

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

**THIS INDENTURE** made this <sup>June</sup> 27 day of , 2012, between Owner(s) George S. Luce III and Nancy R. Luce, natural persons residing at 6000 Redman Road, City of Brockport, County of Monroe, 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 on Redman Road in the Town of Sweden, County of Monroe and State of New York, known and designated on the tax map of the County Clerk of Monroe as tax map parcel numbers: Section 098.04 Block 1 Lot 20.1, being the same as that property conveyed to Grantor by deed dated May 28, 1982 and recorded in the Monroe County Clerk's Office in Liber 6156 of Deeds at Page 53. The portion of property subject to this Environmental Easement (the "Controlled Property") comprises approximately 4.3 +/- acres that includes a gravel access road leading to the Property, and is hereinafter more fully described in the Land Title Survey dated August 3, 2011 and revised on September 1, 2011 and September 14, 2011 prepared by C.T. Male Associates, which will be attached to the Site Management Plan. The Controlled Property descriptions are 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, 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:  
its current use as a closed and capped landfill.
- (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) Groundwater and other environmental or public health monitoring must be performed as defined in the SMP;
- (5) Data and information pertinent to Site Management of the Controlled Property must be reported at the frequency and in a manner defined in the SMP;
- (6) All future activities on the property that will disturb remaining contaminated material must be conducted in accordance with the SMP;
- (7) Monitoring to assess the performance and effectiveness of the remedy must be performed as defined in the SMP.
- (8) Operation, maintenance, monitoring, inspection, and reporting of any mechanical or physical components of the remedy shall be performed as defined in the SMP.
- (9) 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 and to perform the activities required by Subparagraphs 2.A.3, 2.A.4, 2.A.5, 2.A.7 and 2.A.8.

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B. The Controlled Property shall not be used for Residential, Restricted Residential, Commercial or Industrial purposes as defined in 6NYCRR 375-1.8(g)(i), (ii), (iii) and (iv), 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 Department or its agents, employees or other representatives shall perform the actions described in Subparagraphs 2.A.2, 2.A.3, 2.A.4, 2.A.5, 2.A.7 and 2.A.8 and Grantor shall provide access to the Department for the performance of these actions. The performance of these activities is 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. Copies of the SMP may be obtained 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 this Easement.

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 upon request by NYSDEC it shall provide a certification to the Department that the Controlled Property is not being used for any purpose other than a landfill, that groundwater underlying the Controlled Property is not being used for drinking water or industrial purposes unless permitted and that no contaminated material was disturbed by Grantor except in accordance with the SMP. .

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 and to perform the actions described in Subparagraphs 2.A.2, 2.A.3, 2.A.4, 2.A.5, 2.A.7 and 2.A.8.

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 7 1-3603, 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 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.

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 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, and the County tax map number or the Liber and Page or computerized system identification number.

Parties shall address correspondence to:

Site Number: 828040A  
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

All notices and correspondence shall be delivered by hand, 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.

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. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner's Designee, 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, or the Commissioner's Designee, 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.

George S. Luce III and Nancy R. Luce:

By: *George S. Luce III Nancy R. Luce*

Print Name: George S. Luce III and Nancy R. Luce

Title: grantors Date: 6/7/2012

**Grantor's Acknowledgment**

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

On the 7 day of June, in the year 20 12, before me, the undersigned, George S. Luce III and Nancy R. Luce 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.

*Mindy L. Zoghlín*  
Notary Public - State of New York

MINDY L. ZOGHLIN  
NOTARY PUBLIC, State of New York  
Registration #02ZO4986874  
Qualified in Monroe County  
Commission Expires September 15, 20 13  
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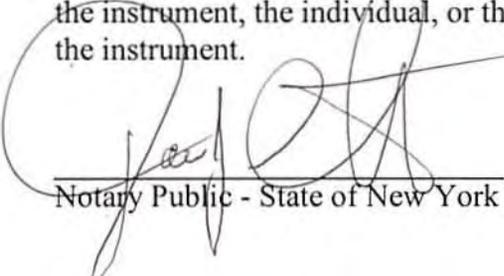
THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

By:   
Robert Schick, Acting Director  
Division of Environmental Remediation

**Grantee's Acknowledgment**

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

On the 27<sup>th</sup> day of JUNE, in the year 2012, 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, 2014

**SCHEDULE "A" PROPERTY DESCRIPTION****CAPPED LANDFILL**

All that piece or parcel of property, situate in the Town of Sweden, County of Monroe, State of New York, being a portion of lands owned by George S. Luce, III as recorded in Liber 6156 of Deeds, at Page 53 on file in the Monroe County Clerk's Office and also part of Lot 3 and Lot 6, of the 6th Section, Township 3 of the Triangular Tract, and more particularly described as follows:

COMMENCING at a point on the northerly right of way of County Route 231 (Beadle Road), an existing county highway 49.5 feet wide, at its intersection with the division line between the property of George S. Luce, III (reputed owner) on the west and the property of Harold R. Polle and Barbara L. Polle (reputed owners) on the east, thence; North 0 deg. 04 min. 23 sec. East along the last mentioned division line a distance of 401.10 feet to the point of BEGINNING, thence; Through the property of George S. Luce, III (reputed owner) the following four (4) courses and distances:

1. South 86 deg. 33 min. 52 sec. West a distance of 317.95 feet to a point, thence;
2. North 53 deg. 16 min. 08 sec. West a distance of 108.00 feet to a point, thence;
3. North 0 deg. 04 min. 52 sec. West a distance of 374.00 feet to a point, thence;
4. South 89 deg. 38 min. 55 sec. East a distance of 405.00 feet to a point on the first mentioned division line, thence;

South 0 deg. 04 min. 23 sec. West, along the first mentioned division line, 417.05 feet to the point or place of beginning, containing 3.927 acres of land, more or less.

**ACCESS ROAD**

All that piece or parcel of property, situate in the Town of Sweden, County of Monroe, State of New York, being a portion of lands owned by George S. Luce, III as recorded in Liber 6156 of Deeds, at Page 53 on file in the Monroe County Clerk's Office and also part of Lot 3 and Lot 6, of the 6th Section, Township 3 of the Triangular Tract, and more particularly described as follows:

BEGINNING at a point on the northerly right-of-way of County Route 231 (Beadle Road), an existing county highway being 49.5 feet wide, at its intersection with the division line between the property of George S. Luce, III (reputed owner) on the west and the property of Harold R. Polle & Barbara L. Polle (reputed owners) on the east, thence; North 0 deg. 04 min. 23 sec. East along the last mentioned division line a distance of 401.10 feet to a point, thence; South 86 deg. 33 min. 52 sec. West coincident with the southerly boundary of a deed restriction parcel, mapped by Popli Design Group and dated February 10, 2011, a distance of 40.08 feet to a point, thence; South 0 deg. 04 min. 23 sec. West through the property of George S. Luce, III (reputed owner) on a line parallel to and at all points 40.00 feet distant westerly from the first mentioned division line, a distance of 399.48 feet to a point on the first mentioned right-of-way, thence; North 88 deg. 52 min. 53 sec. East along said right-of-way a distance of 40.01 feet to the point or place of beginning and containing 0.368 acre of land more or less.

