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

THIS INDENTURE made this 30th day of December, 2008, between Owners 3035 White Plains Housing Development Fund Corp. as nominee for 3035 White Plains Retail, LLC, and 3035 White Plains Housing Development Fund Corp. as nominee for Adee & Lester Limited Partnership, having an office c/o The Arker Companies located at 15 Verbena Avenue, Suite 100, Floral Park, New York 11001 (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, Grantor is the owner of real property located at the address of 3035 White Plains Road, in the City of New York, Bronx County, New York known and designated on the tax map of the Borough of the Bronx as tax map parcel numbers Block 4545, Lots 1001 and 1002, being the same as to Lot 1001 as that property conveyed to Grantor 3035 White Plains Housing Development Fund Corp. as nominee for 3035 White Plains Retail LLC by deed on July 31, 2007, and recorded in the Land Records of the City Register for Bronx County on October 24, 2007 at computerized system tracking/ identification number 2007000536870 and that declaration of interest and nominee agreement by and between 3035 White Plains Housing

Development Fund Corp., and 3035 White Plains Retail LLC dated as of July 31, 2007 and recorded in the office of the City Register for Bronx County at computerized system tracking/ identification number 2007000536878; and being the same as to Lot 1002 as that property conveyed to Grantor 3035 White Plains Housing Development Fund Corp. as nominee for Adece and Lester Limited Partnership by deed on July 31, 2007, and recorded in the Land Records of the City Register for Bronx County on August 15, 2007 at computerized system tracking/ identification number 2007000422860 and that declaration of interest and nominee agreement by and between 3035 White Plains Housing Development Fund Corp., and Adece and Lester Limited Partnership dated as of July 31, 2007 and recorded in the office of the City Register for Bronx County at computerized system tracking/ identification number 2007000536871, comprised of approximately 0.39 acres, and hereinafter more fully described in Schedule A (Description of Property) and Schedule B (Map of Property) attached hereto and made a part hereof (the "Controlled Property"); 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 Brownfield Cleanup Agreement Number W2-1108-07-07, 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 may be used for unrestricted use so long as the following short-term engineering controls are employed:

(i) The use of the groundwater underlying the Controlled Property is prohibited without

treatment rendering it safe for the intended use and approval by the NYS Department of Health:

(ii) Compliance with all elements of the NYSDEC-approved Site Management Plan, dated November 2008 ("SMP").

The Grantor hereby acknowledges receipt of a copy of the NYSDEC-approved 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 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. This 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:

Regional Remediation Engineer	or	Site Control Section
Region 2		Division of Environmental Remediation
NYS DEC		NYSDEC
One Hunter's Plaza		625 Broadway
47-40 21 st Street		Albany, New York 12233
Long Island City, NY 11101		

B. 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 to Title 36 of 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:

1. Use of the Controlled Property for all purposes not inconsistent with, or limited by the terms of this Environmental Easement;

2. 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 14, 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

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.

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2. 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;

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B. If any person intentionally violates this Environmental Easement, the Grantee may revoke the Certificate of Completion provided under ECL Article 27, Title 14, 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: Environmental Easement Attorney
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.

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.

EDMS: 327611

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:

3035 White Plains Housing Development Fund Corp. as
Nominee for 3035 White Plains Retail, LLC

By: 3035 White Plains Retail, LLC, a New York limited
liability company, as Attorney-in-Fact

By:  _____

Title: a member Date: 12.19.08

Grantor's Name:

3035 White Plains Housing Development Fund Corp. as
Nominee for Adee and Lester Limited Partnership

By: Adee and Lester Limited Partnership, a New York
limited partnership, as Attorney-in-Fact


By: Adee and Lester GP LLC, a New York limited
liability company, its General Partner

By: Bedford Park Associates, LLC, a New York
limited liability company, its Member

By:  _____

Title: a member Date: 12.19.08

**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

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF Nassau

On the 19th day of Dec, in the year 20__ , before me, the undersigned, personally appeared Dr. Aron, 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.

Carol Giuliani
Notary Public - State of New York

CAROL GIULIANI
Notary Public, State of New York
No. ~~011000300~~ 01GI4803300 RB
Qualified in Nassau County
Commission Expires July 31, 20₁₀

Grantor's Acknowledgment

STATE OF NEW YORK)
) ss:
COUNTY OF Nassau

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Carol Giuliani
Notary Public - State of New York

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Notary Public, State of New York
No. ~~011000300~~ 01GI4803300 RB
Qualified in Nassau County
Commission Expires July 31, 20₁₀

SCHEDULE A

PERIMETER DESCRIPTION

ALL that certain piece or parcel of land, situate, lying and being in the County of Bronx, City and State of New York, shown as Block 4545 Lot 1 and the southerly half of Lester Street as shown on the New York City Tax Map, and being more particularly described as follows:

BEGINNING at a point formed by the intersection of the centerline of Lester Street (a private road) and the westerly side of White Plains Road forming an interior angle of 88 degrees 17 minutes 40 seconds;

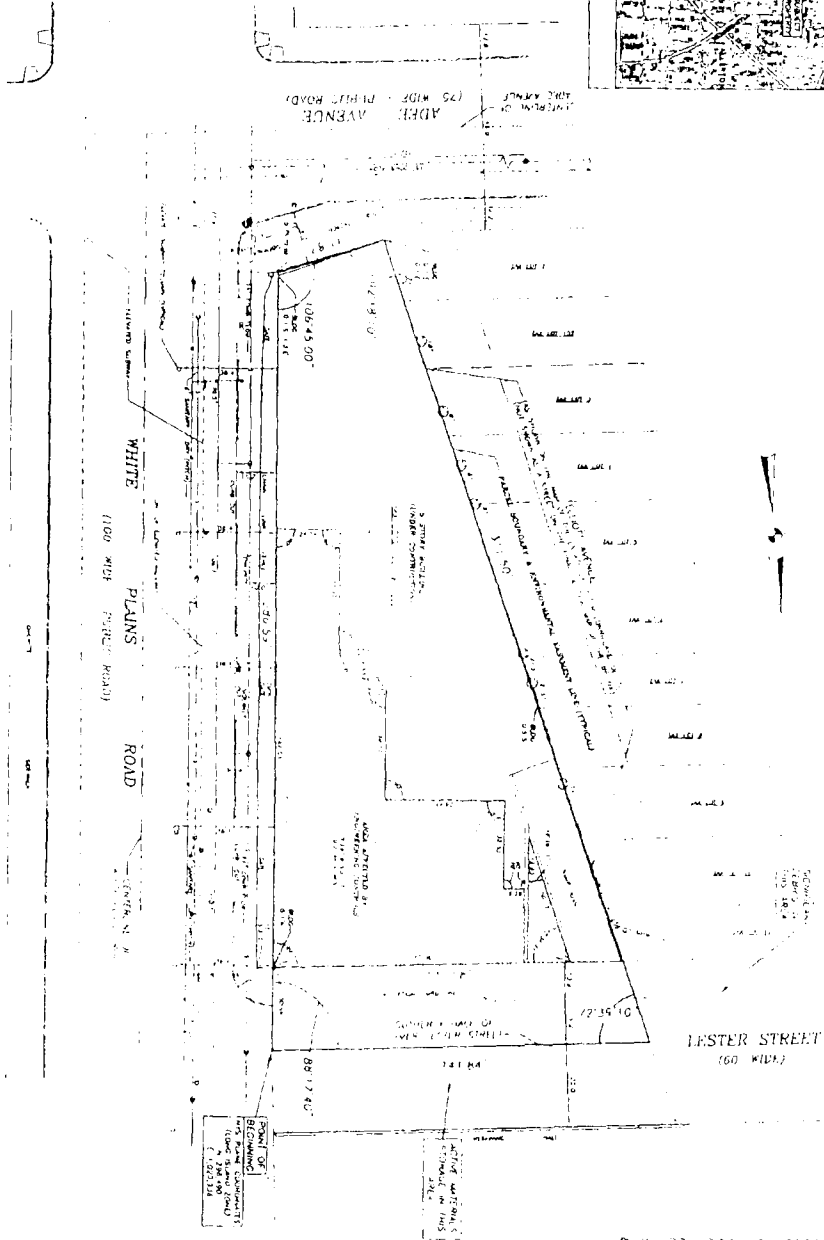
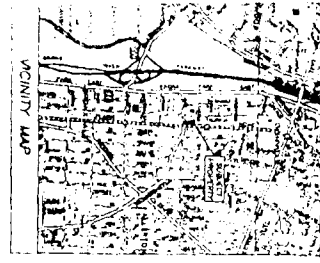
THENCE southerly along the westerly side of White Plains Road a distance of 286.59 feet to the northerly side of Adee Avenue as widened;

THENCE westerly along the northerly side of Adee Avenue forming an interior angle of 106 degrees 45 minutes 00 seconds a distance of 41.87 feet to its intersection with the easterly line of Elliot Avenue as laid out on the Map of The Estate of Peter Lorillard known as map number 448, filed April 20, 1871;

THENCE northerly along said line of Elliot Avenue forming an interior angle of 92 degrees 18 minutes 10 seconds a distance of 311.50 feet to its intersection with the centerline of Lester Street (a private road);

THENCE easterly along the centerline of Lester Street (a private road) forming an interior angle of 72 degrees 39 minutes 10 seconds a distance of 141.84 feet to the point of BEGINNING.

SCHEDULE B



NOTE: A preliminary site plan was prepared by the applicant on 10/15/11. It is hereby noted that the applicant is responsible for the accuracy of the information provided in this report.

- 1501. The applicant shall be responsible for obtaining all necessary permits and approvals from the appropriate agencies.
- 1502. The applicant shall be responsible for the design and construction of the proposed facility.



DESCRIPTION OF SUBJECT AND ENVIRONMENTAL ASSESSMENT: This report provides a detailed description of the subject property and the results of the environmental assessment conducted on 10/15/11.

Table with 4 columns: No., Date, Name, and Title. Includes project information and professional details.