

- operate a work area;
- install groundwater monitoring wells, soil vapor monitoring points, soil borings, etc.;
- place fencing or traffic cones to secure work area;
- conduct air, soil vapor, water or soil sampling for analysis;
- remove air, water or soil samples;
- perform chemical injections to the subsurface of the Property in accordance with the selected remedy for the Site.
- ;
- access building(s) on the Property;
- remove from the Property any material generated from the DEPARTMENT'S work activities; and
- carry on any activity necessary for the completion of the inactive hazardous waste disposal site remedial program for the Site in a

manner protective of public health and the environment, 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.

4. At a minimum of five (5) days prior to the entry on and use of the Property for the Purposes described herein, the DEPARTMENT will provide the OWNER with the work plans and associated health and safety plan for the work to be performed on the Property.

5. The OWNER may elect to obtain split/duplicate samples. The OWNER shall inform the representatives of the DEPARTMENT of its election prior to the start of any sampling event and shall provide the sample containers required by the laboratory that will analyze the samples on behalf of the OWNER.

6. Subject to the availability of lawful appropriations, and as provided by New York State's Court Of Claims Act and Section 17 of the New York State Public Officers Law, the DEPARTMENT, hereby agrees to indemnify and hold harmless the OWNER for any and all causes of action in law or equity, arising directly from the negligence of the DEPARTMENT or its employees, to the extent attributable to said negligence, in the use and access of the Property, for the Purposes described herein.

The duty to indemnify and hold harmless shall be conditioned upon delivery to the Attorney General by the OWNER of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days of receipt.

The DEPARTMENT, for and on behalf of its employees, hereby releases the OWNER from any liability directly arising from the use and access of the Property, to the extent said liability is directly attributable to the negligence of the DEPARTMENT or its employees.

OWNER hereby acknowledges that this indemnification, hold harmless and release agreement is given in consideration of allowing the DEPARTMENT to use the Property on the stated dates, for the stated Purpose(s), and that the consideration is fair and adequate.

7. 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.

8. Prior to the termination of this Agreement, the DEPARTMENT, at its cost and expense, will restore the Property to its former condition, restoring blacktop/concrete and/or reseeding and revegetating, but not including replacement of large trees.

9. The DEPARTMENT's obligations to obtain permits for work at the Site is as set

forth in 6 NYCRR Section 375-1.12.

10. Consistent with New York State contracting requirements, 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 that 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. To the extent that subcontractors are utilized, each subcontractor that performs invasive activities shall be required, consistent with New York State contracting requirements, to comply with the same insurance requirements as the Contractor.

11. The DEPARTMENT shall provide the OWNER with copies of the sampling data, test results and final reports of the work done at the Site in accordance with applicable state law.

12. The effective date of this Agreement is the date it is signed by the DEPARTMENT's Director, Division of Environmental Remediation (the "DER Director") or the DER Director's designee.

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


IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the date indicated opposite each signature.

Dated: April 5, 2017


OWNER

STATE OF NEW YORK)
) ss:
COUNTY OF)


On the 5th day of April, in the year 2017, before me, the undersigned, personally appeared Jan Halperin, 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.

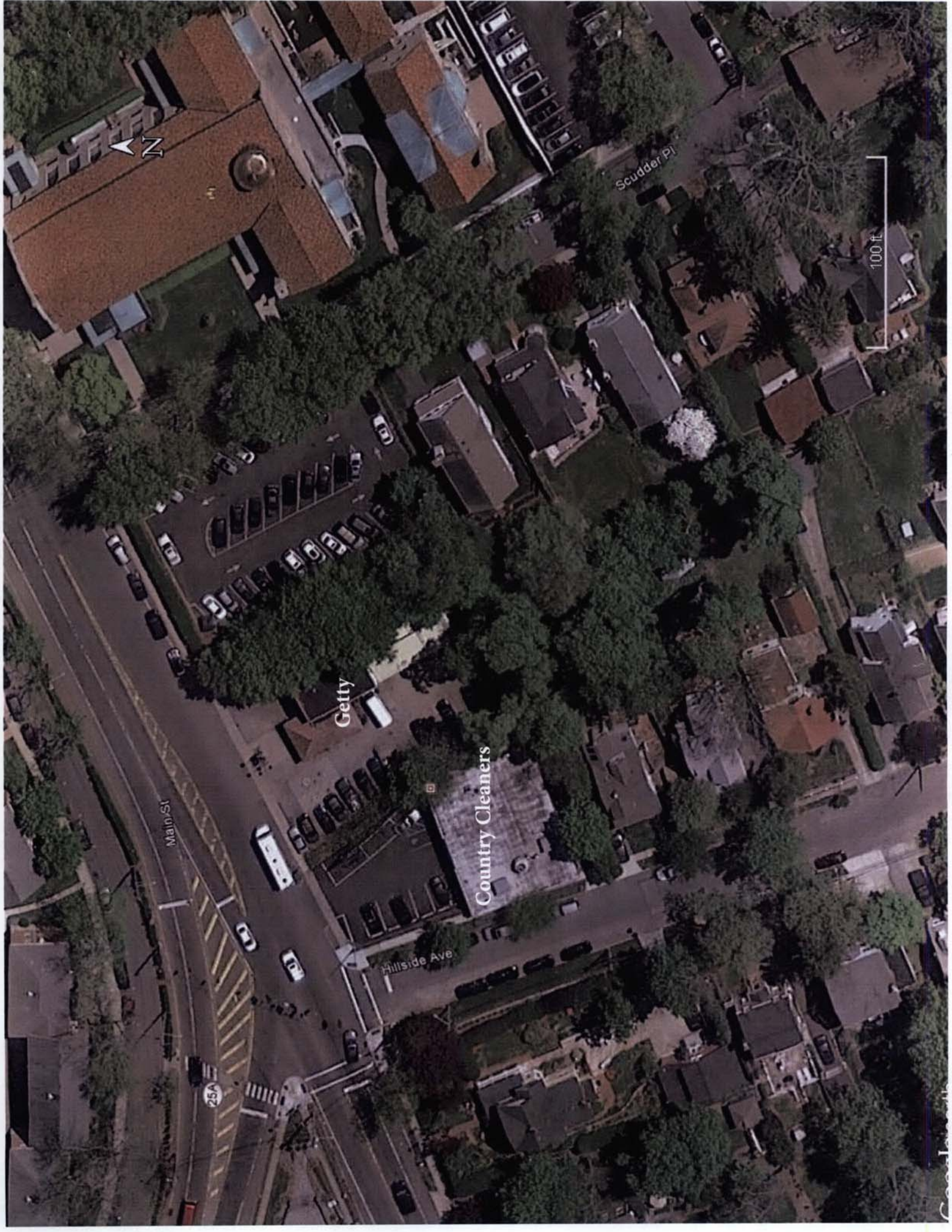

Signature and Office of individual taking
acknowledgment

FRANK J. MARALLO, JR.
Notary Public, State of New York
No. 02MA6328751
Qualified in Queens County
Commission Expires August 10, 2019

Dated: May 1, 2017

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

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



Scudder Pl

100 ft

Getty

Country Cleaners

Main St

Hillside Ave

25A

Schedule "A"
Map

Appendix "A"
Legal Description of the Property

Parcel 5

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Village of Huntington, Suffolk County, New York, bounded and described as follows:

BEGINNING at a point on the southerly side of Main Street distant fifty (50) feet easterly from the easterly line of Hillside Avenue;

RUNNING THENCE Easterly and along the southerly side of Main Street, South 70 degrees 43 minutes 21 West, one hundred ten and one one-hundredths (110.01) feet, more or less, to the westerly side of lot #15, as shown on a certain map entitled "Map of 48 lots situate in the Village of Huntington, Town of Huntington, Suffolk County, New York", surveyed October 1891, Oscar Darling, C.E., Huntington, New York, which said map was filed in the office of the Clerk of the County of Suffolk, New York, on February 25, 1892 as #485;

RUNNING THENCE Southerly and along the westerly line of said lot #15, South 19 degrees 21 minutes 27 seconds East, one hundred fifty-two and fifty-four one-hundredths (152.54) feet to the northerly line of lot #13, as shown on said map;

THENCE Westerly and along the northerly line of lots #13 and #19, as shown on said map, South 70 degrees 38 minutes 33 seconds West, fifty-six and forty-one one-hundredths (56.41) feet;

THENCE again westerly and along the northerly line of said lot #19 on said map, South 78 degrees 55 minutes 40 seconds West, forty-four and twenty-seven one-hundredths (44.27) feet to the southeasterly corner of lot #18, as shown on said map;

RUNNING THENCE Northerly and along the westerly line of lot #18 on said map North 19 degrees 17 minutes West, seventy-three and fifteen one-hundredths (73.15) feet to a stake set as a monument;

THENCE North 27 degrees 4 minutes 0 seconds West seventy-three and eighty-five one-hundredths (73.85) feet to the point or place of BEGINNING.

JH
R13

Schedule B
List of leases and tenancies