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

THIS INDENTURE made this 6th day of October, 2010, between Owner(s) City of Poughkeepsie Industrial Development Agency (Fee Simple) and J M. Development Group, LLC (Leasehold), having an office at 62 Civic Center Plaza, County of Dutchess, 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 36 Pine Street and Laurel Street in the City of Poughkeepsie, Dutchess County and State of New York, known and designated on the tax map of the County Clerk of Dutchess County as tax grid numbers: 6061 – 27 – 797885 and 803922 being the same as that property conveyed to Grantor by deed dated March 29, 2004 and recorded in the Dutchess County Clerk's Office in Document No: 02 2004 4061, comprising approximately 5.53 ± acres, and hereinafter more fully described in the Land Title Survey dated December 16, 2009, revised July 7, 2010, July 9, 2010, August 3, 2010 and August 6, 2010 prepared by Raymond E. Heinsman, Professional Land Surveyor, P.L.L.C., which will be attached to the Site Management Plan. The property description (the "Controlled Property") 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 human 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 BCA Index NoNumber: A3 – 0597 - 1207, 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) 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.

B. The Controlled Property shall not be used for raising livestock or producing animal products for human consumption, 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:

Regional Remediation Engineer
NYSDEC – Region 3
Division of Environmental Remediation
21 South Putt Corners Road
New Paltz, NY 12561 - 1620,
Phone: (845) 256 - 3031

or

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 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, 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 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: Site Number: C 314108
Office of General Counsel
NYSDEC
625 Broadway

With a copy to:

Albany New York 12233-5500
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.

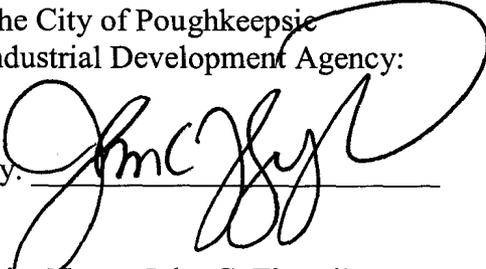
8. Amendment. Any amendment to this Environmental Easement may only be executed by the Commissioner of the New York State Department of Environmental Conservation or the Commissioner’s Designee, and filed with the office of the recording officer for the county or counties where the Property is situated 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.

The City of Poughkeepsie
Industrial Development Agency:

By: 

Print Name: John C. Tkazyik

Title: Chair Date: 9/30/10

JM Development Group, LLC:

By: 

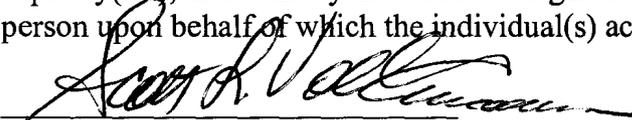
Print Name: Joseph A. Bonura, Jr.

Title: Member/Operating Manager Date: 9/30/10

Grantor's Acknowledgment

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

On the 30 day of September, in the year 2010, before me, the undersigned, personally appeared JOHN C. TRAZI, 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.

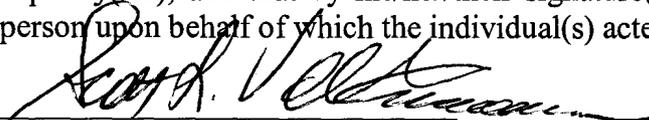

Notary Public - State of New York

SCOTT L. VOLKMAN
Notary Public, State of New York
Reg. No. 4859709
Qualified in Dutchess County
Commission Expires: April 28, 2014

Grantor's Acknowledgment

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

On the 30 day of September, in the year 2010, before me, the undersigned, personally appeared JOSEPH A. ZANUZZA JR., 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

SCOTT L. VOLKMAN
Notary Public, State of New York
Reg. No. 4859709
Qualified in Dutchess County
Commission Expires: April 28, 2014

SCHEDULE "A" PROPERTY DESCRIPTION

Pine Street and Laurel Street
Poughkeepsie, NY
6061-27-797885 and 803922



RAYMOND E. HEINSMAN
PROFESSIONAL LAND SURVEYOR, P.L.L.C.

1830 South Road Unit 24, Suite 167
Wappingers Falls, NY 12590
P: 845.632.3019 | F: 845.632.3020
www.heinsmansurveying.com

DESCRIPTION
LANDS BEING CONVEYED TO
JM DEVELOPMENT GROUP, LLC
CITY OF POUGHKEEPSIE

Revised: June 24, 2009
December 16, 2009

All that lot, parcel or piece of land situate in the City of Poughkeepsie, County of Dutchess, State of New York, and being Parcels A and B as shown on the "Riverview Executive Center for City of Poughkeepsie Urban Renewal Agency Map" filed as Map No. 8588 in the Dutchess County Clerk's Office, Poughkeepsie, New York, and as shown on "Preliminary Map of Survey Prepared for Poughkeepsie Waterfront Development, LLC" as prepared by Chazen Engineering and Land Surveying Company, PC, last revised date March 12, 2004, and being more particularly described as follows:

Beginning at a box cut set on a retaining wall on the northerly line of Pine Street, said point of beginning being on the easterly line of lands now or formerly Conrail, said point of beginning also being the southwesterly corner of the herein described parcel as described in recorded Deed Document No. 02 2004 4061; thence, from said point of beginning and along the easterly line of lands of said Conrail the following courses and distances: on a curve to the right having a radius of 4205.66 feet, an arc distance of 155.54 feet as described by the chord, North 11-34'-10" East 155.53 feet; thence, North 12-37'-44" East 438.84 feet to an iron rod set; thence, South 88-09-46" East 16.14 feet to an iron rod set; thence, North 12-38'-13" East 7.19 feet; thence, on a curve to the left having a radius of 4824.74 feet, an arc distance of 365.58 feet as described by the chord, North 10-27'-46" East 365.49 feet to an iron rod set; thence, South 89-54'-46" East 10.15 feet to an iron rod set; thence, North 07-31'-34" East 129.73 feet to an iron rod set; thence, South 89-23'-26" East 19.99 feet to an iron rod set; thence, North 04-55'-24" East 78.95 feet to an iron rod found on the southerly line of Laurel Drive; thence, along said line, South 89-01'-23" East 55.11 feet to an iron rod found on the westerly line of US Route 9, also being the northeasterly corner of the herein described parcel, Parcel B as shown on said Filed Map No. 8588; thence, along the westerly line of US Route 9 the following courses and distances: South 00-56'-24" West 161.00 feet; thence, South 89-25'-32" East 41.00 feet to an iron rod set; thence, South 06-57'-36" East 220.91 feet to a monument found; thence, South 01-43'-44" West 50.01 feet; thence, South 02-29'-34" West 30.02 feet; thence, South 02-02'-24" West 118.04 feet; thence, South 01-33'-24" West 59.01 feet to an iron rod found; thence, South 00-22'-26" East 239.03 feet to a concrete monument found; thence, South 00-18'-16" East 118.59 feet to an iron rod set on the northerly line of Pine Street; thence, along said line the remaining courses and distances: South 75-23'-44" West 71.06 feet; thence, South 75-27'-54" West 34.20 feet; thence, South 64-58'-34" West 164.00 feet; thence, South 64-24'-24" West 142.42 feet to the point of beginning.

	Page 1 of 2	<i>Licensed in NY, NJ & PA</i>
<i>Maintaining the survey records of:</i>		
Raymond E. Heinsman, P.L.L.C. (1996-Present)	Barger, Campbell, Gray & Railing, P.C. (1983-1988)	Willis E. Tuttle, Jr., P.L.S. (1960-1996)
Gray, Railing, Heinsman, P.C. (1988-1996)	Richard G. Barger, P.E., L.S. (1960-1983)	  

DESCRIPTION
LANDS BEING CONVEYED TO
JM DEVELOPMENT GROUP, LLC
CITY OF POUGHKEEPSIE

Page 2 of 2

June 24, 2009
Revised: December 16, 2009

Containing 5.530 +/- acres.

Subject to easements, right-of-way, and DEC Environments Easement as per Filed Map No. 8588, and recorded Deeds Liber 1259, page 736, Easement 4, Liber 1217, page 504, Parcel "B", Doc. No. 02-2004-4062 A and B and Doc. No. 02-2007-7452.

Subject also to any other right-of-way, easement, covenant, or restrictions of record.

Project No. 09-025
REH/pmm

