

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

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In the Matter a Remedial Program for

**ORDER ON CONSENT AND  
ADMINISTRATIVE SETTLEMENT**  
Index No. CO 3-20220204-43

**DEC Site Name: Former Gabriel Mfg. Site**

DEC Site No.: 344041

Site Address: 125 South Liberty Drive  
Stony Point, New York

Hereinafter referred to as "Site"

by:

Stony Points Estates LLC

Hereinafter referred to as "Respondent"

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

2. A. The Department is responsible for inactive hazardous waste disposal site remedial programs pursuant to Article 27, Title 13 of the ECL and Part 375 of Title 6 of the Official Compilation of Codes, Rules and Regulations ("6 NYCRR") and may issue orders consistent with the authority granted to the Commissioner by such statute.

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. This Order is issued pursuant to the Department's authority under, *inter alia*, ECL Article 27, Title 13 and ECL 3-0301, and resolves Respondent's liability to the State as provided at 6 NYCRR 375-1.5(b)(5).

3. The Site is currently listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State (the "Registry") as Site Number 344041 with a Classification of 2 pursuant to ECL 27-1305.

4. Pursuant to the legal authorities cited herein, the Department has incurred costs, and anticipates the need to incur additional costs, paid from the hazardous waste remedial fund for the implementation of a Remedial Program at the Site. These expenditures are authorized by and in conformance with relevant and applicable State and federal law.

5. To facilitate productive reuse of the Site, 125 South Liberty, LLC, the current owner of the Site, desires to sell the Site to Respondent, with the understanding that the Respondent will be entering into a voluntary agreement with the Department confirming that it is subject to statutory defenses to Superfund liability and, therefore, not liable for any past or current response costs associated with the implementation of the Remedial Program at the Site so long as Respondent complies with the terms and conditions of the voluntary agreement.

6. A. Respondent represents it is a prospective purchaser under a contract to acquire title to the Site. Respondent further represents that it is not affiliated in any way with 125 South Liberty, LLC, the current owner of the Site.

B. Respondent represents that it is a Bona Fide Prospective Purchaser ("BFPP") as that term is defined in Section 101(40) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601(40) and that it has and will continue to comply with the requirements of CERCLA §§ 101(40) and 107(r)(1) during its ownership of the Site. Therefore, Respondent qualifies for the protection from liability under CERCLA set forth in CERCLA §107(r)(1), 42 U.S.C. § 9607(r)(1), with respect to the contamination existing at the Site on the effective date of this Order.

C. Respondent anticipates that within 60 days of the date that this Order is executed by the Department, 125 South Liberty, LLC will convey title of the Site to Respondent.

7. Respondent consents to the issuance of this Order without (i) an admission or finding of liability, fault, wrongdoing, or violation of any law, regulation, permit, order, requirement, or standard of care of any kind whatsoever; (ii) an acknowledgment that there has been a release or threatened release of hazardous waste at or from the Site; and/or (iii) an acknowledgment that a release or threatened release of hazardous waste at or from the Site constitutes a significant threat to the public health or environment.

8. Respondent and the Department agree that the primary goals of this Order are (i) for Respondent to satisfy the terms and conditions set forth herein to obtain BFPP liability protection under CERCLA, (ii) for the Department to obtain access to the Site in order to implement the remedy set forth in the ROD, including placement of an Environmental Easement on the Site, and (iii) for the Department to release the Respondent and furnish a covenant not to sue with respect to any response costs incurred by the State related to the Site upon the execution of this Order and Respondent's satisfaction of the terms and conditions set forth herein.

9. The Parties recognize that implementation of this Order will expedite the remediation of the Site and may avoid prolonged and costly litigation between the Parties. The Parties also recognize that this Order is mutually acceptable, fair, reasonable and in the public interest.

10. Solely regarding the matters set forth below, 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. 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 or the validity of data submitted to the Department by Respondent pursuant to this Order.

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

I. Real Property

The Site subject to this Order has been assigned number 344041, consists of approximately 3 acres, and is described as follows:

Subject Property Description (A Map of the Site is attached as Exhibit "A")

125 South Liberty Drive, Stony Point, Rockland County  
Tax Map/Parcel No.: Section 20.11 Block 2 Lot 30.

II. Site Access/Notice to Successors in Interest

A. Respondent agrees to provide to 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 by the Commissioner, an irrevocable right of access at all reasonable times to the Site with seventy-two (72) hours written notification and subject to authorization of tenants and to any other property Respondent controls to which access is required for the implementation of response actions at and near the Site under applicable federal and state law, including but not limited to all activities authorized under ECL §§ 27-1309(3) – (4) and ECL § 27-1313(8). Notwithstanding any provision of this Settlement Agreement, the Department retains all its authorities and rights, including enforcement authorities thereto, under CERCLA, Article 27, Title 13 of the ECL or pursuant to any other provision of state or federal statutory or common law with respect to this access.

B. Consistent with the terms of this Consent Order, Respondent, hereby grants to the Department, its agents, employees, contractors, sub-contractors, consultants and representatives ("Department Parties") a non-exclusive and limited license (the "License") to enter upon and use the Site in order to perform activities

associated with the ongoing remedial program for the Site ("Environmental Activities"). This grant of access shall not convey any property interest in the Site to the Department and the State of New York. The Department Parties are hereby granted permission to enter upon the Property to conduct such Environmental Activities as may be required by applicable environmental laws to fund and implement a Department-selected remedy that will be summarized in a Record of Decision to be issued in the future. These contemplated Environmental Activities may include but is not limited to: installation of soil borings, collection of soil and/or groundwater samples, vapor intrusion air samples, surveying and/or engineering services, excavation of soils, installation of groundwater remediation systems, access, exit and use of vehicles equipment, material and personnel necessary to accomplish the work. The Department Parties' access to the Site shall be performed so as to not cause any interruption to Respondent's operations and shall be further limited to normal business hours (specified herein as Monday-Friday from 8:00 a.m. to 5:00 p.m.), unless the Respondent consents in writing with respect to a specific Environmental Activity.

C. The Department agrees to provide Respondent with a Remedial Action Work Plan that, among other things, identifies areas of the Site where remedial activities will occur. The Department agrees to work with Respondent to perform the Environmental Activities, and to locate and store equipment, in a manner to minimize interference with use of the Site by Respondent, tenants and customers of the Site.

D. Upon the completion of the Environmental Activities, the Department Parties, at their cost and expense, will remove all equipment and structures and reasonably restore the Site to its pre-existing condition, generally consisting of, but not limited to, placement and grading of clean backfill, reseeding of disturbed areas, re-vegetating disturbed areas, replacement in kind of disturbed driveway areas and replacing in kind of disturbed concrete walkways. Any drill cuttings, sediment, dewatering decant water, equipment or other decontamination water, soil, groundwater, waste, air samples or other materials generated by the Environmental Activities are referred to herein as "Wastes." Any equipment and vehicles used for purposes of the Environmental Activities are referred to herein as "Equipment." The Department Parties shall be responsible, at their sole cost, for the proper management, characterization, storage, labeling, manifesting, transport and disposal of Wastes. All waste manifests shall designate the Department Parties as the sole generator. The Department Parties agree to work with Respondent to locate and store Wastes and Equipment in a manner to minimize interference with use of the Site by Respondent and its tenants. Respondent disclaims any and all responsibility for the Department's compliance with applicable environmental, health, safety or other regulations pertaining to the handling, storage, or transportation of Wastes or Equipment. The Department shall be solely responsible for compliance with all laws and regulations pertaining to the Environmental Activities conducted upon the Property.

E. The Department's obligations to obtain permits for the Environmental Activities at the Site are as set forth in 6 NYCRR Part 375-1.12. Respondent shall cooperate with The Department's reasonable requests in obtaining all such permits,

consents, and approvals, and Respondent shall promptly execute any reasonable documents prepared by the Department Parties to obtain such permits, consents and approvals. Respondent shall not be required to sign any waste disposal manifests.

F. The Respondent shall have the right, at its sole cost and expense, to have its employees, agents, consultants, engineers, contractors or other representatives (collectively the "Respondent's Representatives") present at all times during the Environmental Activities conducted at the Property, and shall have the right, at the Respondent's Representatives' sole cost and expense, to concurrently conduct such testing, sampling and analysis, and to obtain duplicate samples so long as the Respondent's Representatives do not interfere with the Environmental Activities being conducted by the Department Parties. Respondent shall be solely responsible for all applicable environmental health and safety standards, regulations and training, including but not limited to OSHA Hazardous Waste Operations and Emergency Response (HAZWOPER) standards, for Respondent's Representatives.

G. It shall be the responsibility of the Department Parties to delineate all utilities prior to drilling. Utilities shall include, but shall be not limited to, private sewer, water, electric and gas lines. The Department Parties shall be responsible at its own cost and expense to repair any utility lines that may be compromised in connection with the Environmental Activities and to ensure that overhead lines are not compromised. Respondent shall not be responsible for the security, damage or loss of the Equipment.

H. The Department Parties will notify Respondent in writing at least three (3) days prior to any Environmental Activities at the Site. Any waiver by Respondent of the three (3) days notice provision for an Environmental Activity shall not act as a waiver of the continuing requirement for the three (3) days notice for other Environmental Activities.

I. The Department shall share all sampling data and analysis and related site investigation reports obtained and/or prepared in connection with the Environmental Activities performed on the Site pursuant to the terms of this Agreement with Respondent's environmental consultant as soon as such sampling data, analysis and site investigation reports are obtained by the Department herein. The Department agrees to provide Respondent with the Remedial Investigation/Feasibility Study ("RI/FS") Report that summarizes environmental data for the Site, including soil, groundwater and soil vapor intrusion sampling data, upon Department approval of the RI/FS Report.

J. To the maximum extent permitted by applicable law, particularly the New York State 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 Respondent against any and all causes of actions in law or equity arising directly from the negligence or omission of the Department or its employees, to the extent attributable to said negligence or omission, in the use and access of the Site for the Environmental Activities. In accordance with New York State Finance Law Section 41, said

responsibility of the Department is limited to the availability of lawful appropriations. The Department, for and on behalf of its employees, hereby releases Respondent from any liability directly arising from the use and access of the Site, to the extent said liability is directly attributable to the negligence or omission of the Department or its employees. The Department's duty to indemnify and hold harmless prescribed by this subsection shall be conditioned upon:

- (i) Delivery to the New York State Attorney General by Respondent of the original or a copy of any summons, complaint, process, notice, demand or pleading within fifteen (15) business days after Respondent is served with such document; and

- (ii) Representation by the Attorney General or, if the Attorney General in her or his sole discretion based upon investigation and review of the facts and circumstances of the case that representation by the Attorney General would be inappropriate, representation by private counsel to be selected by the Attorney General after consultation with Respondent as the case may be; and

- (iii) The full cooperation of Respondent as the case may be in the defense of such action or proceeding against the Department based upon the same act or omission, and in the prosecution of any appeal.

K. The Department's contractors, and sub-contractors that will be performing the Environmental Activities or at any time will be present on the Site shall maintain the minimum insurance coverage reflected below at all times that this Settlement Agreement is in effect:

- i. Commercial general liability insurance of not less than \$1,000,000 for each occurrence of bodily injury, including death and property damage, and \$2,000,000 in the aggregate;

- ii. An errors and omissions or professional liability insurance policy with an annual aggregate of \$2,000,000;

- iii. Automobile liability insurance with a combined single limit of \$1,000,000;

- iv. Excess liability coverage in the amount of \$2,000,000; and

- v. Worker's compensation insurance as required by applicable law.

The Department's contractors and sub-contractors shall add Respondent as an additional insured on the above referenced insurance policies and shall require that the carrier provide Respondent not less than thirty (30) days notice prior to any cancellation or material change in the form of such policy or policies. Certificates of insurance and endorsements reasonably satisfactory to Respondent shall be provided to Respondent a minimum of two (2) days prior to entry upon the Property by The Department or its

contractors. The Department's contractors and sub-contractors shall be responsible for all deductibles and premiums in connection with all above referenced insurance policies.

L. Within sixty (60) days after the effective date of this Settlement Agreement, Respondent shall cause to be filed with the Rockland County Clerk a Department-approved Notice of Settlement Agreement, which Notice shall be substantially similar to the Notice of Settlement Agreement attached as Exhibit B, to provide all parties who may acquire any interest in the Site with notice of this Settlement Agreement. Within thirty (30) days of such filing (or a longer period of time as may be required to obtain a certified copy provided Respondent advises the Department of the status of its efforts to obtain such certified copy within thirty (30) days), Respondent shall provide the Department with a copy of such instrument certified by the Rockland County Clerk to be a true and faithful copy.

M. If Respondent proposes to convey the whole or any part of Respondent's ownership interest in the Site or becomes aware of such conveyance, 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 party not affiliated with Respondent to secure repayment of money or the performance of a duty or obligation.

N. Respondent shall require that assignees, successors in interest, lessees and sublessees of the Site shall provide the same access and cooperation with the Department. Respondent shall not be responsible for any such parties' failure to comply. The Respondent shall ensure that a copy of this Settlement Agreement is provided to any current lessee or sublessee on the Site as of the effective date of this Settlement Agreement and shall ensure that any subsequent leases, assignments or transfers of the Site or an interest in the Site are consistent with this Paragraph and Paragraph X (Parties Bound/Transfer of Covenant) of this Settlement Agreement.

O. Respondent shall cooperate and comply, at Department's sole expense, with any land use restrictions and institutional controls on the Site in connection with the remedial program for the Site. Neither Respondent nor its successors and/or assigns shall interfere with the continued operation of the engineering controls identified in the ROD, including any and all Department-approved amendments to the ROD, and the to-be-drafted Department-approved Site Management Plan ("SMP"), including any and all Department-approved amendments to the SMP. Further, if Respondent or its successors and assigns propose to change the use of the Site, as defined in ECL 27-1317 and 6 NYCRR Part 375-2.2(a), Respondent must comply with the notice requirements of 6 NYCRR Part 375-1.11(d). Respondent shall not incur any costs for

compliance with annual inspections and compliance with any land use restrictions, engineering and institutional controls on the Site in connection with the remedial program for the Site as those compliance costs shall be borne solely by the Department. The State shall complete all remedial program activities associated with this Site going forward and as set forth in the SMP.

P. Upon sale or other conveyance of the Site or any part thereof, Respondent shall require that any grantee, transferee or other holder of an interest in the Site or any part thereof shall provide access and cooperation to the Department, its authorized officers, employees, representatives, and all other persons implementing the remedial program for the Site under the Department's oversight. Respondent shall require that each grantee, transferee or other holder of an interest in the Site or any part thereof shall comply with any land use restrictions and institutional controls on the Site in connection with the remedial program for the Site.

### III. Environmental Easement

A. The remedy selected by the Department for the Site as described in a future Record of Decision ("ROD") may rely upon institutional and/or engineering controls. Upon the Department's written request, Respondent shall submit to the Department for approval an Environmental Easement for the Site to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36.

B. The Environmental Easement executed by 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").

C. Upon acceptance of the Environmental Easement by the Department, Respondent shall file and record the Environmental Easement in accordance with ECL § 71-3605(8). Respondent shall not convey title until the easement is recorded.

D. Within ten (10) days of recording the Environmental Easement with the Rockland County Clerk, Respondent shall submit proof of recording to the Department.

### IV. Due Care/Cooperation

A. Respondent shall exercise due care and shall comply with all applicable local, state and federal laws and regulations with respect to the existing contamination at the Site. Respondent recognizes that the implementation of the response actions at the Site may temporarily interfere with Respondent's use of the Site and may require temporary closure of its operations or a part thereof. Respondent agrees to cooperate fully with the Department in the implementation of response actions at the Site and further agrees not to interfere with such response actions. The Department agrees, consistent with its responsibilities under applicable law, to cooperate and use reasonable efforts to minimize any interference with Respondent's and/or its tenant's



operations by entry and implementation of response actions. In the event Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous waste, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or the environment, Respondent shall immediately take appropriate action to prevent, abate or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements, or any other law, immediately notify the Department of such release or threatened release.

B. Respondent shall take and maintain all steps necessary to continue its status as a "Bona Fide Prospective Purchaser" as that term is defined in § 101(40) of CERCLA, 42 U.S.C. § 9601(40), for the Site by continuing to comply with all of the requirements for a Bona Fide Prospective Purchaser as set forth in applicable federal and state law, including but not limited to § 101(40) of CERCLA, including without limitation the exercise of "appropriate care" by taking "reasonable steps" as set forth in § 101(40)(D) of CERCLA, 42 U.S.C. § 9601(40)(D), and the implementation and compliance with any land use restrictions and institutional controls as set forth in § 101(40)(F) of CERCLA, 42 U.S.C. § 9601(40)(F) and ECL § 27-1318 for so long as Respondent retains any ownership interest in the Site.

#### V. Certification

By entering into this Settlement Agreement, Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to the Department all information known to Respondent and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any existing contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site. Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous waste or pollutants or contaminants at the Site. If the Department determines that the information provided by Respondent is not materially accurate and complete, this Settlement Agreement, within the sole discretion of the State of New York, shall be null and void, and the Department reserves all its rights.

#### VI. Release and Covenant Not to Sue

Subject to the Reservation of Rights in Paragraph VII of this Settlement Agreement, based upon the Respondent's continued cooperation with the Department and the Department's acceptance of an Environmental Easement as required by the selected remedy in the ROD, the Department hereby releases and covenants not to sue, and shall forbear from bringing any action, proceeding or suit pursuant to New York's Environmental Conservation Law or State Finance Law involving or relating to the release or threatened release of contamination existing on, at, or emanating from the Site as of the effective date of this Settlement Agreement (the "Existing Contamination") and from referring the New York Attorney General any claim for recovery of costs incurred by the Department against Respondent and Respondent's

members, managers, officers, directors, shareholders, lessees and sublessees, grantees, successors and assigns, successors-in-title and its respective secured creditors for the further investigation and remediation of the Site based upon the Existing Contamination. The Department further agrees that and that this Release and Covenant Not to Sue set forth herein extends to all claims for Natural Resource Damages. "Natural Resource Damages" shall mean all claims arising from discharges at or from the Site that occurred prior to the effective date of this Settlement Agreement, and that are recoverable by the Department as natural resource damages for injuries to natural resources under the Resource Conservation Recovery Act; the Oil Pollution Act, 33 U.S.C.A. §§ 2701 through -2761; the Clean Water Act, 33 U.S.C.A. §§ 1251 through - 1387; the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C.A. §§ 9601 through 9675; the Sanitary Landfill Act, or any other state or federal common law, statute, or regulation, and include: a. The costs of assessing injury to natural resources, the Department's Office of Natural Resource Restoration's costs, attorneys' fees, consultants and experts' fees, other litigation costs, and interest, incurred prior to the Effective Date of this Consent Order; and b. Compensation for the lost value of, injury to, or destruction of natural resources.

Respondent shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by 6 NYCRR § 375-1.5(b)(5), and as provided in the provisions set forth in 42 U.S.C. Section 9613(f). The "matters addressed" pursuant to and in accordance with this Settlement Agreement, as that term is used in 6 NYCRR § 375-1.5(b)(5), include any and all past or future claims for response costs of removal or remedial action incurred not inconsistent with the National Contingency Plan within the meaning of CERCLA § 107(a)(4)(A), 42 U.S.C. § 9607(a)(4)(A), that the Department has incurred or may incur in responding to the release and/or threatened release of the Existing Contamination at the Site, as well as any and all past, present, or future federal, state or common law claims, including prejudgment interest accrued thereon, that were, or could now or hereafter be, asserted by the State against Respondent arising out of or in connection with the disposal, release or threat of release of the Existing Contamination at, from, or from the Site, including but not limited to any claims regarding off-site contamination that may be emanating from the Site, may have emanated from the Site or may emanate in the future from the Site, whether incurred or to be incurred by the State.

The Department, however, hereby reserves its 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 unrelated to Existing Contamination (whether on-site or off-site) at the time of this Release and Covenant Not to Sue was issued and which indicate that this Order cannot be implemented with sufficient protection of human health and the environment;
- Due to Respondent's failure to comply with this Settlement Agreement; or

- Due to fraud committed by Respondent in entering into or implementing this Settlement Agreement.

Additionally, the Department hereby reserves its rights concerning, and such Release and Covenant Not to Sue shall not extend to Respondent or any of Respondent's lessees, sublessees, successors or assigns or successors-in-title who cause or allow a release or threat of release at the Site of any hazardous waste or petroleum, other than the Existing Contamination; nor to any of Respondent's lessees, sublessees, successors or assigns who are otherwise responsible under state or federal law for the remediation of the Existing Contamination independent of any obligation that party may have respecting the same resulting solely from the Settlement Agreement's execution.

Notwithstanding the above, with respect to any claim or cause of action asserted by the Department, the party 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 Existing Contamination.

Notwithstanding any other provision in this Release and Covenant Not to Sue:

- If with respect to this 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 Settlement Agreement shall be construed or deemed to preclude the State of New York from recovering such claim;
- Except as provided in this Settlement Agreement, nothing contained in this Settlement Agreement 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 resource damages) with respect to any party, including Respondent;
- Nothing contained in this Settlement Agreement shall prejudice any rights of the Department to take investigatory or remedial action it deems necessary if Respondent fails to comply with the Settlement Agreement or if contamination other than Existing Contamination is encountered at the Site; and
- Nothing contained in this Settlement Agreement shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal rights or claims, actions, suits, causes of action or demands whatsoever that (i) Respondent may have against any party other than the Department, and (ii) the Department may have against any party other than Respondent, its directors, officers, employees, agents and servants, and those successors and assigns

of Respondent that were not responsible under applicable law for the development and implementation of a remedial program at the Site prior to the effective date of this Settlement Agreement, and their respective secured creditors.

## VII. Reservation of Rights

A. The Release and Covenant Not to Sue set forth in Paragraph VI does not pertain to any matters other than those expressly specified in Paragraph VI. The Department reserves and this Settlement Agreement is without prejudice to all rights against Respondent with respect to all other matters, including but not limited to claims based on a failure by Respondent to meet requirements of this Settlement Agreement, including but not limited to Paragraph II (Access/Notice to Successors in Interest), Paragraph III (Environmental Easement) and Paragraph IV (Due Care/Cooperation).

B. Except as provided in the Release and Covenant Not to Sue in Paragraph VI after its issuance and except as otherwise provided in this Settlement Agreement, nothing contained in this Settlement Agreement shall be construed as barring, diminishing, adjudicating or in any way affecting any of the Department's rights or authorities, including but not limited to 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 Respondent.

C. Except as otherwise provided in this Settlement Agreement, Respondent expressly reserves all rights and defenses under applicable law to contest, defend against, dispute or disprove any actions, proceedings, allegations, assertions or determinations of the Department, including any assertion of remedial liability by the Department against Respondent, and further reserves all rights including the rights to notice, to be heard, to appeal and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Settlement Agreement. The existence of this Settlement Agreement or Respondent's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing or violation of law by Respondent, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

D. Except as provided in this Settlement Agreement, 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 other such costs or damages arising from contamination at the Site as provided under applicable law.

## VIII. Respondent's Indemnification

Respondent shall indemnify and hold the Department, the State of New York and their employees and representatives harmless for all third-party claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Settlement Agreement by Respondent and/or

any of Respondent's directors, officers, employees, servants, agents, successors and assigns except for liability arising from (i) vehicular accidents occurring during travel to or from the Site; or (ii) willful, wanton or malicious acts or omissions, and acts or omissions constituting gross negligence or criminal behavior by the Department, the State of New York and/or their employees and representatives during the course of any activities conducted pursuant to this Settlement Agreement. The Department shall provide Respondent with written notice no less than thirty (30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

If any mechanic's or materialmen's lien, or similar lien, is asserted against the Site, or any other property as a consequence of the response actions, the Department shall immediately satisfy, defend, or obtain the release of such lien, all at the Department's expense, and the Department shall indemnify and defend Respondent against any claims arising out of or connected with such lien.

#### IX. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic transmission including email or facsimile as follows:

1. Communication from Respondent shall be sent to:

Mark Domaracki, Department Project Manager  
New York State Department of Environmental Conservation  
Division of Environmental Remediation  
625 Broadway  
Albany, N.Y. 12233  
[mark.domaracki@dec.ny.gov](mailto:mark.domaracki@dec.ny.gov)

Michael C. Murphy, Esq. (correspondence only)  
New York State Department of Environmental Conservation  
Office of General Counsel  
625 Broadway, 14<sup>th</sup> Floor  
Albany, N.Y. 12233  
[michael.murphy1@dec.ny.gov](mailto:michael.murphy1@dec.ny.gov)

2. Communication from the Department to Respondent shall be sent to:

Stony Points Estates LLC  
c/o Gregory J. Coffey, Esq.  
Coffey & Associates  
310 South Street, Suite 5  
Morristown, NJ 07960  
[gjc@coffeylaw.com](mailto:gjc@coffeylaw.com)

B. The Department and Respondent reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Respondent provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this Paragraph IX.

X. Parties Bound/Transfer of Covenant Not to Sue

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

B. 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 Settlement Agreement except as the Department and the assignor or transferor agree otherwise and modify this Settlement Agreement, in writing, accordingly. Moreover, prior to or simultaneously with any assignment or transfer of the Site, the assignee or transferee must consent in writing to be bound by the terms of this Settlement Agreement, including but not limited to the certification requirement in Paragraph V of this Settlement Agreement in order for the Release and Covenant Not to Sue in Paragraph VI to be available to that party. The Release and Covenant Not to Sue in Paragraph VI shall not be effective with respect to any assignees or transferees who fail to provide such written consent to the Department.

XI. Disclaimer

This Order in no way constitutes a finding by the Department as to the risks to human health and the environment which may be posed by the Existing Contamination at the Site nor constitutes any representation by the Department that the Site is fit for any particular purpose.

XII. Payment of Costs

If Respondent fails to comply with the terms of this Settlement Agreement as determined by a court of appropriate and proper jurisdiction, Respondent shall be liable for all litigation and other enforcement costs incurred by the Department to enforce this Settlement Agreement or otherwise obtain compliance.

### XIII. Termination

A. Should the Release and Covenant Not to Sue set forth in Paragraph VI herein become null and void, *ab initio*, in the event of fraud relating to the execution or implementation of this Settlement Agreement or in the event of Respondent's failure to materially comply with any provision of this Settlement Agreement, then neither this Settlement Agreement nor its termination shall affect any liability of Respondent for remediation of the Site and/or for payment of State Costs, including implementation of removal and remedial actions, interest, enforcement, and any and all other response costs as defined under CERCLA.

B. If any Party to this Settlement Agreement believes that any or all of the obligations under Paragraph II (Site Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of this Settlement Agreement, that Party may request in writing that the other Party agree to terminate the provisions establishing such obligations; provided that the provisions in question shall continue in full force unless and until the Party requesting such termination receives written confirmation from the other Party to terminate such provisions.

### XIV. Miscellaneous

A. Respondent and Respondent's officers, directors, agents, servants, employees, successors and assigns shall be bound by this Settlement Agreement. Any change in ownership or corporate status of Respondent, including but not limited to any transfer of assets or real or personal property, shall in no way alter Respondent's responsibilities under this Settlement Agreement. Respondent's officers, directors, employees, servants and agents shall be obliged to comply with the relevant provisions of this Settlement Agreement in the performance of their designated duties on behalf of Respondent.

B. All references to "days" in this Settlement Agreement are to calendar days unless otherwise specified.

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

D. 1. No term, condition, understanding or agreement purporting to modify or vary any term of this Settlement Agreement 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 regarding any report, proposal, plan, specification, schedule or any other submittal shall be construed as relieving Respondent of Respondent's obligation to obtain such formal approvals as may be required by this Settlement Agreement

2. If Respondent seeks to change any provision of this Settlement Agreement, Respondent shall make timely written application, signed by Respondent, to the Commissioner setting forth reasonable grounds for the relief sought. Copies of such written application shall be delivered or mailed to the Department's contacts provided in Paragraph X.

E. To the extent authorized under 42 U.S.C. Section 9613, New York General Obligations Law § 15-106, 6 NYCRR § 375-1.5(b)(5)(i) and other applicable law, Respondent shall be deemed to have resolved its liability to the State for purposes of contribution protection provided by CERCLA Section 113(f)(2), 42 U.S.C. Section 9613(f)(2), for "matters addressed" pursuant to and in accordance with this Settlement Agreement. "Matters addressed" in this Order shall mean all response actions, as this term is defined at 42 U.S.C. § 9601(25), taken by Respondent to implement this Settlement Agreement for the Site and all response costs incurred and to be incurred by any person or party in connection with the work performed under this Settlement Agreement, which costs have been paid by Respondent, including a Windfall Payment pursuant to this Settlement Agreement. To the extent authorized under 42 U.S.C. § 9613(f)(3)(B), by entering into this administrative settlement of liability, if any, for some or all of the response action and/or for some or all of the costs of such action, Respondent is entitled to seek contribution from any person except those who are entitled to contribution protection under 42 U.S.C. § 9613(f)(2).

F. Respondent agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Settlement Agreement, it will notify the Department in writing no later than sixty (60) days prior to the initiation of such suit or claim.

G. Respondent also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Settlement Agreement, it will notify the Department in writing within ten (10) days of service of the complaint on them.

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

I. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in ECL Article 27, Title 13 or in regulations promulgated under such statute have the meaning assigned to them under said statute or regulations. Whenever terms defined in this Settlement Agreement are used in this Settlement Agreement, the definitions in this Settlement Agreement shall apply. In the event of a conflict, the definition set forth in this Settlement Agreement shall control.

J. Respondent's obligations under this Settlement Agreement represent payment for or reimbursement of response costs and shall not be deemed to constitute any type of fine or penalty.



K. This order may be executed for the convenience of the Parties hereto, 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 Settlement Agreement is the date of the closing for the completion of the sale/purchase of the Site between Respondent and 125 South Liberty, LLC. This Settlement Agreement shall be null and void if closing of the sale/purchase of the Site between Respondent and 125 South Liberty, LLC does not occur.

DATED: March 25, 2022

BASIL SEGGOS  
COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION

By:

*Susan Edwards*

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Susan Edwards, P.E., Acting Director  
Division of Environmental Remediation

## CONSENT BY RESPONDENT

Respondent, Stony Points Estates LLC, hereby consents to the issuance of the foregoing order without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, provisions, and conditions contained herein.

### STONY POINTS ESTATES LLC

By [Signature]:

Name [Print]:

Title:

Date:

Email:

### Acknowledgment

STATE OF NEW YORK )

) ss:

COUNTY OF )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public

ELI BRIGER  
NOTARY PUBLIC, State of New York  
No. 01-PR6141234  
Qualified in Kings County  
Commission Expires 08/10/2022

### **If you are unable to secure notarization, you must sign the statement below.**

In signing this document, I acknowledge under penalty of perjury that I understand the contents and purpose of this document; the signature above is my own and I signed willingly. I have also submitted state-issued identification verifying my identity. I am aware that any false statement made herein is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed name

## **EXHIBIT "A"**

Map

**GABRIEL MANUFACTURING CO., INC. SITE  
SITE MAP**



## **EXHIBIT "B"**

### **NOTICE OF SETTLEMENT AGREEMENT**

Stony Points Estates LLC ("Respondent") is subject to a Settlement Agreement (Index No. \_\_\_\_\_) (the "Settlement Agreement") issued by the Commissioner of the New York State Department of Environmental Conservation (the "Department" under Article 27, Title 13, and Article 71, Title 27 of the Environmental Conservation Law of the State of New York ("ECL")) for a site located at 125 S. Liberty Drive, Stony Point, NY (the "Site").

The Department designated the Site as an inactive hazardous waste disposal site, as that term is defined at ECL Section 27-1301(2) and listed the Site on the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site No. 344041. The Department classified the Site as a Class "2" site pursuant to ECL Section 27-1305(4)(b). This classification indicates that the Department determined that the Site presents a significant threat to the public health or environment. The Site is more particularly described in the legal description attached hereto as Schedule "A."

The purpose of the Settlement Agreement is to facilitate the development and implementation of an inactive hazardous waste disposal site remedial program for the Site. The effective date of the Settlement Agreement was \_\_\_\_\_. A copy of the Settlement Agreement, as well as any and all Department-approved Work Plans and Reports under this Settlement Agreement may be reviewed at the Department's Central Office located at 625 Broadway, Albany, New York.

This Notice of Settlement Agreement is being filed with the Rockland County recording officer in accordance with Paragraph II of the Settlement Agreement to give all parties who may acquire any interest in the Site notice of the Settlement Agreement.

**WHEREFORE**, the undersigned has signed this Notice of Settlement Agreement in compliance with the terms of the Settlement Agreement.