

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
STATE SUPERFUND PROGRAM
ECL §27-1301 *et seq.*

In the of Matter 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:

Ace Suede-Life, Inc.,
"Settling Respondent"

**ORDER ON CONSENT
and
ADMINISTRATIVE SETTLEMENT
(CASH-OUT)**

Index No. R2-20170223-81

Site No. 203072

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 – Cash-Out (the "Order").

B. The Department is responsible for carrying out the policy of the State of New York (the "State") 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 § 30301.1.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, ECL § 3-0301, and SFL Section 97-b, and resolves Settling Respondent's 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 XI.C, 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 at 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. Ace Suede-Life, Inc. ("Settling Respondent") is an active domestic business corporation with a mailing address of 808 East 139th Street, Bronx, NY 10454, and is the current owner of certain property located at 808 East 139th Street, Bronx, NY 10454, Bronx County Tax Block 2590 Lot 36 (hereinafter the "Site"). Exhibit "A" is a map of the Site showing its general location.
3. Ace Suede-Life, Inc. acquired the Site on June 27, 1989, and is the current owner.
4. From approximately the 1940s until the mid-1970s, the Site was operated as a dry cleaning facility. From approximately the late 1970s until the late 2000s, a leather factory operated on-Site.
5. The Site is currently listed in the *Registry of Inactive Hazardous Waste Disposal Sites in New York State* as "Ace Suede and Leather" Site No. 203072, with a Class "2" classification, pursuant to ECL § 27-1305, indicating that the Site is a "significant threat to the public health or environment--action required."
6. Pursuant to the legal authorities stated herein, the Department has spent, 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.
7. The objectives and conditions of this Order are for: (i) Settling Respondent to pay a portion of the Department's past and future response costs at the Site, in part from the proceeds of a future sale of the property, for the investigation and remediation of the Site; (ii) Settling Respondent to grant an Environmental

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

Easement to the Department for the Site as provided for in ECL Article 71, Title 36; (iii) 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; (iv) 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; and (v) a prospective purchaser of the Site to apply to the Brownfield Cleanup Program, pursuant to ECL Article 14, since the Settling Respondent has demonstrated to the Department's satisfaction that it will not have the ability to pay for the investigation and/or cleanup of the Site except by the proceeds of a sale of the Site.

8. The 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.
9. Solely with regard to the matters set forth herein, the Settling Respondent hereby waives any right to a hearing regarding its liability as may otherwise be provided by law, consents to the issuance and entry of this Order, and agrees to be bound by its terms and conditions. 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 and conditions.

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

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: The real property designated by the Department as New York State Inactive Hazardous Waste Site Number 203072, approximately 0.438 acres in size, known as "Ace Suede and Leather" located at 808 East 139th Street, Bronx, Bronx County, New York and more specifically identified as Bronx County Tax Block 2590 Lot 36. Exhibit "A" is a map of the Site showing its general location.

B. Effective Date: This Order will become effective when signed by the Commissioner or his designee.

C. Settling Respondent: Settling Respondent means Ace Suede-Life, Inc. and only for purposes of the Release and Covenant Not to Sue in Paragraph VII and Contribution Protection in Paragraph VIII shall include all principals, shareholders, officers, and directors of Settling Respondent.

II. Payment, Property Transfer, and Other Actions

Commencing on the Effective Date of this Order, the Settling Respondent, its principals, agents, executors, employees, attorneys, successors, and assigns shall refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity or protectiveness of the investigation and/or remedial measures to be performed on the Site.

Settling Respondent must include a payment for past costs in the amount of forty thousand dollars (\$40,000). Details on the timing of this payment are set forth in Section VI below.

Settling Respondent must make a good faith effort to sell the Site to a bona fide purchaser as soon as possible after the Effective Date of this Order. The Settling Respondent agrees to provide the Department a copy of the contract of sale upon signing of the contract.

Within ten (10) days of the the closing of the sale of the Site, Settling Respondent must pay to the Department 50% of the purchase price net of the reasonable costs of closing the sale of the Site, or five hundred thousand dollars (\$500,000), whichever is greater. A detailed accounting of all closing costs, including attorneys' fees, must be provided to the Department within seven (7) days after the closing date. Such payment shall be made pursuant to Section VI below.

Prior to executing a contract of sale for the Site or similar instrument, Settling Respondent must inform in writing any third party who seeks to obtain title to or possessory interest in the Site of the existence and applicability to the Site of this Order, including the Environmental Easement. The Settling Respondent shall not transfer title, grant a possessory interest, or otherwise encumber title to the Site until the Environmental Easement required under Section IV of this Administrative Order has been filed and recorded by the Bronx County Clerk.

The Settling Respondent shall file and submit for recordation this Administrative Order with the Bronx County Clerk within thirty (30) days of the Administrative Order's Effective Date, placing the document in the Site's chain of title.

III. Appropriate Care/Cooperation

While still in ownership of the Site, the Settling Respondent: shall exercise appropriate care at the Site with respect to the contamination on the Site, shall comply with all applicable local, state, and federal laws and regulations; shall cooperate fully with the Department in its implementation of any additional response actions needed to address contamination at the Site and shall not interfere with such response actions; and Settling Respondent, and any parent company, successors, and assigns 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 and 375-2.11.

IV. Environmental Easement

A. Settling Respondent shall submit to the Department for approval an approvable 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 § 375.8(h)(2) for the Site and is based on the model EE.

B. The Environmental Easement executed by Settling Respondent shall comply with the requirements of 6 NYCRR § 375-1.8(h)(2) and DEC Program Policy DER-33/Institutional Controls: A Guide to Drafting and Recording Institutional Controls, issued December 3, 2010 ("DER-33"). A model EE is attached as Exhibit "C" to this Order.

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

D. Within ten (10) days of recording the EE with the Bronx County Clerk's Office, Settling Respondent shall submit proof of recording to the Department.

V. Access

A. Commencing on the Effective Date of this Order, Settling Respondent shall provide the State and its representatives, including the Department and its contractors, with access at all reasonable times to the Site, for the purpose of conducting any investigation, removal, remedial, or response activity related to the Site. The Department shall make good faith efforts to notify the Site owner and/or tenant in possession prior to entering the Site and, to the extent possible and reasonable, avoid interfering with business activities on the Site. Such investigation, removal, remedial, or response activities may include, but are not limited to, the following:

- i. Monitoring, investigation, removal, remedial or other activities at the Site;
- ii. Verifying any data or information submitted to the State;
- iii. Conducting investigations relating to contamination at or near the Site;

- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Site; vi. Assessing the Settling Respondent's or any subsequent owners' compliance with the institutional controls on the property; and vii. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Order.

B. While still in ownership of the Site, Settling Respondent shall take reasonable steps to ensure that lessees, and sublessees of the Site provide the Department and its approved representatives with access.

VI. Payment

A. The forty thousand dollar (\$40,000) payment required by Paragraph II above must be made in two installments. The first \$20,000 payment must be delivered with Settling Respondent's signed Order, and the second \$20,000 payment must be made by December 31, 2017. These payments can be made by certified or bank check, payable to "New York State Department of Environmental Conservation" and to:

Andrew Guglielmi
Assistant Attorney
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233

B. The payment required upon sale of the Site, as detailed in Paragraph II above, must be made by Electronic Fund Transfer ("EFT") to the New York State Department of Environmental Conservation account in accordance with current EFT procedures or by certified or bank check as described in Paragraph VI(A) above.

C. Settling Respondent shall transmit confirmation of such wire transfer to:

ANDREW O. GUGLIELMI
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway Albany, NY 12233
andrew.guglielmi@dec.ny.gov

VII. Release and Covenant Not to Sue

A. Once the Department receives full payment, as detailed in Paragraphs II and VI, above, and Settling Respondent has submitted proof of recording the Environmental Easement with the Bronx County Clerk's Office, as detailed in Paragraph IV.D, the Department will 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 secured creditors and insurers, and its 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 CERCLA Section 107(a), 42 U.S.C. § 9607(a), based upon the release or threatened release of contamination, provided that: (a) Settling Respondent continues to exercise appropriate care and cooperation as required in Paragraph III; and (b) Settling Respondent continues to allow access as required by Paragraph V. Nonetheless, the Department hereby reserves all of its 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 environmental conditions or information related to the Site which were unknown, but should have been known, at the time of 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 reasonable satisfaction; or
- due to fraud committed by Settling Respondent in entering into or implementing the Order.

Additionally, the Department hereby reserves all of its respective rights concerning, and any such release and covenant not to sue shall not extend to Settling Respondent if Settling Respondent 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 the contamination existing at the Site upon the effective date of this Order ("Present 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 against any party including the Settling Respondent.

- 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 rights (including, but not limited to, the right to recover natural resources damages) with respect to any party, including the Settling Respondent.
- nothing contained in this Order shall prejudice any of the Department's rights to take any investigatory or remedial action it deems necessary if Settling Respondent fails to comply with the Order or if contamination other than the Site's Present 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 with the Order's terms and conditions.

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 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.

VIII. Contribution Protection

As of the date the Department receives full payment pursuant to Paragraphs II and VI and Settling Respondent has submitted proof of recording a Department-accepted Environmental Easement, as detailed in Paragraph IV.D, Settling Respondent

and its principals, shareholders, directors, officers, employees, agents, successors, and assigns shall not be liable for claims for contribution and are entitled to protection from contribution actions or claims up to the amount recovered by the State and for all matters addressed in this Order. The matters addressed in this Order include any and all past, present, and future claims or causes of action, administrative or judicial, civil or criminal, in law or in equity, including any claim pursuant to CERCLA § 107 (42 U.S.C. § 9607) for past or future investigation costs, response costs or remedial action arising out of or relating to the past release of hazardous substances or wastes at, on, or emanating from the Site.

IX. Indemnification

Settling Respondent and any consenting Respondent pursuant to Exhibit B shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless as provided by 6 NYCRR § 3752.5(a)(3)(i).

X. Dispute Resolution

A. In the event a dispute arises under this Order, Settling Respondent may, within fifteen (15) days after Settling Respondent knew or should have known of the facts that are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR § 375-1.5(b)(2). All rights and remedies provided in 6 NYCRR § 375-1.5 shall apply to any disputes arising under this Order.

B. All costs incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to 6 NYCRR § 375-1.5(b)(3) and shall be payable to the Department in addition to the costs described in Paragraphs II and VI.

XI. 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 (Settlement Payment), Paragraph III (Appropriate Care/Cooperation), Paragraph IV (Environmental Easement), and Paragraph V (Access).

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 Order, 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).

XII. 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:

David Harrington, DEC Project Manager
Division of Environmental Remediation
New York State Department of Environmental Conservation
625 Broadway, 12th Floor
Albany, New York 12233-7017
david.harrington@dec.ny.gov

Jessica Steinberg Albin, DEC Project Attorney
Office of General Counsel
New York State Department of Environmental Conservation,
Region 2
47-40 21st Street, 4th Floor

New York, New York 11101
jessica.albin@dec.ny.gov

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

Linda Shaw, Esq.
Knauf Shaw LLP
Counsel for Settling Respondent
1400 Crossroads Building, 2 State Street
Rochester, NY 14614
lshaw@nyenvlaw.com

Candace Choi
Ace Suede-Life, Inc.
P.O. Box 327
Cliffside, New Jersey 07010
bravoejchoi@gmail.com

XIII. Termination

Should the release and covenant not to sue set forth in Subparagraph VII.A herein become null and void, *ab initio*, because of fraud in the execution or implementation of this Order, or because Settling Respondent fails to materially comply with any provision of this Order, then neither this Order nor its termination shall affect any liability of Settling Respondent to pay State Costs, except for any State costs paid through the date of the breach, including costs to implement removal and remedial actions, interest, enforcement, and any and all other response costs, as defined in CERCLA.

XIV. Miscellaneous

- A. The Settling Respondent's successors and assigns shall be bound by this Order and the terms of this Order shall inure to the benefit of Settling Respondent and its successors and assigns. Any change in ownership or corporate status of Settling Respondent including, but not limited to, any transfer of assets or real or personal property, shall in no way alter 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. Upon execution of this Order, Settling Respondent has demonstrated that it will not have the ability to pay for the investigation and/or cleanup of the Site except with the proceeds of a sale of the Site. Therefore, upon the closing of a sale of the Site, and satisfaction of this Order, (i.e. payment pursuant to Paragraph II and recording of the EE pursuant to Paragraph IV.D), the Department will determine that no viable responsible party exists at the Site, which determination shall mean the Site is potentially eligible to participate in the Brownfield Cleanup Program.
- D. 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 its obligation to obtain such formal approvals as required by this Order.
2. i. Except as set forth herein, if Settling Respondent wants any provision of this Order changed, it will make timely written application to the Commissioner with copies to the parties listed in Paragraph XII herein. It shall be in the Department's sole discretion whether a provision will be changed. 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. Changes to a time frame shall be at the Department's sole discretion.
- E. 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 the 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.
- F. To the extent authorized under CERCLA Section 113 (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 is 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 CERCLA Section 113(f)(3)(B), 42 U.S.C. § 9613(f)(3)(B).
- G. 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.
- H. 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 statute shall have the meaning assigned to them under such statute or regulations.
- I. 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.
- J. This Order shall be submitted for recording in the Office of the Bronx County Clerk at the expense of Settling Respondent within thirty (30) days of receipt of an original signed document. Proof of recording must be provided to the Department within thirty (30) days of the actual filing.

- K. 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.
- L. The effective date of this Order is the date on which the Commissioner or the Commissioner's designee signs this Order.

DATED: *September 11, 2017*

BASIL SEGGOS
COMMISSIONER
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

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 – Cash Out, 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.

Ace Suede-Life, Inc.

By: Ace Suede-Life, Inc.

By: W. J. [Signature]

Title: President

Date: Sept 5 2017

STATE OF NEW YORK)
) ss:
 COUNTY OF BERGEN)

On the 5th day of September in the year 2017, before me, the undersigned, personally appeared HO JIN CHOI, 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

JOHN BALLAS
 NOTARY PUBLIC OF NEW JERSEY
 MY COMMISSION EXPIRES AUG. 25 2019

Exhibit "A" Site Map

808 EAST 139TH STREET, BRONX

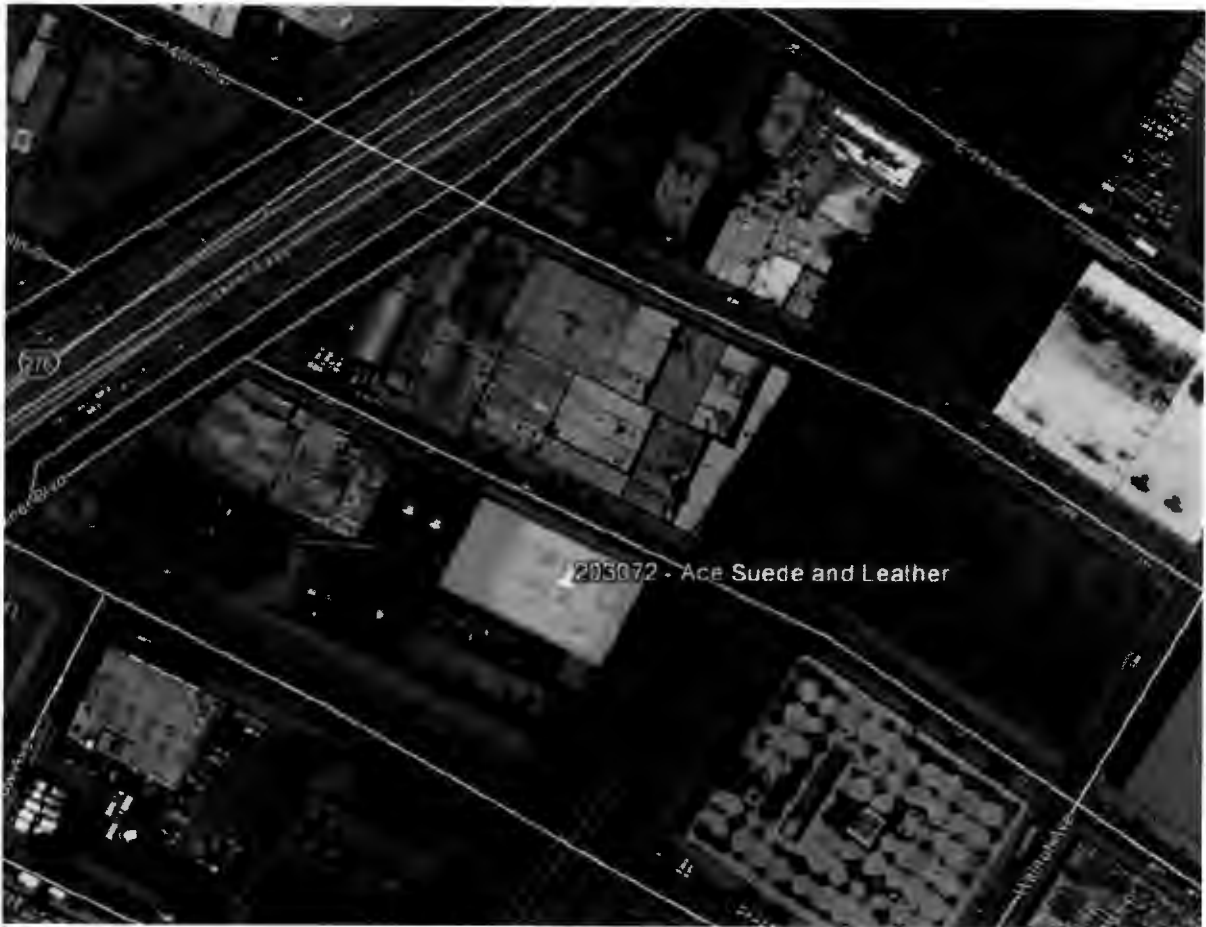


Exhibit "B" Consent of Additional Signatory

The party executing this form, _____, hereby consents to being added as a Respondent to the Order on Consent and Administrative Settlement, Index # R2-20170223-81 regarding Site #203072 and further consents to the issuing and entering of the referenced Order, waives Respondent's right to a hearing herein as provided by law, and agrees to be bound by this Order.

By: _____

Title: _____

Date: _____

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

On the _____ day of _____, in the year 20 __, before me, the undersigned, personally appeared _____, 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

Exhibit "C"

Model Environmental Easement

**ENVIRONMENTAL EASEMENT GRANTED PURSUANT TO ARTICLE 71, TITLE 36
OF THE NEW YORK STATE ENVIRONMENTAL CONSERVATION LAW**

THIS INDENTURE made this _____ day of _____, 20____, between Owner(s) Enter property owner(s) name, having an office at Enter property owner's address, County of Enter owner's county, State of Enter owner's state (the "Grantor"), and The People of the State of New York (the "Grantee."), acting through their Commissioner of the Department of Environmental Conservation (the "Commissioner", or "NYSDEC" or "Department" as the context requires) with its headquarters located at 625 Broadway, Albany, New York 12233,

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to encourage the remediation of abandoned and likely contaminated properties ("sites") that threaten the health and vitality of the communities they burden while at the same time ensuring the protection of public health and the environment; and

WHEREAS, the Legislature of the State of New York has declared that it is in the public interest to establish within the Department a statutory environmental remediation program that includes the use of Environmental Easements as an enforceable means of ensuring the performance of operation, maintenance, and/or monitoring requirements and the restriction of future uses of the land, when an environmental remediation project leaves residual contamination at levels that have been determined to be safe for a specific use, but not all uses, or which includes engineered structures that must be maintained or protected against damage to perform properly and be effective, or which requires groundwater use or soil management restrictions; and

WHEREAS, the Legislature of the State of New York has declared that Environmental Easement shall mean an interest in real property, created under and subject to the provisions of Article 71, Title 36 of the New York State Environmental Conservation Law ("ECL") which contains a use restriction and/or a prohibition on the use of land in a manner inconsistent with engineering controls which are intended to ensure the long term effectiveness of a site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located at the address of Enter street address of property in the City of Enter property municipality, County of Enter property county and State of New York, known and designated on the tax map of the County Clerk of Enter clerk county as tax map parcel numbers: Section Enter Tax ID Section #. Block Enter Tax ID Block # Lot Enter Tax ID Lot #, being the same as that property conveyed to Grantor by deed dated Enter Deed Date and recorded in the Enter county name or leave blank for NY City deeds County Clerk's Office in Liber and Page Enter Instrument # or Liber and Page #s. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately Enter Acreage +/- acres, and is hereinafter more fully described in the Land Title Survey dated Enter original survey date and, if applicable, "and revised on" and revised survey date prepared by Enter revised surveyor's name or original surveyor's name if not revised, which will be attached to the Site Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the Controlled Property until such time as this Environmental Easement is extinguished pursuant to ECL Article 71, Title 36; and

NOW THEREFORE, in consideration of the mutual covenants contained herein and the terms and conditions of Order on Consent Index Number: Enter SAC# or BCA/Consent Order Index # and "as amended by Amendment(s) #(s)" as applicable, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. Purposes. Grantor and Grantee acknowledge that the Purposes of this Environmental Easement are: to convey to Grantee real property rights and interests that will run with the land in perpetuity in order to provide an effective and enforceable means of encouraging the reuse and redevelopment of this Controlled Property at a level that has been determined to be safe for a specific use while ensuring the performance of operation, maintenance, and/or monitoring requirements; and to ensure the restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements apply to the use of the Controlled Property, run with the land, are binding on the Grantor and the Grantor's successors and assigns, and are enforceable in law or equity against any owner of the Controlled Property, any lessees and any person using the Controlled Property.

A. (1) The Controlled Property may be used for:

Choose the allowable land use

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Automatic County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for Choose the correct list of inapplicable uses., and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the Grantor assumes on behalf of Grantor, its successors and assigns. The Grantor's assumption of the obligations contained in the SMP which may include sampling, monitoring, and/or operating a treatment system, and providing certified reports to the NYSDEC, is and remains a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. The SMP may be modified in accordance with the Department's statutory and regulatory authority. The Grantor and all successors and assigns, assume the burden of complying with the SMP and obtaining an up-to-date version of the SMP from:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of ECL Article 71, Title 36 of the ECL, the property deed and all subsequent instruments of conveyance relating to the Controlled Property shall state in at least fifteen-point bold-faced type:

**This property is subject to an Environmental Easement held
by the New York State Department of Environmental Conservation**

pursuant to Title 36 of Article 71 of the Environmental Conservation Law.

F. Grantor covenants and agrees that this Environmental Easement shall be incorporated in full or by reference in any leases, licenses, or other instruments granting a right to use the Controlled Property.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:

(i) are in-place;

(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

3. Right to Enter and Inspect. Grantee, its agents, employees, or other representatives of the State may enter and inspect the Controlled Property in a reasonable manner and at reasonable times to assure compliance with the above-stated restrictions.

4. Reserved Grantor's Rights. Grantor reserves for itself, its assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Property, including:

A. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

B. The right to give, sell, assign, or otherwise transfer part or all of the underlying fee interest to the Controlled Property, subject and subordinate to this Environmental Easement;

5. Enforcement

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantor, Grantee, or any affected local government, as defined in ECL Section 71-3603, against the owner of the Property, any lessees, and any person using the land. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel, or waiver. It is not a defense in any action to enforce this Environmental Easement that: it is not appurtenant to an interest in real property; it is not of a character that has been recognized traditionally at common law; it imposes a negative burden; it imposes affirmative obligations upon the owner of any interest in the burdened property; the benefit does not touch or concern real property; there is no privity of estate or of contract; or it imposes an unreasonable restraint on alienation.

B. If any person violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the expiration of such period of time to cure, or any extensions granted by Grantee, the Grantee shall notify Grantor of any failure to adequately cure the breach or suspected breach, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

D. The failure of Grantee to enforce any of the terms contained herein shall not be deemed a waiver of any such term nor bar any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing the following information:

County, NYSDEC Site Number, NYSDEC Brownfield Cleanup Agreement, State Assistance Contract or Order Number, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to: Site Number: Enter DEC Site #
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

With a copy to: Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, NY 12233

All notices and correspondence shall be delivered by hand, by registered mail or by Certified mail and return receipt requested. The Parties may provide for other means of receiving and communicating notices and responses to requests for approval.

7. Recordation. Grantor shall record this instrument, within thirty (30) days of execution of this instrument by the Commissioner or her/his authorized representative in the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release by the Commissioner of the New York State Department of Environmental Conservation, or the Commissioner's Designee, and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed by Article 9 of the Real Property Law.

10. Joint Obligation. If there are two or more parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

Remainder of Page Intentionally Left Blank

THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By:

Robert W. Schick, Director
Division of Environmental Remediation

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the _____ day of _____, in the year 20__, before me, the undersigned, personally appeared Robert W. Schick, 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/ executed the same in his/her/ capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his/her/ signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public - State of New York

SCHEDULE "A" PROPERTY DESCRIPTION