

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

THIS INDENTURE made this 20th day of June, 2014, between Owner(s) The O'Neill Group-Dutton LLC, having an office at 241 Hudson Street, Hackensack, County of Bergen, State of New Jersey (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 One Dutchess Avenue in the City of and Town of Poughkeepsie, County of Dutchess and State of New York, known and designated on the tax map of the County Clerk of Dutchess as tax map parcel numbers: Section City – 6062, Section Town - 6062 Block City – 59, Block Town - 02 Lot City – 766443, Lot Town – 763508, being the same as that property conveyed to Grantor by deed dated October 1, 2004, and recorded in the Dutchess County Clerk's Office in Liber and Page 02 2004 10889. The property subject to this Environmental Easement (the "Controlled Property") comprises approximately 11.839 +/- acres, and is hereinafter more fully described in the Land Title Survey dated September 17, 2013 and revised on September 23, 2013, April 24, 2014 and April 28, 2014 prepared by Larry L. Lynn, L.S., 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 Brownfield Cleanup Agreement Index Number: W3-1066-05-05 as amended by NYSDEC Letter, dated December 15, 2010, 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:

**Restricted Residential as described in 6 NYCRR Part 375-1.8(g)(2)(ii),
Commercial as described in 6 NYCRR Part 375-1.8(g)(2)(iii) and Industrial
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 Dutchess 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

- (6) 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;
- (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 6NYCRR 375-1.8(g)(2)(i), 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;

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.

The O'Neill Group-Dutton, LLC:

By: 

Print Name: Paul O'Neill

Title: MANAGING
MEMBER

Date: 5/14/14

Grantor's Acknowledgment

STATE OF NEW ^{Jersey}~~YORK~~)
COUNTY OF ^{Belgen}~~Belgen~~) ss:

TERESA DONEGAN
NOTARY PUBLIC OF NEW JERSEY
ID # 2430446
My Commission Expires 2/26/2018

On the 14th day of May, in the year 2014, before me, the undersigned, personally appeared Paul O'Neill, 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.


Notary Public - State of New York

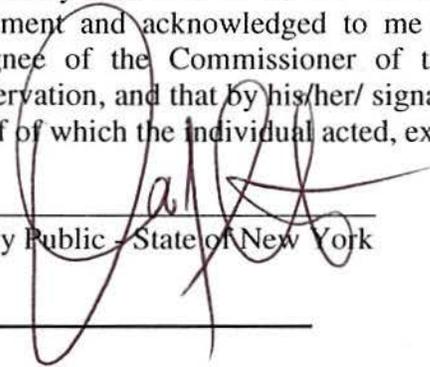
THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner,

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

Grantee's Acknowledgment

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

On the 20th day of June, in the year 2014, before me, the undersigned, personally appeared Robert W. 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, 2016

SCHEDULE "A" PROPERTY DESCRIPTION

ALL that certain parcel of land with the buildings and improvements thereon erected, situate, lying and being partially in the City of Poughkeepsie and Town of Poughkeepsie, County of Dutchess and State of New York, being a portion of what is shown as Parcel A on a certain map entitled, "Subdivision of Property, A. C. Dutton Lumber Corporation" and filed as map number 7345 and being more particularly bounded and described as follows.

BEGINNING at a point on the northerly line of Dutchess Avenue in the City of Poughkeepsie at the southwesterly corner of a grant of lands underwater to Martin Hoffman by Letters Patent dated August 10, 1815 and recorded in the New York State Department of State in Book 26 of Patents at page 505; heading from said point of beginning along the easterly and northerly lines of the Hoffman Patent, N 05° 09' 22" E, a distance of 383.28 feet and S 84°50'38" E, a distance of 66.00 feet to a point on the westerly line of a grant of lands under water to John Delafield by Letters Patent dated September 22, 1836 and recorded in Book 31 of Patents at page 39; thence heading northerly along the same, N 05° 09' 22" E for a distance of 164.29 feet to a point on a grant of lands under water to Fallkill Iron Works by Letters Patent dated December 12, 1862 and recorded in Book 39 of Patents at page 128; thence heading westerly and northerly along the same, N 88° 15'38" W, a distance of 60.37 feet and N 06° 59' 22" E, a distance of 455.33 feet to a point on the southerly line of a grant of lands underwater to Henry D. Myers by Letters Patent dated March 26, 1870, recorded in Book 42 of Patents at page 1; thence heading northerly along the same, N 06° 59' 22" E, crossing the centerline of an underground creek known as "Kidney Creek", at 10.36 feet, said creek being the division line between the City of Poughkeepsie and the Town of Poughkeepsie and continuing in the Town of Poughkeepsie for a distance of 252.64 feet for a total distance of 263.00 feet and N 13° 05'38" W, a distance of 137.75 feet to a point at the southwesterly corner of Parcel B, f.m. 7354, land now or formerly of Vassar College (L1967 P625), said point also being the northwesterly corner of the herein described Easement; thence heading southeasterly along the lands of Vassar College, S 83° 53' 08" E, a distance of 336.58 feet to a point at the corner of the main portion of Parcel B and the North Water Street portion of Parcel B, said point also being the northeasterly corner of this described Easement; thence heading southerly along the westerly line of the North Water Street portion of lands of Vassar College, the following 9 courses:

1) A curve to the left having a radius of 252.11 feet, a length of 117.24 feet and a delta angle of 26° 38' 41" to a point;

2) S 20° 31' 42" E, a distance of 23.60 feet to a point;

3) A curve to the right having a radius of 71.25 feet, a length of 24.43 feet and a delta angle of 19° 38' 43" to a point;

4) S 00° 52' 32" E, crossing the centerline of the previously mentioned "Kidney Creek" at 268.41 feet, said creek being the division line between the Town of Poughkeepsie and the City of Poughkeepsie and continuing in the City of Poughkeepsie for a distance of 156.59 feet for a total distance of 425.00 feet to a point;

5) A curve to the left having a radius of 296.26 feet, a length of 56.38 feet and a delta angle of 10° 54' 13" to a point;

6) S 11° 46' 42" E, a distance of 108.00 feet to a point;

7) A curve to the right having a radius of 474.30 feet, a length of 138.90 feet and a delta angle of 16° 46' 46" to a point;

8)S 04° 59' 58" W, a distance of 115.71 feet to a point;

9)A curve to the left having a radius of 894.65 feet, a length of 34.52 feet and a delta angle of 2° 12' 38" to a concrete monument found at the northwesterly corner of a City of Poughkeepsie Highway Taking area (L22009 P4466);

thence heading southerly along the Taking Line, the following 3 courses:

1)S 18° 10' 56" W, a distance of 26.90 feet to a concrete monument;

2)S 06° 54' 44" W, a distance of 50.77 feet to a concrete monument;

3)S 02° 09' 16" W, a distance of 52.32 feet to a concrete monument, said point being on the northerly line of the unimproved section of Hoffman Street;

thence heading northwesterly along Hoffman Street, N 74° 44' 52" W, a distance of 192.56 feet to a point at the northwesterly corner of Hoffman Street; thence heading southwesterly along Hoffman Street and lands now or formerly of Morrison (L22003 P10228) and Dubraski (L1590 P210), S 15° 15' 08" W, a distance of 310.00 feet to a point on the northerly line of the previously mentioned Dutchess Avenue, said point also being the southeasterly corner of the herein described Easement; thence heading northwesterly along the northerly line of Dutchess Avenue, N 74° 44' 52" W, a distance of 227.54 feet to the point and place of beginning.

CONTAINING 11.839 acres of land, more or less.