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

THIS INDENTURE made this 19th day of October, 2011, between Owner(s) City of Syracuse Industrial Development Agency [Fee Owner], a public benefit corporation existing under the laws of the State of New York, having its principal office at 233 East Washington Street, Syracuse, New York 13202 and DestiNY USA Holdings, LLC, [Beneficial Owner] having an office at 4 Clinton Square, Syracuse, New York 13202 (collectively 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 306 Hiawatha Boulevard West, Syracuse, County of Onondaga and State of New York, known and designated on the tax map of the County Clerk of Onondaga as tax map parcel numbers: Section 114. Block 02 Lot 05.7, being a portion of that property conveyed to Grantor by deed dated August 24, 1989 and recorded in Liber 3559 cp. 142; by deed dated November 13, 1990, recorded in Liber 3664 cp. 321; and by deed dated June 1, 1990, recorded in Liber 3624 cp. 142; by deed dated August 24, 1989, recorded in Liber 3559 cp. 151; and by deed dated October 19, 1994, recorded in Liber 3981 cp. 107 and subject to an Expansion Installment Sale Agreement made by and between the City of Syracuse Industrial Development Agency as Contract Vendor, and DestiNY USA Holdings, LLC, as Contract Vendee, dated as of February 1, 2007, as referenced in Memorandum of Expansion Installment Sale Agreement dated February 26, 2007, recorded March 23, 2007 in Liber 4987 cp 119. The property subject to this Environmental Easement (the "Controlled Property") is approximately 10.138 +/- acres, and is hereinafter more fully described in the Land Title Survey dated August 31, 2011, last revised September 22, 2011 prepared by C.T. Male Associates, P.C.,

which will be attached to the Site Management Plan. The Controlled Property description and survey 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: C734104-06-28, 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:

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 Residential or Restricted Residential purposes as defined in 6NYCRR 375-1.8(g)(2)(i) and (ii), 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
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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
[6/11]

County:

Site No:

BCA Index No:-

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.

Grantor: City of Syracuse Industrial Development Agency

By: 

Print Name: William M. Ryan

Title: Chairman Date: 10-18-11

Grantor's Acknowledgment

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

On the 18th day of October, in the year 2011, before me, the undersigned, personally appeared William M. Ryan, 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

LORI L. McROBBIE
Notary Public, State of New York
Qualified in Onondaga Co. No. 01MC5055591
Commission Expires on Feb. 12, 2014

County:

Site No:

BCA Index No:-

Grantor: DestiNY USA Holdings, LLC

Manager: Carousel Destiny Holdings LLC
a Delaware limited liability company

By: [Signature]

Print Name: Bruce A. Kenan

Title: Vice President Date: October 17, 2011

Grantor's Acknowledgment

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

On the 17th day of October, in the year 20 11, before me, the undersigned, personally appeared Bruce A. Kenan, 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.

[Signature]
Notary Public - State of New York

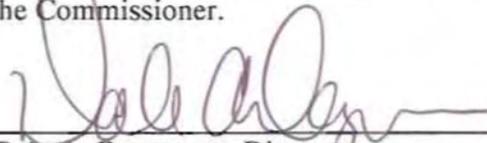
ELIZABETH A. FALLON
Notary Public, State of New York
Qualified in Onondaga Co. No. 01FA6236728
Commission Expires March 7, 2015

County:

Site No:

BCA Index No:-

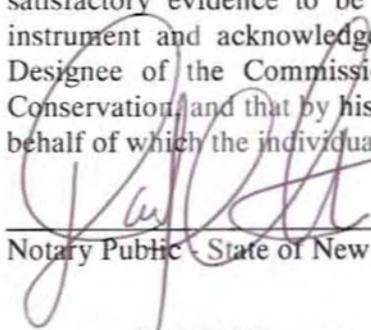
THIS ENVIRONMENTAL EASEMENT IS HEREBY ACCEPTED BY THE PEOPLE OF THE STATE OF NEW YORK, Acting By and Through the Department of Environmental Conservation as Designee of the Commissioner.

By: 
Dale A. Desnoyers, Director
Division of Environmental Remediation

Grantee's Acknowledgment

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

On the 19th day of October, in the year 2011, before me, the undersigned, personally appeared Dale A. Desnoyers, 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

Property Address: 306 Hiawatha Boulevard West, Syracuse, Onondaga County, State of New York

Tax Map: 114. – 02 – 05.7 (Part of)

ENVIRONMENTAL EASEMENT AREA
OIL CITY/CAROUSEL CENTER - PHASE 1 SITE #C734104

All that certain tract, piece or parcel of land situate, lying and being in the City of Syracuse, County of Onondaga, State of New York, lying generally Westerly of Interstate Route 81, Northeasterly of the New York State Barge Canal and Southeasterly of the lands of the Consolidated Rail Corporation, being a portion of Lot 11L of the Carousel Center Subdivision as shown on a resubdivision plan of the Carousel Center Subdivision filed as Map Number 9855 in the Onondaga County Clerk's Office, and being more particularly bounded and described as follows:

COMMENCING at the point of intersection of the division line between the lands of the New York State Barge Canal on the southwest and Lot 11L of the Carousel Center Subdivision on the northeast with the northwesterly margin of Hiawatha Boulevard West as shown on said resubdivision plan;

Thence North 13 deg. 36 min. 44 sec. East, through said Lot 11L, 415.84 feet to the POINT OF BEGINNING of the hereinafter described parcel:

Thence through said Lot 11L and along its westerly line in part, the following eighty-five (85) courses and distances:

- 1) North 49 deg. 36 min. 29 sec. West 44.99 feet to a point; thence
- 2) North 40 deg. 23 min. 31 sec. East 1.97 feet to a point; thence
- 3) North 49 deg. 39 min. 22 sec. West 156.96 feet to a point; thence
- 4) South 40 deg. 20 min. 38 sec. West 2.09 feet to a point; thence
- 5) North 49 deg. 25 min. 03 sec. West 41.72 feet to a point; thence
- 6) North 00 deg. 34 min. 12 sec. West 0.97 feet to a point; thence
- 7) North 82 deg. 09 min. 03 sec. West 26.05 feet to a point; thence
- 8) North 07 deg. 52 min. 16 sec. East 85.46 feet to a point; thence
- 9) South 82 deg. 07 min. 44 sec. East 6.30 feet to a point; thence
- 10) North 07 deg. 04 min. 28 sec. East 18.76 feet to a point; thence
- 11) North 82 deg. 07 min. 44 sec. West 6.04 feet to a point; thence
- 12) North 07 deg. 52 min. 16 sec. East 18.08 feet to a point; thence
- 13) North 52 deg. 10 min. 14 sec. East 2.20 feet to a point; thence
- 14) South 37 deg. 04 min. 34 sec. East 4.00 feet to a point; thence
- 15) North 52 deg. 55 min. 26 sec. East 11.99 feet to a point; thence
- 16) North 37 deg. 37 min. 49 sec. West 3.98 feet to a point; thence
- 17) North 07 deg. 35 min. 57 sec. East 19.97 feet to a point; thence
- 18) North 54 deg. 50 min. 48 sec. East 4.01 feet to a point; thence
- 19) North 36 deg. 42 min. 10 sec. West 11.99 feet to a point; thence
- 20) South 53 deg. 17 min. 50 sec. West 4.00 feet to a point; thence
- 21) North 36 deg. 42 min. 10 sec. West 2.26 feet to a point; thence
- 22) North 07 deg. 52 min. 16 sec. East 131.30 feet to a point; thence
- 23) South 82 deg. 07 min. 45 sec. East 53.96 feet to a point; thence
- 24) North 07 deg. 52 min. 16 sec. East 34.48 feet to a point; thence

- 25) South 79 deg. 43 min. 13 sec. East 0.96 feet to a point; thence
- 26) South 37 deg. 32 min. 40 sec. East 26.90 feet to a point; thence
- 27) North 47 deg. 29 min. 01 sec. East 0.62 feet to a point; thence
- 28) South 82 deg. 30 min. 34 sec. East 13.80 feet to a point; thence
- 29) South 37 deg. 04 min. 37 sec. East 0.78 feet to a point; thence
- 30) North 52 deg. 55 min. 23 sec. East 27.13 feet to a point; thence
- 31) North 37 deg. 04 min. 37 sec. West 0.73 feet to a point; thence
- 32) North 07 deg. 32 min. 59 sec. East 13.80 feet to a point; thence
- 33) North 46 deg. 40 min. 50 sec. East 0.68 feet to a point; thence
- 34) North 40 deg. 17 min. 58 sec. West 27.00 feet to a point; thence
- 35) North 08 deg. 32 min. 21 sec. East 2.59 feet to a point; thence
- 36) South 82 deg. 07 min. 44 sec. East 7.01 feet to a point; thence
- 37) North 07 deg. 52 min. 16 sec. East 35.49 feet to a point; thence
- 38) South 82 deg. 07 min. 44 sec. East 1.52 feet to a point; thence
- 39) North 07 deg. 52 min. 16 sec. East 45.53 feet to a point; thence
- 40) South 82 deg. 07 min. 44 sec. East 92.67 feet to a point; thence
- 41) North 07 deg. 52 min. 16 sec. East 194.00 feet to a point; thence
- 42) North 82 deg. 07 min. 44 sec. West 121.00 feet to a point; thence
- 43) North 07 deg. 52 min. 14 sec. East 230.60 feet to a point; thence
- 44) South 82 deg. 09 min. 55 sec. East 19.02 feet to a point; thence
- 45) North 07 deg. 54 min. 33 sec. East 24.96 feet to a point; thence
- 46) North 82 deg. 13 min. 45 sec. West 19.04 feet to a point; thence
- 47) North 07 deg. 52 min. 14 sec. East 153.13 feet to a point; thence
- 48) South 82 deg. 07 min. 44 sec. East 168.50 feet to a point; thence
- 49) North 07 deg. 52 min. 16 sec. East 17.90 feet to a point; thence
- 50) South 82 deg. 12 min. 33 sec. East 17.10 feet to a point; thence
- 51) North 68 deg. 04 min. 40 sec. East 12.12 feet to a point; thence
- 52) South 22 deg. 07 min. 42 sec. East 6.93 feet to a point; thence
- 53) South 82 deg. 12 min. 33 sec. East 4.96 feet to a point; thence
- 54) South 07 deg. 53 min. 09 sec. West 2.02 feet to a point; thence
- 55) South 82 deg. 06 min. 51 sec. East 117.01 feet to a point; thence
- 56) North 07 deg. 53 min. 09 sec. East 1.96 feet to a point; thence
- 57) South 82 deg. 04 min. 46 sec. East 44.91 feet to a point; thence
- 58) South 07 deg. 56 min. 11 sec. West 44.86 feet to a point; thence
- 59) North 82 deg. 04 min. 23 sec. West 1.79 feet to a point; thence
- 60) South 07 deg. 55 min. 37 sec. West 237.24 feet to a point; thence
- 61) South 84 deg. 37 min. 25 sec. East 1.99 feet to a point; thence
- 62) South 07 deg. 41 min. 47 sec. West 39.81 feet to a point; thence
- 63) South 82 deg. 02 min. 28 sec. East 74.91 feet to a point; thence
- 64) North 07 deg. 57 min. 32 sec. East 1.98 feet to a point; thence
- 65) South 82 deg. 04 min. 35 sec. East 44.95 feet to a point; thence
- 66) South 07 deg. 51 min. 04 sec. West 45.57 feet to a point; thence
- 67) North 85 deg. 12 min. 07 sec. West 1.93 feet to a point; thence
- 68) South 07 deg. 49 min. 42 sec. West 196.38 feet to a point; thence
- 69) South 81 deg. 15 min. 26 sec. East 1.88 feet to a point; thence
- 70) South 07 deg. 47 min. 07 sec. West 69.62 feet to a point; thence
- 71) South 41 deg. 25 min. 56 sec. West 3.42 feet to a point; thence

- 72) South 49 deg. 35 min. 36 sec. East 31.58 feet to a point; thence
73) South 40 deg. 09 min. 44 sec. West 44.99 feet to a point; thence
74) North 49 deg. 50 min. 16 sec. West 2.00 feet to a point; thence
75) South 40 deg. 20 min. 30 sec. West 117.05 feet to a point; thence
76) South 49 deg. 39 min. 30 sec. East 2.38 feet to a point; thence
77) South 40 deg. 20 min. 34 sec. West 42.89 feet to a point; thence
78) North 49 deg. 39 min. 30 sec. West 2.38 feet to a point; thence
79) South 40 deg. 23 min. 11 sec. West 117.18 feet to a point; thence
80) South 49 deg. 39 min. 30 sec. East 2.38 feet to a point; thence
81) South 40 deg. 24 min. 48 sec. West 42.84 feet to a point; thence
82) North 49 deg. 39 min. 30 sec. West 2.38 feet to a point; thence
83) South 40 deg. 23 min. 59 sec. West 237.14 feet to a point; thence
84) South 49 deg. 36 min. 34 sec. East 2.00 feet to a point; and
85) South 40 deg. 23 min. 31 sec. West 44.84 feet to the point or place of beginning.

Containing 10.138 acres of land more or less.

SURVEY

