

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

THIS INDENTURE made this 4th day of April, 2016, between Owner(s) New York State Electric & Gas Corporation, having an office at 18 Link Drive, Binghamton, County of Broome, State of New York (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 the 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, Grantor, is the owner of real property located at the address of 618 Madison Avenue and Judson Street Extension in the City of Elmira, County of Chemung and State of New York, known and designated on the tax map of the County Clerk of Chemung as tax map parcel numbers: Section 89.11 Block 7 Lot 46.2; and Section 89.12 Block 3 Lot 39.1, being the same as that property conveyed to Grantor by (i) deed dated June 10, 2003 and recorded in the Chemung County Clerk's Office on December 30, 2003 as Instrument No. 200307240076 (Lot 46.2), and (ii) deed dated July 7, 1884 and recorded in the Chemung County Clerk's Office on July 23, 1884 in Liber 83 of Deeds, at page 171 (Lot 39.1). The property subject to this Environmental Easement (the "Controlled Property") consists of a two separate parcels, one parcel of approximately 2.695 +/- acres (Lot 46.2) and a second parcel of approximately 1.788 +/- acres (Lot 39.1), which are hereinafter more fully described in the Land Title Survey dated March 15, 2015 prepared by Keystone Associates, which will be attached to the Site

Management Plan. The Controlled Property description is set forth in and attached hereto as Schedule A; and

WHEREAS, the Department accepts this Environmental Easement in order to ensure the protection of public health and the environment and to achieve the requirements for remediation established for the 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 mutual covenants contained herein and the terms and conditions of Order on Consent Index Number DO-0002-9309, Grantor conveys to Grantee a permanent Environmental Easement pursuant to ECL Article 71, Title 36 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 restriction of future uses of the land that are inconsistent with the above-stated purpose.

2. Institutional and Engineering Controls. The controls and requirements listed in the Department approved Site Management Plan ("SMP") including any and all Department approved amendments to the SMP are incorporated into and made part of this Environmental Easement. These controls and requirements 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. (1) The Controlled Property may be used for:

Commercial use as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial use as described in 6 NYCRR Part 375-1.8(g)(2)(iv);

(2) All Engineering Controls must be operated and maintained as specified in the Site Management Plan (SMP);

(3) All Engineering Controls must be inspected at a frequency and in a manner defined in the SMP;

(4) The use of groundwater underlying the property is prohibited without necessary water quality treatment as determined by the NYSDOH or the Chemung County Department of Health to render it safe for use as drinking water or for industrial purposes, and the user must first notify and obtain written approval to do so from the Department;

(5) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;

(6) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in the manner defined in the SMP;

(7) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;

(8) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP;

(9) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP;

(10) Access to the site must be provided to agents, employees or other representatives of the State of New York with reasonable prior notice to the property owner to assure compliance with the restrictions identified by this Environmental Easement.

B. The Controlled Property shall not be used for **Residential purposes as defined in 6 NYCRR 375-1-8(g)(2)(i) or Restricted Residential purposes as defined in 6 NYCRR 375-1-8(g)(2) (ii), or for agriculture or vegetable gardens**, and the above-stated engineering controls may not be discontinued without an amendment or extinguishment of this Environmental Easement.

C. The SMP describes obligations that the 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, 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. The SMP may be modified in accordance with the Department's statutory and regulatory authority. 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:

Site Control Section
Division of Environmental Remediation
NYSDEC
625 Broadway
Albany, New York 12233
Phone: (518) 402-9553

D. Grantor must provide all persons who acquire any interest in the Controlled Property a true and complete copy of the SMP that the Department approves for the Controlled Property and all Department-approved amendments to that SMP.

E. Grantor covenants and agrees that until such time as the Environmental Easement

is extinguished in accordance with the requirements of ECL 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 to Title 36 of Article 71 of the Environmental Conservation Law.

F. 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.

G. Grantor covenants and agrees that it shall, at such time as NYSDEC may require, submit to NYSDEC a written statement by an expert the NYSDEC may find acceptable certifying under penalty of perjury, in such form and manner as the Department may require, that:

(1) the inspection of the site to confirm the effectiveness of the institutional and engineering controls required by the remedial program was performed under the direction of the individual set forth at 6 NYCRR Part 375-1.8(h)(3).

(2) the institutional controls and/or engineering controls employed at such site:

(i) are in-place;

(ii) are unchanged from the previous certification, or that any identified changes to the controls employed were approved by the NYSDEC and that all controls are in the Department-approved format; and

(iii) that nothing has occurred that would impair the ability of such control to protect the public health and environment;

(3) the owner will continue to allow access to such real property to evaluate the continued maintenance of such controls;

(4) nothing has occurred that would constitute a violation or failure to comply with any site management plan for such controls;

(5) the report and all attachments were prepared under the direction of, and reviewed by, the party making the certification;

(6) to the best of his/her knowledge and belief, the work and conclusions described in this certification are in accordance with the requirements of the site remedial program, and generally accepted engineering practices; and

(7) the information presented is accurate and complete.

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 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 part or all of the underlying fee interest to the Controlled Property, 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 violates this Environmental Easement, the Grantee may revoke the Certificate of Completion with respect to the Controlled Property.

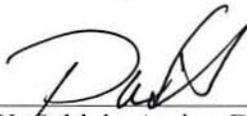
C. Grantee shall notify Grantor of a breach or suspected breach of any of the terms of this Environmental Easement. Such notice shall set forth how Grantor can cure such breach or suspected breach and give Grantor a reasonable amount of time from the date of receipt of notice in which to cure. At the 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, and Grantee may take any other appropriate action reasonably necessary to remedy any breach of this Environmental Easement, including the commencement of any proceedings in accordance with applicable law.

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 any enforcement rights.

6. Notice. Whenever notice to the Grantee (other than the annual certification) or approval from the Grantee 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 Brownfield Cleanup Agreement, State Assistance

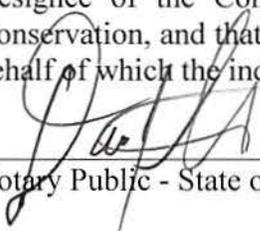
THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By: 
Robert W. Schick, Acting Director
Division of Environmental Remediation

Grantee's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the 4th day of April, in the year 2016, before me, the undersigned, personally appeared Robert Schick, 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 Designee of the 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.



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, 2018



SCHEDULE "A"**ENVIRONMENTAL EASEMENT**
PROPERTY DESCRIPTION**Lot 46.2**

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Elmira, County of Chemung, State of New York, being all of the property now or formerly of New York State Electric & Gas Corporation described in L. 3072 P. 40076 (Control # 200307240076) as recorded in the Chemung County Clerk's Office on December 30, 2003 (TM# 089.11-7-46.2), bounded and described as follows:

BEGINNING at a 5/8 inch rebar on the easterly boundary of Madison Avenue at its intersection with the division line between the property now or formerly of Chemung County Industrial Development Agency per L. 708 P. 427 (TM# 89.12-3-28) on the south and the property now or formerly of New York State Electric & Gas Corporation per L. 3072 P. 40076 (Control # 20030724006) (TM# 089.11-7-46.2) herein described as 'NYSEG' on the north;

RUNNING THENCE N20°50'54"W along said Madison Avenue, a distance of 30.00 feet to a mag nail at its intersection with the division line between the property now or formerly of Irving D. Booth, Inc. per L. 651 P. 430 (TM# 089.11-7-46.1) on the north and said NYSEG on the south; thence along the division lines between said Irving D. Booth, Inc. and said NYSEG the following four (4) courses and distances: 1) N68°12'29"E, a distance of 130.00 feet to a 5/8 inch rebar capped "KEYSTONE BING NY" (KEYSTONE capped rebar); 2) N03°27'55"W, a distance of 89.50 feet to a mag nail; 3) N21°41'39"W, a distance of 201.41 feet to a mag nail; 4) N68°18'22"E, a distance of 245.99 feet to a rebar capped "WEILER" at its intersection with the division line between the property now or formerly of I. D. Booth, Inc. per L. 3123 P. 54 (TM# 89.12-3-39.2) on the northeast and said NYSEG on the southwest; thence along the division lines between said I. D. Booth, Inc. and said NYSEG the following three (3) courses and distances: 1) On a curve to the left having a radius of 410.28 feet, an arc length of 20.46 feet to a point, said curve being subtended by a chord having a bearing of S57°36'53"E and a length of 20.46 feet; 2) S59°02'36"E, a distance of 88.21 feet to a point; 3) On a curve to the left having a radius of 410.27 feet, an arc length of 164.29 feet to a rebar capped "WEILER" at its intersection with the division line between the property now or formerly of New York State Electric & Gas Corporation (Formerly Elmira Gas Light Company) (TM# 089.12-3-39.1) on the north and said NYSEG on the south, the last mentioned curve being subtended by a chord having a bearing of S70°30'53"E and a length of 163.20 feet; thence along the last mentioned division line on a curve to the left having a radius of 410.27 feet, an arc length of 79.44 feet to a rebar capped "WEILER" at its intersection with the division line between said Chemung County Industrial Development Agency on the east and said NYSEG on the west, the last mentioned curve being subtended by a chord having a bearing of S87°32'00"E and a length of 79.31 feet; thence along the division lines between said Chemung County Industrial Development Agency and said NYSEG the following six (6) courses and distances: 1) S13°17'31"E, a distance of 53.47 feet to

a KEYSTONE capped rebar; 2) S68°12'29"W, a distance of 125.38 feet to a KEYSTONE capped rebar; 3) S65°11'29"W, a distance of 133.20 feet to a point; 4) S61°28'29"W, a distance of 145.00 feet to a KEYSTONE capped rebar; 5) S21°57'32"E, a distance of 12.00 feet to a KEYSTONE capped rebar; 6) S68°12'29"W, a distance of 255.03 feet to the POINT OF BEGINNING.

The above described parcel contains 117,411 square feet or 2.695 acres, more or less.

The above described parcel is subject to any and all easements of record and/or as found in the field.

Bearings are referred to True North at the 76°35' Meridian of West Longitude.

The above described parcel is shown on the map entitled "Environmental Easement Description, Department Site No. 808018, NYSEG Former Elmira MGP Site, 618 Madison Avenue & Judson Street Extension, Town of Elmira, Chemung County, New York State" prepared by Keystone Associates Architects, Engineers and Surveyors, LLC as project number 1677.03515, sheet SU-1 dated March 15, 2015.

Lot 39.1

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Elmira, County of Chemung, State of New York, being all of the property now or formerly of New York State Electric & Gas Corporation (Formerly Elmira Gas Light Company) described in L. 83 P. 171 as recorded in the Chemung County Clerk's Office on July 23, 1884 (TM# 089.12-3-39.1), bounded and described as follows:

BEGINNING at a point on the southerly boundary of Judson Street at its intersection with the division line between the property now or formerly of Chemung County Industrial Development Agency per L. 708 P. 427 (TM# 89.12-3-28) on the east and the property now or formerly of New York State Electric & Gas Corporation (Formerly Elmira Gas Light Company) per L. 83 P. 171 (TM# 089.12-3-39.1) herein described as 'NYSEG' on the west, said point being N59°01'12"W, a distance of 1.04 feet from a rebar capped "WEILER);

RUNNING THENCE along the division lines between said Chemung County Industrial Development Agency and said NYSEG the following four (4) courses and distances: 1) S44°41'53"E, a distance of 13.41 feet to a point; 2) S37°40'16"E, a distance of 94.58 feet to a point, the last mentioned point being N63°42'56"E, a distance of 0.46 feet from a rebar capped "WEILER"; 3) S75°15'29"W, a distance of 396.59 feet to a 5/8 inch rebar capped "KEYSTONE BING NY" (KEYSTONE capped rebar); 4) S13°17'31"E, a distance of 8.63 feet to a rebar capped "WEILER" at its intersection with the division line between the property now or formerly of New York State Electric & Gas Corporation per L. 3072 P. 40076 (TM# 089.11-7-46.2) on the south and said NYSEG on the north; thence along the last mentioned division line, on a curve to the right having a radius of 410.27 feet, an arc length of 79.44 feet to a rebar capped "WEILER" at its intersection with the division line between the property now or

formerly of I.D. Booth, Inc. per L. 3123 P. 54 (TM# 89.12-3-39.2) on the west and said NYSEG on the east, said curve being subtended by a chord having a bearing of N87°32'00"W and a length of 79.31 feet; thence N07°59'37"E along the last mentioned division line, a distance of 283.22 feet to a point at its intersection with said Judson Street, the last mentioned point being S07°59'37"W, a distance of 0.38 feet from a rebar capped "WEILER"; thence S75°42'59"E along said Judson Street, a distance of 365.47 feet to the POINT OF BEGINNING.

The above described parcel contains 77,898 square feet or 1.788 acres, more or less.

The above described parcel is subject to any and all easements of record and/or as found in the field.

Bearings are referred to True North at the 76°35' Meridian of West Longitude.

The above described parcel is shown on the map entitled "Environmental Easement Description, Department Site No. 808018, NYSEG Former Elmira MGP Site, 618 Madison Avenue & Judson Street Extension, Town of Elmira, Chemung County, New York State" prepared by Keystone Associates Architects, Engineers and Surveyors, LLC as project number 1677.03515, sheet SU-1 dated March 15, 2015.