

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

THIS INDENTURE made this 13th day of APRIL, 2011, between Janice Goldman and David Goldman residing at 7146 Huntington Lane, Building 21, Apt. 403, Delray Beach, Florida, 33446 (the "Grantors"), and the People of the State of New York (the "Grantee"), acting through their Commissioner of Environmental Conservation (the "Commissioner" or "Department" as the context requires) with offices at the Department of Environmental Conservation, at 625 Broadway, Albany, New York 12233; and

WHEREAS, the Legislature of the State of New York has declared that contaminated site remedial programs are an important and necessary component of the State's policy of restoring and revitalizing real property located throughout New York State that threaten the health and vitality of the communities they burden; 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 maintenance, monitoring or operation requirements and of ensuring the potential 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 be effective, or which requires groundwater use restrictions; and

WHEREAS, the Legislature of the State of New York has declared that an 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 contaminated site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, in a Record of Decision dated March 2008, the Department set forth a remedy to eliminate or mitigate all significant threats to the public health and the environment presented by the former Hercules Machine Sales Company Site currently listed in the Registry of Inactive Hazardous Waste Disposal Sites in New York State as Site Number 1-30-083 ("Site"); and

WHEREAS, the selected remedy for the Site includes, inter alia, remediation of contaminated groundwater using extraction and treatment; remediation of contaminated soil using soil vapor extraction; and the development of a Site Management Plan ("SMP") that will (a) restrict excavation below the pavement or buildings, and require that excavated soils be tested, handled properly for the protection of the health and safety of workers and the nearby community, and managed in a manner acceptable to the Department, (b) monitor groundwater, and (c) provide for the continued proper operation and maintenance of the components of the remedy; and the imposition of an institutional control in the form of an environmental easement that will require (a) compliance with the approved site management plan; (b) restricting the use

of groundwater as a source of potable or process water, without necessary water quality treatment as determined by New York State Department of Health ("NYSDOH"); (c) the property owner to complete and submit to the Department a periodic certification regarding institutional and engineering controls; and (d) limiting the use and development of the property to commercial use, which will also permit industrial use; and

WHEREAS, Grantors are the owners of the Site, which is real property located at 3188 Lawson Boulevard, Oceanside, Town of Hempstead, Nassau County, New York, known and designated on the tax map of Nassau County as Parcel Nos. 43-209-0039-0 and 43-209-0040-0, being the same as that property conveyed to Grantors by deed dated December 2, 1982, and recorded in the Land Records of Nassau County at Book 9445 Page 796. The Site is approximately 0.25 acres in size, and is more fully described in Schedule A, attached hereto ("Controlled Property"); and

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

NOW THEREFORE, in consideration of the covenants and mutual promises contained herein and the terms and conditions of the Judicial Consent Decree dated 4/13/11, Grantors grant, convey and release to Grantee an Environmental Easement pursuant to Article 71, Title 36 of the ECL in, on, over, under, and upon the Controlled Property as more fully described herein ("Environmental Easement").

1. **Purposes.** Grantors 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 access for the construction of the remedy selected in the ROD and the performance of operation, maintenance, and/or monitoring; and to provide an effective and enforceable means of ensuring compliance with the restrictions and the performance of the obligations contained herein; and to ensure the potential restriction of future uses of the land for the protection of human health and the environment.

2. **Institutional and Engineering Controls.** The following controls apply to the use of the Controlled Property, run with the land, are binding on the Grantors and the Grantors' 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. The Controlled Property may be used for restricted **commercial use**, as defined in 6 N.Y.C.R.R. Part 375, which includes restricted **industrial use**, as long as the following long-term engineering controls are employed:

i. No activity that will, or could be reasonably anticipated to, interfere with the remedial program at the Controlled Property (i.e., damage to the Site, groundwater monitoring wells, soil vapor extraction system) or otherwise result in an increased threat of harm to human health or the environment, shall be conducted on the Controlled Property without prior written approval from the Department.

ii. No physical construction, including, inter alia, excavation below the pavement or buildings, or change of use within the Controlled Property shall be undertaken without prior written approval from the Department.

iii. The Controlled Property shall not be used for day care, child care or medical/health care uses without prior written approval from NYSDOH.

iv. The groundwater underlying the Controlled Property shall not be used as a source of potable or process water, without necessary water quality treatment as determined by NYSDOH.

v. Grantors hereby acknowledge that the ROD requires the development of a SMP which will require that excavated soils be tested, handled properly for the protection of the health and safety of workers and the nearby community, and managed in a manner acceptable to the Department and that these requirements are a fundamental element of the Department's determination that the Controlled Property is safe for a specific use, but not all uses. Grantors assume on behalf of Grantors and their successors and assigns such testing, handling, and management obligations with respect to soils which the Grantors or their successors and assigns excavate.

B. The Controlled Property may not be used for a higher level of use such as **unrestricted** or **restricted residential** use, as defined in 6 N.Y.C.R.R. Part 375, and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. Grantors covenant and agree that until such time as the Environmental Easement is extinguished in accordance with the requirements of Article 71, Title 36 of the ECL, 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 of Title 36 to Article 71 of the Environmental Conservation Law.

D. Grantors covenant and agree 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.

E. Grantors covenant and agree that they shall annually, or at such time as the Department may allow, submit to the Department a written statement by an expert that the Department may find acceptable, which may, at the Department's sole discretion, include Grantors or Grantors' successors, certifying under penalty of perjury that the institutional controls employed at the Controlled Property are unchanged from the previous certification, that the engineering controls employed at the Controlled Property remain undisturbed and accessible, and that nothing has occurred that would impair the ability of such controls to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls.

F. Grantors covenant and agree that they shall notify the Department of any work, action or change of use in or around the Controlled Property which may affect the groundwater monitoring wells, groundwater treatment system or the soil vapor extraction system, including any direct damage to same, or result in the excavation of soil below the pavement or buildings.

3. Right to Enter and to Inspect. Grantee, its agents, employees, or other representatives of the State may enter the Controlled Property to construct, operate and maintain the remedy; and 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 Grantors' Rights. Grantors reserve for themselves, their assigns, representatives, and successors in interest with respect to the Property, all rights as fee owner of the Controlled 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 the underlying fee interest to the Controlled Property by operation of law, by deed, or by indenture, subject and subordinate to this Environmental Easement.

5. Enforcement.

A. This Environmental Easement is enforceable in law or equity in perpetuity by Grantors, 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. Grantee shall notify Grantors of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantors can cure such breach or suspected breach and give Grantors 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 Grantors of any failure to adequately cure the breach or suspected breach. Grantors shall then have a reasonable amount of time from receipt of such notice to cure. At the expiration of said second period, Grantee may commence any proceedings and take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement in accordance with applicable law to require compliance with the terms of this Environmental Easement.

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

breach of or noncompliance with any of the terms of this Environmental Easement.

6. Notice. Whenever notice to the State or approval from the State is required, the Party providing such notice or seeking such approval shall identify the Controlled Property by referencing its associated County tax map number or the Liber and Page or computerized system tracking/ identification number. All correspondence shall be addressed to:

Parties shall address correspondence to: Site Number: 130038
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

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

7. Recordation. Grantee shall record this Environmental Easement within thirty (30) days of its execution by the Commissioner or the Commissioner’s Designee in the office of the recording officer for Nassau County in the manner prescribed by Article 9 of the Real Property Law.

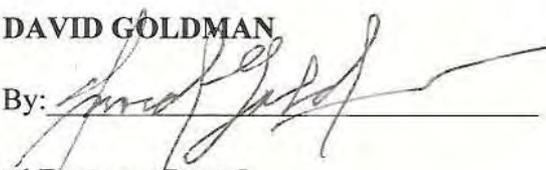
8. Amendment. This Environmental Easement may be amended only by an amendment executed by the Commissioner or the Commissioner’s Designee and filed with the office of the recording officer for Nassau County in the manner prescribed by Article 9 of the Real Property Law.

9. Extinguishment. This Environmental Easement may be extinguished only by a release executed by the Commissioner or the Commissioner’s Designee and filed with the office of the recording officer for Nassau County in the manner prescribed by Article 9 of the Real Property Law.

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

IN WITNESS WHEREOF, Grantors have caused this instrument to be signed in their name.

DAVID GOLDMAN

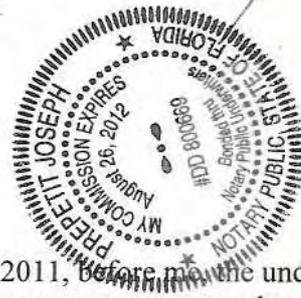
By: 

JANICE GOLDMAN

By: Janice Goldman

Grantors' Acknowledgment

STATE OF ~~NEW YORK~~ FLORIDA)
COUNTY OF ~~ALBANY~~ Palm Beach) ss:



On the 13th day of April, in the year 2011, before me, the undersigned, personally appeared he or she, 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]
Notary Public - State of ~~New York~~ FLORIDA

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: [Signature]
Dale A. Desnoyers, Director
Division of Remediation

Grantee's Acknowledgment

STATE OF NY)
COUNTY OF Albany) ss:

On the 21st day of April, in the year 2011, before me, the undersigned, personally appeared Dale Desnoyers, 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 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

County: Nassau Site No. ¹³⁰⁰⁸³~~130038~~ ad

Consent Decree No. 11-CV-1732 (EDNY)

individual acted, executed the instrument.

David J. Chiusano
Notary Public - State of New York

David J. Chiusano
Notary Public, State of New York
No. 01CH5032146
Qualified in Schenectady County
Commission Expires August 22, 2011

County: Nassau

Site No. ¹³⁰⁰⁸³~~130038~~ *ad*

Consent Decree No. 11-CV-1732 (EDNY)

SCHEDULE A

All that certain plot, piece or parcel of land, with the buildings and improvements, thereon erected, situate, lying and being in the Town of Hempstead, County of Nassau and State of New York, bounded and described as follows:

Known and designated as Lots 3 and 4 in Block 38 on a certain map entitled, "Map number 18 of Oceanside Beach, Oceanside, Nassau County, controlling Realty corporation, New York, New York, October 22, 1927, LeRoy A. Beach, surveyor, Oceanside, Beach, Long Island, New York" and filed November 25, 1927 in the Office of the Clerk of the County of Nassau as Map Number 644 new number 915, bounded and described according to said map as follows:

BEGINNING at a point on the westerly side of Lawson Boulevard distant 40 feet southerly from the corner formed by the intersection of the Westerly side of Lawson Boulevard and the southerly side of Weidner Avenue (Oceanside Parkway);

RUNNING THENCE south 2 degrees 50 minutes 30 seconds east along the westerly side of Lawson Boulevard 40 feet;

THENCE south 87 degrees 30 minutes west 100 feet;

THENCE north 2 degrees 50 minutes 30 seconds west 40 feet;

THENCE north 87 degrees 30 minutes east 100 feet to the westerly side of Lawson Boulevard the point or place of BEGINNING.

EXCEPTING from the above described premises the following (if any exception)

TOGETHER with all of the right, title and interest of the mortgagor in and to the highway in front of and adjoining said premises to the center line thereof.

TOGETHER with the appurtenances and all the estate and rights of the mortgagor in and to said premises.

SUBJECT to any state of facts which an accurate survey would show.

SUBJECT to any state of facts which a personal inspection of the premises would disclose.

SUBJECT to the fact that telephone, telegraph or electric light wires, poles or appurtenances may be in, on or may be in, on or across the premises and the right of any person to maintain same.

County: Nassau

Site No. ¹³⁰⁰⁸³~~130038~~ ad

Consent Decree No. 11-CV-1732 (EON)

SUBJECT to zoning ordinances and building regulations of the Town of Hempstead and any amendments thereto.

SUBJECT to mining and mineral rights owned by person other than the parties hereto.

SUBJECT to riparian rights, if any, of others.

SUBJECT to rules and regulations and orders of the Department of Environmental Conservation and pending law suits, if any, to enforce the same.