DECLARATION OF COVENANTS AND RESTRICTIONS AND ENVIRONMENTAL EASEMENT

This Declaration Of Covenants And Restrictions And Environmental Easement is made this 17th day of May, 2011, by and between Crumb's Trailer Park, LLC, a New York limited liability company, having an address c/o Darryl Ferguson, 134 Burrows Road, West Winfield, NY 13491 ("Grantor"), and the People of the State of New York, acting through their Commissioner of the New York State Department of Environmental Conservation with its Central Office located at 625 Broadway, Albany, New York 12233 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of an 8-acre property located in the Village of West Winfield, County of Herkimer, State of New York, comprised of a 2.6-acre parcel, (the "Contaminated Parcel") and an adjacent 5.4-acre parcel (the "Uncontaminated Parcel");

WHEREAS, the Contaminated Parcel is more particularly described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, soils at the Contaminated Parcel are contaminated with lead and magnesium, which are hazardous substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et. seq., such that United States Environmental Protection Agency ("EPA") determined that use of the Contaminated Parcel for residential purposes presents an unacceptable human health risk;

WHEREAS, the Contaminated Parcel had been developed and occupied with a 15-unit mobile home facility;

WHEREAS, EPA selected and implemented a response action at the Contaminated Parcel, pursuant to CERCLA, in order to address hazardous substances in soils, which action included the relocation from the Contaminated Parcel of the mobile homes and the residents of the mobile home facility to the Uncontaminated Parcel; the placement of a permeable demarcation barrier over the contaminated existing soils at the Contaminated Parcel and a two-foot soil cover over the demarcation barrier; and the prohibition of future residential use of the Contaminated Parcel to be implemented by the owner of the Contaminated Parcel by imposition of institutional controls in the form of a Declaration of Covenants and Restrictions and Environmental Easement prohibiting such further residential use of the Contaminated Parcel;

WHEREAS, the parties hereto have agreed that Grantor shall grant to the Grantee a permanent Environmental Easement pursuant to Article 71, Title 36 of the Environmental Conservation Law, covenant with respect to restrictions on the use of the Contaminated Parcel, and provide a right of access to the Contaminated Parcel in favor of Grantee and EPA, all of which shall run with the land, for purposes of implementing, facilitating and monitoring the CERCLA response actions in order to protect human health and the environment; and

WHEREAS, Grantor wishes to cooperate fully with the Grantee in the implementation of all response actions at the Contaminated Parcel;

NOW THEREFORE:

1. Grant. Grantor, on behalf of itself, its successors and/or assigns, for ten dollars and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby give, grant and convey to Grantee an Environmental Easement pursuant to Article 71, Title 36 of the Environmental Conservation Law, and Grantor does further covenant and declare in favor of the Grantee that the Contaminated Parcel shall be subject to this Environmental Easement and that the Contaminated Parcel shall be further subject to the restrictions and covenants on use and rights of access set forth below, and Grantor does further give, grant and convey to the Grantee the perpetual right to enforce said restrictions and covenants, which shall be of the nature and character and for the purposes hereinafter set forth, with respect to the Contaminated Parcel.

2. Purposes. It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, facilitate the remediation of past environmental contamination and impose use restrictions and covenants to protect human health and the environment by reducing the risk of exposure to contaminants.

3. Restrictions on Use and Covenants of Grantor. The following restrictions apply to the use of the Contaminated Parcel, run with the land and are binding on the Grantor and its successors in title and assigns: (i) no portion of the Contaminated Parcel may be used for residential purposes; (ii) there shall be no excavation or other intrusive activities on the Contaminated Parcel below the demarcation layer. Grantor covenants and agrees, for itself and its successors and assigns, that it shall maintain and mow the grass and maintain such other vegetation as may have been planted on the soil cover at the Contaminated Parcel; shall maintain in good repair the fences or vegetation erected or planted by EPA as part of the CERCLA response action at the rear boundary (adjacent to the railroad track), front boundary (adjacent to Burrows road) or other boundary of the Contaminated Parcel; and shall submit periodic certifications as required by Grantee that the requirements of this Declaration of Covenants and Restrictions and Environmental Easement have been duly filed in the property records of Herkimer County and that Grantor, or its successors and assigns, as applicable, are in compliance therewith.

4. Modification or Termination of Restrictions or Covenants. The restrictions specified in the preceding paragraph of this instrument may only be modified or terminated, in whole or in part, in writing, by the Grantee, provided, however, that EPA shall be provided with 30 days notice in advance of any modification or termination of said restrictions, and provided further that no modification or termination shall adversely affect the CERCLA response actions for the Contaminated Parcel. If requested by the Grantor, such writing will be executed by Grantee in recordable form.

5. Right of Access: Grantor, for itself and its successors and assigns, hereby conveys to Grantee and to EPA a right of access to the Contaminated Parcel at all reasonable times for the following purposes, that shall run with the land and be binding on Grantor, its successors and /or assigns, and on any tenants or any other parties having an interest in and/or right to the Contaminated Parcel:
    a. Implementing the CERCLA response actions for the Contaminated Parcel;
    b. Verifying any data or information relating to the Contaminated Parcel;
    c. Verifying that no action is being taken on the Contaminated Parcel in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
    d. Conducting investigations under CERCLA relating to contamination on or near the Contaminated Parcel, including, without limitation, sampling of air, water, sediments, soils; and
    e. Implementing additional or new response actions under CERCLA.

6. Reserved Rights of Grantor. Grantor hereby reserves unto itself and its successors and assigns all rights and privileges in and to the use of the Contaminated Parcel which are not incompatible with the restrictions, rights, covenants and easements granted herein.

7. Federal Authority. Nothing in this document shall limit or otherwise affect EPA's rights of entry and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.

8. State Authority. Nothing herein shall constitute a waiver of any rights the Grantee may have pursuant to the Environmental Conservation Law, regulations and/or relevant provisions of statutory or common law.

9. No Public Access and Use. No right of access or use by the general public to any portion of the Contaminated Parcel is conveyed by this instrument.

10. Public Notice. Grantor, on behalf of itself, its successors and assigns, agrees to include in each instrument conveying any interest in any portion of the Contaminated Parcel, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

    NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO A DECLARATION OF COVENANTS AND RESTRICTIONS AND ENVIRONMENTAL EASEMENT, DATED _____, 2011, RECORDED IN THE HERKIMER COUNTY CLERK'S OFFICE ON _____, 2011, IN BOOK _____, PAGE _____, IN FAVOR OF, AND ENFORCEABLE BY, THE PEOPLE OF THE STATE OF NEW YORK AND BY THE UNITED STATES OF AMERICA AS THIRD-PARTY BENEFICIARY.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor agrees to provide Grantee and EPA with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

11. Enforcement. The Grantee shall be entitled to enforce the terms of this instrument by resort to specific performance. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Any forbearance, delay or omission to exercise Grantee's rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee of such term or of any of the rights of the Grantee under this instrument.

12. Damages. Grantee shall also be entitled to recover damages for breach of any covenant or violation of the terms of this instrument including any impairment to the remedial action that increases the cost of the selected response action for the Contaminated Parcel as a result of such breach or violation.

13. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

14. Covenants. Grantor hereby covenants that the Grantor is lawfully seized in fee simple of the Contaminated Parcel, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, and that the Contaminated Parcel is free and clear of encumbrances.

15. Notices. Any notice, demand, request, consent, approval, or communication under this instrument that any party desires or is required to give hereunder, shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

Crumb's Trailer Park, LLC
c/o Darryl Ferguson
134 Burrows Road
West Winfield, New York 13491

And/ or to such other address as Grantor may, by notice, specify for itself or for any successor or assign.

To Grantee:

Office of General Counsel
NYS Department of Environmental Conservation
625 Broadway
Albany, New York 12233-5500

NYS Department of Environmental Conservation
Division of Environmental Remediation
Bureau of Site Control
625 Broadway
Albany, New York 12233

A copy of each such communication shall also be sent to EPA in the same manner as to Grantor or Grantee, and addressed to the following two addressees:

U.S. Environmental Protection Agency
Emergency and Remedial Response Division
Central New York Remediation Section
Attention: Crumb's Trailer Park Superfund (Removal) Site Project Manager
290 Broadway, 20th Floor
New York, New York 10007-1866

U.S. Environmental Protection Agency
Office of Regional Counsel
Attention: Crumb's Trailer Park Superfund (Removal) Site Attorney
290 Broadway, 17th Floor,
New York, New York 10007-1866

16. General Provisions.

a. Controlling law: The interpretation and performance of this instrument shall, with respect to the Environmental Easement, be governed by the laws of the State of New York, and with respect to other matters, shall be governed by the laws of the United States or, if there are no applicable federal laws, by the laws of the State of New York.
b. Liberal construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.
c. Severability. If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
d. Entire agreement. This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.
e. No forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
f. 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.
g. Successors. The covenants, easements, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall

continue as a servitude running in perpetuity with the Contaminated Parcel. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall mean the People of the State of New York acting through their Commissioner of NYSDEC or through any successor department or agency of the State of New York.

h. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

j. Third-Party Beneficiary. Grantor and Grantee hereby agree that the United States, through EPA, shall be, on behalf of the public, a third-party beneficiary of the benefits, rights and obligations conveyed to Grantee in this instrument; provided that nothing in this instrument shall be construed to create any obligations on the part of EPA.

TO HAVE AND TO HOLD unto the Grantee and its assigns forever.

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

Executed this 17th day of May, 2011.

GRANTOR:
Crumb's Trailer Park, LLC

By: _____
Darryl Ferguson
Sole Member of Crumb's Trailer Park, LLC

Grantor's Acknowledgment

STATE OF NEW YORK) ss:
COUNTY OF Herkimer)

On the 17th day of May, in the year 2011, before me, the undersigned, personally appeared Darryl Ferguson, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as sole member of Crumb's Trailer Park, LLC, and that by his signature on the instrument, the Grantor Crumb's Trailer Park, LLC, upon behalf of which the individual acted, executed the instrument.

Notary Public - State of New York

PATRICK M. QUINN
Notary Public, State of New York
Qualified in Oneida County
No. 02QU5083519
My Commission Expires _____

This Declaration of Covenants and Restrictions and 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: _____
Dale A. Desnoyers, Director
Division of Environmental Remediation

Date: MAY 26 2011

Grantee's Acknowledgment

STATE OF NEW YORK) ss:
COUNTY OF Albany)

On the 26th day of May, in the year 2011, 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 whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity as Designee of the Commissioner of the State of New York Department of Environmental Conservation, and that by his signature on the instrument, the People of the State of New York, upon behalf of which the individual acted, executed the instrument.

_____
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, 2014

EXHIBIT A

DECLARATION OF COVENANTS AND RESTRICTIONS AND ENVIRONMENTAL EASEMENT AREA
CONTAMINATED PARCEL LEGAL PROPERTY DESCRIPTION

Property Address: Situate on the North Side of Burrows Road, Village of West Winfield, Town of Winfield, County of Herkimer, State of New York.

Tax Map: 137.039 - 1 – 12

ALL THAT TRACT OR PARCEL OF LANDS situate in the Town of Winfield, Village of West Winfield, County of Herkimer and State of New York, being more particularly described as follows:

Beginning at a point in the centerline of Burrows Road, at it's intersection with the division line between lands conveyed to N/F Ferguson Fuels & Services, (Liber 894 Page 52- T.M.P. 137.039-1-13) to the west, and the parcel herein described on the east. Said point being the southwest corner of this parcel described

Thence; North 14-09-57 East, along said division line, passing through an iron pipe at a distance of 24.0 feet, a total distance of 252.76 feet to a capped iron rod set at the northwest corner of the parcel herein described.

Thence; South 87-00-41 East, along the division line of land conveyed to N/F Central New York Railroad Corporation on the north and the parcel herein described on the south, a distance of 392.86 feet to a "Beauchamp" capped iron rod found.

Thence; South 22-02-37 West, through an iron pipe at 38.67 feet marking the northwest corner of N/F New York State Electric & Gas Co., (Liber 558 page774 – T.M.P. 137.039-1-11), continuing along the west line of New York State Electric & Gas through another iron pipe found at a distance of 322.71 feet, a total distance of 344.61 feet to a point in the centerline of Burrows Road.

Thence; North 67-09-50 West, along the centerline of Burrows Road, a distance of 336.72 feet to the point or place of beginning.

Containing 113,000 plus or minus square feet of 2.6 Acres more or less.

EXHIBIT B

SURVEY
CONTAMINATED AND UNCONTAMINATED PARCELS