

## ENVIRONMENTAL EASEMENT

THIS INDENTURE made this <sup>41-</sup>28 day of December, 2006, between Atlas Park, LLC, having an office at 8000 Cooper Avenue, Glendale, 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 ("brownfield 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 brownfield site remedial program or eliminate potential exposure pathways to hazardous waste or petroleum; and

WHEREAS, Grantor, is the owner of real property located 8000 Cooper Avenue, in the Hamlet of Glendale, City of New York, County of Queens, State of New York, and identified on the Queens County tax map as Section 20, Volume I, Block 3810, Lot 350, being the same as that property conveyed to Grantor by deed on July 15, 2003, and recorded in the Land Records of the Office of the City Register of the City of New York, Queens County as CRFN: 2003000395104, comprised of approximately 3.506 acres (the "Property"); and

WHEREAS, an approximately 3.531 acres portion of this parcel, and hereinafter more fully described in Schedule A attached hereto and made a part hereof is subject to the easement and is referred to as 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.

**NOW THEREFORE**, in consideration of the covenants and mutual promises contained herein and the terms and conditions of Brownfield Cleanup Agreement Index Number W2-1070-05-06, Site Number C241088, dated October 11, 2005, 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 and 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:

The Site Management Plan has been approved by the NYSDEC for management of residual contamination at and from the Controlled Property ("NYSDEC-approved Site Management Plan").

A. The Controlled Property may be used for restricted commercial use as long as the following long-term engineering controls are employed:

- compliance by the Grantor and the Grantor's successors and assigns with all elements of the NYSDEC-approved Site Management Plan is required.
- a composite cover system consisting of asphalt or concrete pavement in walkways and driving surfaces, and concrete slabs under building structures must be inspected, certified and maintained as required in the NYSDEC-approved Site Management Plan;
- a soil vapor mitigation system consisting of a sub-slab depressurization system under all building structures must be inspected, certified, operated and maintained as required in the NYSDEC-approved Site Management Plan;
- a groundwater air-sparge/soil vapor extraction system must be inspected, certified, operated and maintained as required in the NYSDEC-approved Site Management Plan;

- onsite environmental monitoring devices, including but not limited to, groundwater monitor wells and soil vapor probes, must be protected and replaced as necessary to ensure continued functioning in the manner specified in the NYSDEC-approved Site Management Plan;
- vegetable gardens and farming on the Controlled Property are prohibited;
- the use of the groundwater underlying the Controlled Property is prohibited without treatment rendering it safe for intended purpose;
- all future activities on the Controlled Property that will disturb residual contaminated material protected under this environmental easement, including any proposed soil excavation, are prohibited unless they are conducted in accordance with the soil management provisions in the NYSDEC-approved Site Management Plan;

B. The Controlled Property may not be used for a higher level of use, such as restricted residential or unrestricted use, 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:

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 the Satisfactory Completion of Project provided under ECL 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 its County tax map number or the Liber and Page or computerized system tracking/ identification number and address correspondence to:

Division of Environmental Enforcement  
Office of General Counsel  
New York State Department of Environmental Conservation  
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.

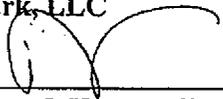
8. Amendment. This environmental easement may be amended only by an amendment executed by the Commissioner of the New York State Department of Environmental Conservation and filed with the office of the recording officer for the county or counties where the Property is situated in the manner prescribed 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.

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.

Atlas Park, LLC

By:  \_\_\_\_\_

Damon J. Hemmerdinger

Title: SVP \_\_\_\_\_

Date: 12/26/06 \_\_\_\_\_



**SCHEDULE "A"**

**Survey containing Metes and Bounds description**

## SCHEDULE A

### Atlas Park Site - Parcel B (Tract B1)

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, being bounded and described as follows:

Beginning at the intersection of the Southerly line of Cooper Avenue and the Easterly line of 80th Street and running thence;

1. Along said Southerly line of Cooper Avenue, North 70 degrees 01 minutes 43 seconds East, a distance of 177.67 feet to a point; thence

Through Block 3810 Lot 350 the following nineteen courses:

2. South 09 degrees 11 minutes 04 seconds East, a distance of 155.82 feet to a point; thence
3. South 64 degrees 46 minutes 08 seconds West, a distance of 13.33 feet to a point; thence
4. South 08 degrees 40 minutes 44 seconds East, a distance of 98.52 feet to a point; thence
5. South 12 degrees 22 minutes 23 seconds East, a distance of 90.93 feet to a point; thence
6. South 20 degrees 15 minutes 18 seconds West, a distance of 10.11 feet to a point; thence
7. South 89 degrees 59 minutes 30 seconds West, a distance of 151.22 feet to a point; thence
8. South 00 degrees 36 minutes 45 seconds West, a distance of 40.47 feet to a point; thence
9. South 88 degrees 16 minutes 31 seconds East, a distance of 161.09 feet to a point; thence
10. South 07 degrees 47 minutes 42 seconds East, a distance of 135.42 feet to a point; thence
11. North 86 degrees 41 minutes 16 seconds East, a distance of 14.48 feet to a point; thence
12. South 13 degrees 45 minutes 19 seconds East, a distance of 55.68 feet to a point; thence
13. South 25 degrees 17 minutes 50 seconds East, a distance of 38.65 feet to a point; thence
14. North 64 degrees 42 minutes 10 seconds East, a distance of 51.51 feet to a point; thence
15. South 25 degrees 16 minutes 19 seconds East, a distance of 133.44 feet to a point; thence
16. North 63 degrees 33 minutes 07 seconds East, a distance of 21.74 feet to a point; thence
17. South 26 degrees 43 minutes 00 seconds East, a distance of 90.05 feet to a point; thence
18. North 63 degrees 10 minutes 38 seconds East, a distance of 77.74 feet to a point; thence
19. South 25 degrees 29 minutes 29 seconds East, a distance of 64.22 feet to a point on the Southerly line of Block 3810 Lot 350; thence
20. Along said Southerly line of Block 3810 Lot 350, South 64 degrees 01 minutes 47 seconds West, a distance of 96.11 feet to a point; thence
21. Along lands of the now or formerly of the Long Island Railroad, North 82 degrees 20 minutes 00 seconds West, a distance of 293.23 feet to a point on the aforementioned Easterly line of 80th Street; thence

Along said Easterly line of 80th Street the following five courses:

22. North 14 degrees 59 minutes 03 seconds West, a distance of 318.86 feet to a point; thence
23. North 73 degrees 59 minutes 13 seconds East, a distance of 12.62 feet to a point; thence
24. North 25 degrees 37 minutes 07 seconds West, a distance of 68.38 feet to a point; thence
25. North 14 degrees 59 minutes 03 seconds West, a distance of 26.94 feet to a point; thence
26. North 09 degrees 23 minutes 17 seconds West, a distance of 363.16 feet to the Point of Beginning.