

County: SUFFOLK Site No: 1-52-031 Contract/Order No: W1-1016-04-08

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

THIS INDENTURE made this 19th day of MARCH, 2009, between Owner(s) Agfa Corporation, successor in interest to RFP, LLC, having an office at 100 Challenger Road, Ridgefield Park, New Jersey 07660 (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 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 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, Agfa Corporation, is the owner of real property located at the address of 4 Randall Rd., Shoreham, in the Town of Brookhaven, Suffolk County, New York, known and designated on the tax map of the Town of Brookhaven as tax map parcel number: District 0200, Section 079.00 Block 04.00 Lot 001.000; Section 080.00 Block 04.00 Lot 031.000 and Section 080.00 Block 04.00 Lot 046.00, being the same as that property conveyed to Grantor by deed dated December 16, 1998, and recorded in the Land Records of the Suffolk County Clerk at Liber 11936 of Deeds at page 228, comprised of approximately 16.5468 acres, hereinafter more fully described in the Schedule "A" description and ALTA/ACSM Land Title Survey Map prepared by Young & Young dated April 04, 2008, last amended September 16, 2008, attached hereto and made a part hereof (the " Controlled Property");

The "Controlled Property" for purposes of the groundwater use restriction consists of the entire "Property" hereinafter more fully described in Schedule "A" property description attached hereto and made a part hereof. However, a portion of the property which will be subject to certain terms of this easement relate to soil use restrictions and is hereinafter more fully described in Schedule "A-1" and Schedule "A-2" (the "Areas of Potential Concern Zone") attached hereto and made a part hereof; and

WHEREAS, the Commissioner does hereby acknowledge that 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 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 covenants and mutual promises contained herein and the terms and conditions of Order on Consent Number W1-1016-04-08, Grantor grants, conveys and releases to Grantee a permanent 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. 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 potential restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The following controls 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. The Controlled Property must be used for restricted commercial and /or industrial use for APC -10 and APC -12 and restricted residential use for the remainder of the property as long as the following long-term engineering controls are employed:

- (i) Any activity that will, or could be reasonably anticipated to, interfere with the remedial program at the Controlled Property or otherwise result in an increased threat of harm to human health or the environment, including the use and/or development of areas on the Controlled Property containing residual contaminated soils (i.e. Area of Potential Concern) shall not be conducted on the Controlled Property without prior written approval from the Department.
- (ii) Any proposed soil excavation on the Controlled Property during any future redevelopment requires prior notification and prior approval of NYSDEC in accordance with the Site Management Plan approved by NYSDEC for this Controlled Property and the excavated soil must be managed, characterized, and properly disposed of in accordance with NYSDEC regulations and directives.
- (iii) Surface soil cover overlying subsurface soil in the APC-10 Tesla Tower Base and APC-12 former North Recharge Basin as shown on ALTA/ACSM Land Title Survey Map prepared by Young & Young dated April 04, 2008 (last amended September 16, 2008) attached hereto, must be maintained.
- (iv) Use of ground water underlying the Controlled Property for any purpose, including but not limited to potable or process water or irrigation water, is prohibited without necessary water quality treatment as determined by the NYSDEC and NYSDOH.

- (v) Continuation of the long term groundwater monitoring program until such time as concentrations of contaminants warrant discontinuation of the monitoring program.
- (vi) All development and future activities at the site must be conducted in accordance with the Site Management Plan dated August 2008.

The Engineering Controls established for the site include the following:

- (i) Continued maintenance of surface soils and vegetative covers installed over Tesla Tower Base - APC 10 as specified in the Site Management Plan (more fully described in Schedule "A-1" property description and in Survey Map prepared by Young & Young dated April 04, 2008, last amended September 16, 2008, attached hereto)
- (ii) Continued maintenance of surface soils and vegetative covers over the North Recharge Basin - APC 12 as specified in the Site Management Plan (more fully described in Schedule "A-2" property description and in Survey Map prepared by Young & Young dated April 04, 2008 last amended September 16, 2008, attached hereto)
- (iii) The property owner must prepare and submit Periodic Review Reports (PRRs) to the NYSDEC each year, as described in Section 5 of the Site Management Plan, including an annual certification, prepared and submitted by a professional Engineer or environmental professional acceptable to the NYSDEC.
- (iv) The Grantor and its successors and assigns must provide a periodic certification of institutional and engineering controls, prepared and submitted by a professional engineer or environmental professional acceptable to the Department, until the Department notifies the property owner in writing that this certification is no longer needed. This submittal should: (a) contain certification that the institutional controls and engineering controls put in place are unchanged from the previous certification or are compliant with Department-approved modifications; (b) allow the Department access to the site; and (c) state that nothing has occurred that will impair the ability of the control to protect public health or the environment, or constitute a violation or failure to comply with the site management plan unless otherwise approved by the Department.

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved Site Management Plan, dated August, 2008 ("SMP"). The SMP describes obligations that 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 on the Controlled Property, 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. Upon notice of not less than thirty (30) days the Department in exercise of its discretion and consistent with applicable law may revise the SMP. The notice shall be a final agency determination. 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:

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Regional Remediation Engineer:
Region 1
NYS DEC
50 Circle Road
SUNY @Stony Brook
Stony Brook, NY 11790

or Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233

B. The Controlled Property may not be used for a higher level of use such as unrestricted or restricted residential use for APC-10 and APC-12 and may not be used as unrestricted residential use for the remainder of the property and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. Grantor covenants and agrees that until such time as the Environmental Easement is extinguished in accordance with the requirements of 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 of Title 36 to Article 71 of the Environmental Conservation Law.

D. 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.

E. Grantor covenants and agrees that it shall annually, or such time as NYSDEC may allow, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury that the controls employed at the Controlled Property are unchanged from the previous certification or that any changes to the controls employed at the Controlled Property were approved by the NYSDEC, and that nothing has occurred that would impair the ability of such control to protect the public health and environment or constitute a violation or failure to comply with any Site Management Plan for such controls and giving access to such Controlled Property to evaluate continued maintenance of such controls.

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 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 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 intentionally violates this Environmental Easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 27, Title 13, or Article 56, Title 5 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. Grantor 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.

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 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 (other than the annual certification) or approval from the State 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 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 No.: 1-52-031
Department of Environmental Enforcement
Office of General Counsel
NYSDEC
625 Broadway
Albany New York 12233-5500

Such correspondence shall be delivered by hand, or 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.

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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. This Environmental Easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation 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 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.

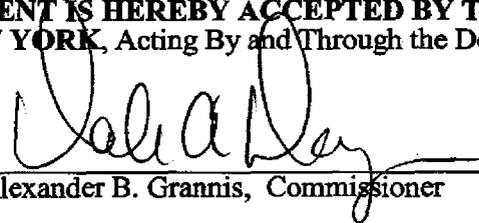
IN WITNESS WHEREOF, Grantor has caused this instrument to be signed in its name.

Grantor's Name: Agfa Corporation

By: 
Gunther Mertens - Vice President
Finance and Administration

Title: _____ Date: _____

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

by: 
Alexander B. Grannis, Commissioner

Dale A. Desnoyers, Director
Division of Environmental Remediation

Grantor's Acknowledgment

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

* Gunther Mertens

On the 6th day of March, in the year 2009, 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.

Jennifer Disena
Notary Public - State of New Jersey

JENNIFER F. DISENA
Notary Public of New Jersey
Commission Expires 3/24/2013 Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF)

On the 19th day of March, in the year 2009, before me, the undersigned, personally appeared Dale A. 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 individual acted, executed the instrument.

Cristin M. Clarke
Notary Public - State of New York

CRISTIN M. CLARKE, ESQ.
NOTARY PUBLIC - STATE OF NEW YORK
NO. 02CL6056390
QUALIFIED IN SARATOGA COUNTY
COMMISSION EXPIRES MARCH 19, 2011

SCHEDULE "A" DESCRIPTION

AGFA CORP.
At Shoreham, Town of Brookhaven
Suffolk County, New York

Surveyor's Description Perimeter & Ground Water Easement

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being at Shoreham, Town of Brookhaven, County of Suffolk, State of New York, being Part of Lot 47, "Map of Shoreham Farms, Section Two" filed in the Office of the Clerk of Suffolk County as File No. 1085, Part of Lot 83, "Map of Shoreham Farms, Section Two" and described property, more particularly bounded and described as follows:

BEGINNING at a point marked by a monument found at the northerly terminus of a chamfer connecting the northerly side of Port Jefferson - Riverhead Road (N.Y.S. Rte. 25A) and the easterly side of Randall Road;

RUNNING thence from said point of beginning along the easterly side of Randall Road the following three (3) courses and distances:

1. North 06 deg. 34 min. 00 sec. West 243.72 feet,
2. North 07 deg. 01 min. 00 sec. West 381.65 feet to a stake set,
3. On the arc of a curve to the right having a radius of 20.00 feet for a distance of 27.13 feet to a drill hole set and the southerly side of North Country Road;

RUNNING thence North 70 deg. 42 min. 00 sec. East along the southerly side of North Country Road 202.31 feet to a stake set and land now or formerly Long Island Lighting Co.;

RUNNING thence along land now or formerly Long Island Lighting Co. the following three (3) courses and distances:

1. South 80 deg. 49 min. 20 sec. East 875.27 feet to a stake set,
2. South 09 deg. 10 min. 40 sec. East 45.00 feet to a monument found,
3. South 80 deg. 49 min. 20 sec. East 50.37 feet to a stake set and the westerly line of Lot 48, "Map of Shoreham Farms, Section Two";

RUNNING thence South 07 deg. 36 min. 40 sec. West along the westerly line of Lot 48, "Map of Shoreham Farms, Section Two" 231.00 feet to a monument found and the northerly side of Robinson Street;

RUNNING thence North 82 deg. 23 min. 20 sec. West along the northerly side of Robinson Street 107.85 feet to a stake set and the westerly side of Tesla Street;

RUNNING thence along the westerly side of Tesla Street the following two (2) courses and distances:

1. South 07 deg. 36 min. 40 sec. West 458.86 feet to a monument found,
2. South 54 deg. 12 min. 38 sec. West 24.30 feet to a stake set and the northerly side of Port Jefferson - Riverhead Road (N.Y.S. Rte. 25A);

RUNNING thence along the northerly side of Port Jefferson - Riverhead Road (N.Y.S. Rte. 25A) the following six (6) courses and distances:

1. On the arc of a curve to the right having a radius of 13,944.00 feet for a distance of 23.00 feet,
2. North 80 deg. 09 min. 09 sec. West 577.11 feet,
3. On the arc of a curve to the left having a radius of 8,056.00 feet for a distance of 67.94 feet,
4. North 09 deg. 21 min. 51 sec. East 2.00 feet,
5. On the arc of a curve to the left having a radius of 8,058.00 feet for a distance of 125.00 feet to a stake set,
6. North 49 deg. 38 min. 15 sec. West 48.43 feet to the monument found at the easterly side of Randall Road and the point or place of BEGINNING.

CONTAINING an area of 16.5468 acres or 720,778 sq. ft.

SUBJECT TO a Restrictive Easement as described in L. 11336 cp. 188.

SUBJECT To an Easement in favor of Long Island Lighting Co., its successors and assigns, over the northerly portion of the above described premises, bounded and described as follows:

BEGINNING at a point marked by a stake set on the southerly side of North Country Road, said point being situate the following two (2) courses and distances as measured along the southerly side of North Country Road from the southerly terminus of the arc of a curve connecting the easterly side of Randall Road and the southerly side of North Country Road:

1. On the arc of a curve to the right having a radius of 20.00 feet for a distance of 27.13 feet,
2. North 70 deg. 42 min. 00 sec. East 203.31 feet;

RUNNING thence from said point of beginning along land now or formerly Long Island Lighting Co. the following two (2) courses and distances:

1. South 80 deg. 49 min. 20 sec. East 875.27 feet to a stake set,
2. South 09 deg. 10 min. 40 sec. West 45.00 feet to a monument found;

RUNNING thence North 81 deg. 41 min. 40 sec. West through the above described premises 986.01 feet to the southerly side of North Country Road;

RUNNING thence North 70 deg. 42 min. 00 sec. East along the southerly side of North Country Road 125.85 feet to the stake set at the point or place of Beginning.

AGFA CORP.
at Shoreham, Town of Brookhaven,
Suffolk County, New York

Surveyor's Description

Schedule "A-1"

Tesla Tower Base (APC -10)

ALL that certain plot piece or parcel of land with the buildings and improvements thereon erected, situate, lying and being at Shoreham, Town of Brookhaven, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the perimeter of a granite and concrete foundation, said point being situate North 51 deg. 14 min. 38 sec. West 166.62 feet from the intersection of the westerly side of Tesla Street which bears South 07 deg. 36 min. 40 sec. West and the northerly side of Port Jefferson - Riverhead Road (NYS Rte. 25A) which bears North 54 deg. 12 min. 38 sec. West;

RUNNING thence from said point of beginning along the perimeter of said granite and concrete foundation the following eight (8) courses and distances:

1. North 79 deg. 59 min. 45 sec. West 38.48 feet,
2. North 34 deg. 49 min. 35 sec. West 38.47 feet,
3. North 10 deg. 13 min. 09 sec. East 38.50 feet,
4. North 55 deg. 13 min. 27 sec. East 38.39 feet,
5. South 79 deg. 59 min. 45 sec. East 38.48 feet,
6. South 34 deg. 49 min. 35 sec. East 38.47 feet,
7. South 10 deg. 13 min. 09 sec. West 38.50 feet,
8. South 55 deg. 13 min. 27 sec. West 38.39 feet to the point or place of Beginning

Schedule "A-2"

Former North Recharge Basin (APC-12)

ALL that certain plot piece or parcel of land with the buildings and improvements thereon erected, situate, lying and being at Shoreham, Town of Brookhaven, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the division line of land now or formerly LIPA (LILCO) on the north and land now or formerly RFP LLC on the South, said point being situate South 80 deg. 49 min. 20 sec. East as measured along said division line 75.30 feet from the southeasterly side of North Country Road;

RUNNING thence from said point of beginning along land now or formerly LIPA (LILCO) the following two (2) courses and distances:

1. South 80 deg. 49 min. 20 sec. East 799.97 feet,
2. South 09 deg. 10 min. 40 sec. West 29.37 feet to a point;

RUNNING thence through land now or formerly RFP LLC subject to a LIPA (LILCO) easement the following four (4) courses and distances:

1. North 79 deg. 48 min. 37 sec. West 315.63 feet,
2. North 83 deg. 30 min. 59 sec. West 228.51 feet,
3. North 79 deg. 52 min. 00 sec. West 252.18 feet,
4. North 01 deg. 41 min. 31 sec. East 30.59 feet to the point or place of Beginning.

SURVEY

