

New York State Department of Environmental Conservation
ACCESS STIPULATION
for
PURPOSES AUTHORIZED PURSUANT TO ARTICLE 27 OF THE ENVIRONMENTAL
CONSERVATION LAW

This agreement made this 30th day of June, 2022 between New York Luxury Motors of Mt. Kisco, Inc., hereinafter referred to as "owner", and the COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION FOR THE PEOPLE OF THE STATE OF NEW YORK, hereinafter referred to as "DEC," pursuant to the above cited law,

WITNESSETH:

WHEREAS, the owner represents as follows:

(a). That the owner owns the real property described below and on the sketch map attached as Schedule "A", or some right, title or interest therein, which property is described briefly as follows: the property located at 41 Kensico Drive, Mt Kisco, NY 10549, Westchester County, New York with tax parcel identification No.: 69.50-1-2 (the "Property").

(b). That said ownership consists of the following interest in said property, title to which was acquired by the owner at the time and in the manner following:

Bargain and Sale Deed identified as Control Number 572143325 DED001W recorded on August 24, 2017 at 02:29 PM in the Office of the Westchester County Clerk.

(c). That the Property is free and clear of all leases, tenancies, easements, contracts of sale, as set forth in the Office of the Westchester County Clerk.

WHEREAS, the owner is participating in the Brownfield Cleanup Program ("BCP") set forth in Article 27, Title 14 of the Environmental Conservation Law ("ECL") as a Volunteer as defined in ECL 27-1405(1)(b) with respect to the Property (Former Designs for Leisure, Site No. C360163) and that a Volunteer in the BCP is not required to investigate/remediate off-site contamination.

WHEREAS, the DEC 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 DEC and the Commissioner by Article 1, Title 3 of the ECL.

WHEREAS, the DEC pursuant to ECL 3-0301(1)(i), has the power *inter alia* to provide for the prevention and abatement of all water, land and air pollution.

WHEREAS, the DEC is conducting a Site Characterization (SC) with respect to the Kisco Avenue Groundwater Site No. 360203 located in the Town and Village of Mount Kisco.

WHEREAS, the DEC has determined that the Property is situated near the Site and that the DEC must enter the Property for SC support, including to store SC investigation-derived waste, including drums of soil and groundwater, decontaminate equipment, and store a drill rig at the Property.

WHEREAS, the Property was, or will be, entered upon and occupied by DEC, its representatives, employees, agents or contractors, for the performance of work thereon for one or more of the purposes set forth in ECL Article 27 §§ 1309 and 1313(8), and particularly for the purpose of storing and transporting investigation-derived waste and equipment, and decontamination of equipment, during the Site characterization of Kisco Avenue Groundwater, Site No. 360203.

NOW THEREFORE, the parties hereto agree as follows:

1. This Agreement is to facilitate the entry of the DEC and its Agents onto the Property to conduct activities authorized by the ECL. It shall not convey any interest in the Property to the State of New York.
2. DEC will provide minimum three (3) business days advance notice of scheduled work on owner's property and will work to accommodate the schedule of owner's employees, to the extent possible. DEC will make every effort to minimize any adverse impact of its entry on and occupancy of the Property. For purposes of the notification requirements in this Agreement, the DEC shall contact Harry Brumley at brumleyh@autonation.com (Tel No.: 954-769-7134).
- 3.(a) The owner will permit entry on and use of the property by DEC its agents, employees, contractors and representatives only in the areas identified as NYSDEC Areas on Exhibit A (attached hereto and made a part hereof) from the effective date of this Agreement (as hereinafter defined) until July 31, 2023. Such right of entry includes the right to:
 - i. operate a work area;
 - ii. place fencing to secure the work area;
 - iii. carry on any activity necessary for the storage and transport of investigation-derived waste and equipment in connection with the Site characterization of Kisco Groundwater, Site No. 360203, and decontamination of equipment in a manner protective of public health and the environment, together with the rights at all times during the duration of this agreement of ingress, egress and regress by the State of New York, its employees, agents, contractors and/or representatives for the purposes connected with the above work.

The foregoing activities shall be referred to as the "Approved Activities."

(b) Fencing shall not interfere with the owner and/or owner's tenant's access to the Property.

4. The owner may enter the Property at any time with full access to review the Approved Activities and to maintain, inspect and repair the owner's facilities.

5. Subject to the availability of lawful appropriations, and as provided by New York State's Court of Claims Act and Section 17 of the New York State Public Officers Law, the DEC hereby agrees to indemnify and hold harmless the owner for any and all causes of action in law or equity, arising directly from the DEC, its employees, agents, consultants, contractors and subcontractors, use and access of the Property.

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

The DEC, for and on behalf of its Agents and subcontractors, hereby releases the owner from any liability directly arising from the use and access of Property by its employees, agents, consultants, contractors and subcontractors. Owner hereby acknowledges that this indemnification, hold harmless and release agreement is given in consideration of allowing the DEC to use the Property on the stated dates, for the stated purpose(s) and that the consideration is fair and adequate.

6. The DEC shall work cooperatively with the owner and shall ensure that the Approved Activities are conducted in a manner that does not interfere with the occupancy and use of the Property by the owner or its tenant's, including but not limited to loss of use. The DEC will make every reasonable effort to address the owner's concerns related to the Approved Activities. During each day of work at the Property for the Approved Activities, the DEC will ensure that the work areas are secure and free of Property hazards.

7. If at any time during the Term or Additional Terms the owner desires to perform work on the Property and the owner determines that the Approved Activities pose an obstacle to such work, the owner may serve a written sixty (60) day notice upon the DEC canceling this Agreement and upon the expiration of said sixty (60) days notice, this Agreement shall terminate and the right of entry hereunder shall be revoked for all purposes. After receiving notice, the DEC shall (i) immediately stop all Approved Activities on the Property, (ii) take all action as necessary to promptly repair and restore the Property to its prior condition before the DEC commenced the Approved Activities, (iii) remove all its equipment, tools, derived wastes and materials from the Property, and (iv) vacate and surrender the Property.

8. The DEC and its Agents shall not perform any repair or maintenance of any vehicles on the Property without written permission from the owner.

9. The DEC and its agents shall not maintain on, over or under the surface of the Property any permanent buildings or structures of any kind.

10. The DEC's obligations to obtain permits for the Approved Activities is as set forth in 6 NYCRR section 375-1.12.

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

12. Consistent with New York State contracting requirements, the DEC's contractor has disability benefits coverage, commercial general liability, business automobile liability, statutory

workers compensation and employers' liability insurance, professional liability and umbrella and excess liability policy as set forth in Article 28 of the DEC's Division of Environmental Remediation Standby Engineering Services Contract with O'Brien & Gere Engineers, Inc. (Contract No. D009810), which insurance requirements are attached herein as Schedule "C". The DEC will require that the owner and owner's tenant be added as additional insureds and that a certificate of insurance showing the insurance is in full force and effect be provided to the owner prior to the start of the Site Work and that not less than thirty (30) days notice will be given to the owner prior to date of cancellation. The DEC will cooperate with the owner in pursuing with the insurer any claim that may arise. To the extent that subcontractors are utilized for the purposes described herein, each subcontractor that performs activities at or on the Property shall be required to obtain insurance.

13. The DEC covenants that the Approved Activities will be performed at no cost or expense to the owner; provided, however, this does not constitute a waiver of any rights the DEC may have to recover such cost from any responsible party, pursuant to relevant provisions of statutory or common law.

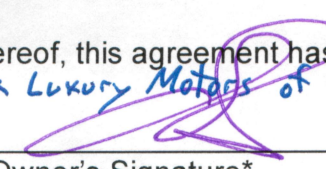
14. The effective date of this Agreement is the date it is signed by the DEC's Acting Director, Division of Environmental Remediation (the "Acting DER Director") or the Acting DER Director's designee.

15. If the DEC determines that work in addition to the Approved Activities is required, the DEC will give the owner thirty (30) calendar days' written notice of such determination and shall work cooperatively with the owner to ensure that additional work is not disruptive of the owner's business.

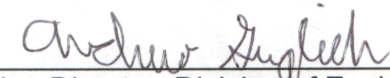
16. This Agreement shall inure to the benefit of and bind the distributees, legal representatives, successors and assigns of the parties.

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

New York Luxury Motors of Mti Kisco, Inc.

MTA 5/25/22 By:  _____
Date Owner's Signature* Charles W. Sabadash III
Authorized Agent

Owner's Title (if corporation)

6/30/22  _____
Date Acting Director, Division of Environmental Remediation
isalem Andrew Guglielmi

*NOTE: If stipulation is with a corporation, the respondent must be an official, authorized corporate representative.